

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).NO. 11543 OF 2011 (P)  
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PETITIONER(S) :  
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M.GEETHA, W/O. GOPINATHAN, AGED 39 YEARS,  
UPPER PRIMARY SCHOOL ASSISTANT, M.S.V.M.U.P.SCHOOL  
P.O.CHUNANGAD, PALAKKAD DISTRICT-679 511.

BY ADVS.SRI.V.A.MUHAMMED  
SRI.K.E.HAMZA

RESPONDENT(S) :  
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1. THE STATE OF KERALA, REPRESENTED BY  
ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,  
JAGATHY, THIRUVANANTHAPURAM-695 014.

3. THE DISTRICT EDUCATIONAL OFFICER,  
OTTAPPALAM, PALAKKAD DISTRICT-679 101.

4. THE ASSISTANT EDUCATIONAL OFFICER,  
OTTAPPALAM, PALAKKAD DISTRICT-679 101.

5. THE MANAGER,  
M.S.V.M.U.P.SCHOOL, P.O.CHUNANGAD  
PALAKKAD DISTRICT-679 101.

R1-R4 BY ADV. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER OF APPOINTMENT OF THE PETITIONER  
DATED 15.07.2006

EXT.P2: TRUE COPY OF THE G.O.(RT.) NO.497/09/GE OF THE GOVERNMENT  
DATED 31.01.2009

EXT.P3: TRUE COPY OF THE ORDER NO.L.DIS.G/2052/08 OF THE ASSISTANT  
EDUCATIONAL OFFICER DATED 13.05.2009

EXT.P4: TRUE COPY OF THE ORDER NO.K.DIS.B4/3651/09 OF THE DISTRICT  
EDUCATIONAL OFFICER DATED 31.10.2009

EXT.P5: TRUE COPY OF THE ORDER NO GI/3469/10/DPI/K.DIS. OF THE 2ND  
RESPONDENT DATED 10.02.2010

EXT.P6: TRUE COPY OF THE ORDER NO.56153/B3/2010/GE OF THE GOVERNMENT  
DATED 22.01.2011

EXT.P7: TRUE COPY OF THE CIRCULAR NO.9679/J2/99/G.EDN. OF THE  
GOVERNMENT DATED 24.03.1999

EXT.P8: TRUE COPY OF THE TRUE COPY OF THE LETTER  
NO.79521/J2/08/G.EDN. OF THE GOVERNMENT DATED 06.01.2009

EXT.P9: TRUE COPY OF THE TRUE COPY OF THE ORDER  
NO.K.DIS.ET2/70484/94/DPI OF THE 2ND RESPONDENT DATED 19.12.2004

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**  
.....  
**W.P.(C).No.11543 of 2011**  
.....  
**Dated this the 22<sup>nd</sup> day of May, 2015**

**J U D G M E N T**

The petitioner was appointed as U.P.S.A in the M.S.V.M.U.P.School, Palakkad district from 15.07.2006 to 31.05.2008 against a leave vacancy of Smt.U.V.Malini, a U.P.S.A in the same School, who was on leave from 01.06.2003 to 31.05.2008. When the said appointment of the petitioner was sent for approval, by Ext.P1 order dated 19.07.2008, the approval was granted only for the period from 15.07.2006 to 31.03.2008. In other words, the period from 01.04.2008 to 31.05.2008 was not approved. It is the case of the petitioner that by virtue of the provisions of Rule 49 of Chapter XIV A of the KER, the petitioner is entitled to get approval for the said period as well, and consequently, the approval of the appointment of the petitioner from 15.07.2006 to 31.05.2008 ought to have been granted by the respondents. The facts in the writ petition would disclose that Smt.Malini, in whose leave vacancy the petitioner was initially appointed, extended her leave from 01.06.2008 to 31.05.2013. The request of Smt.Malini for the extended leave was also sanctioned by Ext.P2 order. To the said leave vacancy, the

petitioner was once again appointed as U.P.S.A from 01.06.2008, in continuation of his earlier appointment. This was possible in the School during the academic year 2008-2009, because the student strength was sufficient to sanction two posts under 1:40 teacher student ratio, so as to protect two U.P.S.A who would otherwise have faced retrenchment on the application of the 1:45 ratio. When the appointment of the petitioner was sent for approval, however, the same was rejected by the Assistant Educational Officer by Ext.P3 order dated 13.05.2009. An appeal preferred by the petitioner against the said order was also rejected by the District Educational Officer by Ext.P4 order dated 31.10.2009. A further revision was rejected by the Director of Public Instruction by Ext.P5 order dated 10.02.2010 and, although the petitioner filed a further revision before the Government, the same also came to be rejected by Ext.P6 order dated 22.02.2011. It will be seen from a perusal of Ext.P6 order that the reason for denial of approval to the appointment of the petitioner for the period from 01.06.2008 to 31.05.2013 was that during 2008-2009, two U.P.S.As were retained in the School under 1:40 ratio and it was the stand of the respondents that the petitioner being a leave substitute would not be entitled to the benefit of retention under the 1:40 ratio, and if

the petitioner's candidature was excluded then one of the L.P.S.A's could be accommodated to the retained post of U.P.S.A for the purposes of the staff fixation in the L.P.Section of the School. In Ext.P6 order, it is stated that there was no vacancy to appoint the petitioner with effect from 04.06.2008.

Counsel for the petitioner would vehemently contend that the respondents erred in denying approval to the appointment of the petitioner for the period from 01.06.2008 to 31.05.2013. It is pointed out that by Ext.P6 Circular, the Government had clarified that the benefit under the revised teacher student ratio of 1:40 can also be applied in favour of leave substitutes. It is therefore contended by counsel for the petitioner that there was no justification whatsoever for the respondents to have denied approval to the appointment of the petitioner especially when, by application of the 1:40 ratio, the petitioner as a leave substitute of a U.P.S.A could have been retained in the U.P Section of the School.

2. A counter affidavit has been filed by the 2<sup>nd</sup> respondent wherein in paragraph 2 and 3, the staff fixation particulars in the

School for the academic year 2008-2009 are narrated. In paragraph 3 of the counter affidavit, it is stated, after referring to the staff strength of L.P.S.As and U.P.S.As in the School, that it was the opinion of the Department that Smt.Sheeladevi, one of the U.P.S.As, who had been retained under the 1:40 ratio could be shifted to the leave vacancy of U.V.Malini and accommodated in the L.P.Section instead of extending the benefit of 1:40 ratio to the petitioner who was appointed to the leave vacancy of U.V.Malini. It was on this basis that the appointment of the petitioner for the period 01.06.2008 to 31.05.2013 was not approved by the respondents, as borne out in Exts.P3 to P6 orders. The counter affidavit also states that there was a reduction of one division in standard VII during 2010-2011, reducing the number of divisions and number of posts in the U.P Section to 6, and therefore, the petitioner could not be accommodated in the School after 15.07.2010.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the

case as also the submissions made across the bar, I find that as regards the entitlement of the petitioner to an approval of his appointment for the period from 15.07.2006 to 31.05.2008, the provisions of Rule 49 Chapter XIV A of the KER would clearly come to his rescue to accord approval for the period from 01.04.2008 to 31.05.2008 also, thereby entitling him to an approval of his appointment for the entire period from 15.07.2006 to 31.05.2008. I find that the non-approval of the appointment of the petitioner during the period from 01.04.2008 to 31.05.2008 in Ext.P1 is not in order and Ext.P1 to that extent is quashed. I direct the 4<sup>th</sup> respondent to approve the appointment of the petitioner for the entire period from 15.07.2006 to 31.05.2008 by issuing a separate order to that effect after cancelling Ext.P1. As regards the appointment of the petitioner from 01.06.2008 to 15.07.2010, I am of the view that the reasoning of the respondents in Exts.P3 to P6 orders is legally flawed in that it proceeds on the basis that a leave substitute will not be entitled to the benefit of 1:40 ratio protection that is given for the specific purpose of retaining teachers who would otherwise face retrenchment pursuant to a division fall noticed in a staff fixation. Ext.P6 Circular of the Government, produced by the petitioner itself would indicate that leave

substitutes also stand to get the benefit of the 1:40 teacher student ratio for the purposes of retention in service pursuant to a division fall that is noticed during the staff fixation. I also find from the counter affidavit filed on behalf of the 2<sup>nd</sup> respondent that there was yet another reason that prompted the respondents to deny the approval to the appointment of the petitioner. This is indicated in paragraph 3 of the counter affidavit wherein it is stated that the respondents were of the view that Smt.Sheeladevi, U.P.S.A, could have been shifted to the leave vacancy of U.V.Malini and accommodated in the L.P Section instead of extending the benefit of 1:40 ratio in favour of the petitioner. It is now settled that such accommodation of a U.P.S.A towards the staff strength of LPSA cannot be done, and hence, the said reasons that prompted the respondents to deny approval to the appointment of the petitioner cannot be legally sustained.

Resultantly, I hold that the appointment of the petitioner for the period from 01.06.2008 to 15.07.2010 also deserves to be approved and I direct the 4<sup>th</sup> respondent to issue orders approving the appointment of the petitioner as U.P.S.A in the School for the period from 01.06.2008 to 15.07.2010. As regards the period after

15.07.2010, the 4<sup>th</sup> respondent will have to ascertain the position obtaining in the school after the staff fixation done for the years in question, and take a decision with regard to the continuation of the petitioner as a U.P.S.A in the School during the said years. The 4<sup>th</sup> respondent shall carry out this exercise and pass orders in the matter with regard to the appointment of the petitioner as UPSA in the School beyond the period 15.07.2010, within a period of two months from the date of receipt of a copy of the judgment after hearing the petitioner. I also make it clear that the salary and emoluments that would become payable to the petitioner consequent to the approval of the appointment for the periods mentioned in this judgment, shall be paid to the petitioner within an outer time limit of three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

mns

