

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 24414 of 2003 (F)

PETITIONER :

THANKAMMA SEBASTIAN,
LOWER GRADE HINDI TEACHER,
D.A.M (DR.AMBEDKAR MEMORAIL U.P.SCHOOL, MUTTAPPALLY,
KANJIRAPPALLY, KOTTAYAM

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS :

1. THE MANAGER, D.A.M.U.P.SCHOOL,
MUTTAPPALLY, KANJIRAPPALLY, KOTTAYAM
2. DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM
3. ASST.EDUCATIONAL OFFICER,
KANJIRAPPALLY
4. ADDITIONAL SECRETARY, GENERAL EDUCATION (E) DEPARTMENT,
GOVERNMENT OF KERALA, GOVT.SECRETARIAT, THIRUVANANTHAPURAM
5. PRINCIPAL SECRETARY, GENERAL EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA, GOVT.SECRETARIAT, THIRUVANANTHAPURAM
6. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVT.,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM

R1 BY ADV.SRI.C.E.UNNIKRISHNAN
R2-R6 BY GOVERNMENT PLEADER SRI.S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 24414 of 2003 (F)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF GOVT.ORDER G.O.RT.NO.656/95/GE DT.24.2.1995

EXT.P2 : COPY OF COMMUNICATION DT.8.7.98 ISSUED BY THE GOVT. TO THE D.P.I

EXT.P3 : COPY OF APPOINTMENT ORDER DT.14.10.1999 ISSUED TO THE PETITIONER BY THE MANAGER WITH THE ENDORSEMENT MADE THEREON BY THE A.E.O APPROVING THE APPOINTMENT W.E.F.14.10.99

EXT.P4 : COPY OF COMMUNICATION DT.8.8.2001 ADDRESSED TO THE GOVT. TO DR.K.C.JOSEPH, M.L.A

EXT.P5 : COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

PA TO JUDGE

AV

K.VINOD CHANDRAN, J.

W.P.(C) No.24414 of 2003

Dated this the 12th day of October, 2015

J U D G M E N T

The petitioner is aggrieved by the fact that the petitioner was not given appointment with effect from the date, on which it was directed, as per Ext.P1 Government Order. The petitioner also claims that, the salary payable to the petitioner has to be recovered from the Manager for the intervening period between 01.06.1994 and 14.10.1999, the later date being the approval granted by the AEO; under Rule 7(4)(d) of Chapter III of Kerala Educational Rules ('KER' for short).

2. The facts to be noticed are that the petitioner was a Rule 51-A claimant, which claim is related to an appointment between 01.01.1987 and 16.03.1987. When a vacancy arose in the respondent school on 01.06.1995, the Manager appointed one Smt.C.G.Krishnakumari with effect from 22.06.1994, ignoring the claim of the Rule 51-A claimant. The appointment of C.G.Krishnakumari failed to get approval of the Assistant Educational Officer. The same was challenged in appeal and then in revision which culminated in Ext.P1 order being passed. In Ext.P1, the Government clearly found that the

petitioner is eligible for appointment in the vacancy that arose with effect from 01.06.1994.

3. Even after Ext.P1 order, the Manager did not appoint the petitioner, since there was a challenge made. Ext.P1 having been upheld, the Manager later appointed the petitioner on 14.10.1999 by Ext.P3 appointment order, however with effect from 01.06.1994. It is also evident that, the petitioner's appointment occurred only since disciplinary action was taken against the Manager and there was also a move to take over the Management of the school to coerce the Manager into making such appointment. In any event, the appointment having been made by Ext.P3, the approval granted was only from 14.10.1999. The petitioner did not challenge the said approval made on 21.02.2000. The petitioner slept over her rights. The petitioner is said to have made a representation to the Government which was replied by Ext.P4 against which a review is said to have been filed.

4. Chapter XIV A of KER specifically provides for an appeal against the order declining approval of appointment issued by the Assistant Educational Officer or the District Educational Officer to the District Educational Officer or the Deputy Director

of Education. Though the approval had been granted in Ext.P1, the petitioner was entitled to claim for approval from 01.06.1994, which she ought to have agitated in an appeal under the provisions of KER. The petitioner having refused to do so contended herself with a representation filed, before the Government, which was declined by Ext.P4 again dated 08.05.2001. A review is said to have been filed after two years to project a cause of action for the above writ petition.

5. The learned counsel for the petitioner argues that since Ext.P3 is in violation of Ext.P1 order, the petitioner ought to have been granted approval with effect from 01.06.1994. However the fact remains that the approval granted by the AEO with effect from 14.10.1994 has become final, for reason only of the petitioner having failed to challenge the said order. In such circumstances, there could be no ground raised for proceeding against the Manager under Rule 7 of Chapter III of KER.

6. The writ petition filed is found to be delayed in so far as the order challenged is of the year 2000 and the writ petition is of the year 2003. Further, an appellate remedy as per the provisions of KER was to be invoked within 15 days from the

date of receipt of a copy of the order appealed against.

This writ petition, for the above reasons, would stand dismissed.

Sd/-
K.VINOD CHANDRAN, JUDGE

AV/13/10/