

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No.11346 of 2013 (P)

PETITIONER(S):-

SUNILKUMAR.P.G., S/O.LATE GANGADHARAN,
PARIYANGATTU HOUSE, MANJAKKARA,
MANKARA RAILWAY STATION P.O.,
PALAKKAD DISTRICT - 678 613.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P.

RESPONDENT(S):-

1. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM, 695 001
2. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD - 678 001.
3. THE ASSISTANT EDUCATIONAL OFFICER,
CHERPULASSERY, PALAKKAD DISTRICT - 678 001.
4. THE MANAGER,
AUP SCHOOL, POMBRA, POMBRA P.O.
PALAKKAD DISTRICT - 678 505.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SMT.RAJASREE M.J.
R4 BY ADVS. SRI.V.A.MUHAMMED
SRI.M.SAJJAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1: TRUE COPY OF THE APPLICATION DATED 28/12/1993
SUBMITTED BEFORE THE RESPONDENT NO.1.
- EXHIBIT P2: TRUE COPY OF THE REMINDER DATED 12/02/1994 SUBMITTED
BEFORE THE RESPONDENT NO.1.
- EXHIBIT P3: TRUE COPY OF THE PETITION DATED 14/07/1995 SUBMITTED
BEFORE THE RESPONDENT NO.1.
- EXHIBIT P4: TRUE COPY OF THE CONSENT LETTER GIVEN BY THE SISTER
OF THE PETITIONER.
- EXHIBIT P5: TRUE COPY OF THE CONSENT LETTER GIVEN BY THE
BROTHER OF THE PETITIONER.
- EXHIBIT P6: TRUE COPY OF THE PETITION DATED 16/10/2006 SUBMITTED
BEFORE THE RESPONDENT NO.4 BY THE PETITIONER.
- EXHIBIT P7: TRUE COPY OF THE LETTER DATED 16/10/2006 SUBMITTED BY
ANIL KUMAR K. TO THE RESONDENT NO.1.
- EXHIBIT P8: TRUE COPY OF THE REPRESENTATION DATED 30/10/2012
SUBMITTED BY THE PETITIONER BEFORE THE
RESPONDENT NO.4.
- EXHIBIT P9: TRUE COPY FO THE COMMUNICATION DATED 06/11/2012 MADE
BY THE RESPONDENT NO.3 TO THE PETITIONER.
- EXHIBIT P10: TRUE COPY OF THE COMMUNICATION DATED 26/3/2013 MADE
BY THE RESPONDENT NO.2 TO THE RESPONDENT NO.3.

RESPONDENT(S)' EXHIBITS:-

- EXT.R4(a) TRUE COPY OF THE COMMUNICATION OF THE MANAGER
DATED 9.4.2013.
- EXT.R4(b) TRUE COPY OF THE APPLICATION OF THE PETITIONER
DATED 16.10.2006.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.11346 of 2013-P

Dated this the 01st day of September, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's application for compassionate appointment filed in the year 2006 has not been considered till date.

2. The brief facts to be noticed, regarding the claim which is urged in the above writ petition, are that the petitioner's father, who was working as a Peon in the 4th respondent, expired on 06.03.1980 when the petitioner, his brother and his sister were minors. Subsequently, the petitioner's elder brother, one Anilkumar, on attaining majority, made an application for compassionate appointment as per Exhibit P1 dated 28.12.1993 and it is also submitted that there is a subsequent reminder made, as per Exhibit P2. The grandfather of the petitioner is also said to have moved the District Educational Officer as per Exhibit P3 dated 14.07.1995. However, the said claim was not pursued after that. The counter affidavit of the 4th respondent refutes such claim having been made as per Exhibits P1 and P2.

3. Subsequently, Exhibits P4 and P5 consent letters were issued by the sister and brother of the petitioner, giving up the claim for compassionate appointment under Rule 51B of Chapter XIV-A and Rule 9A of Chapter XXIV-A of Education Rules, 1959 (Kerala) [for brevity "KER"]. The petitioner is said to have made an application as per Exhibit P6 on 16.10.2006, which is said to be not considered by the 4th respondent. The petitioner relies on the decisions in ***Unnikrishnan v. Manager, C.A.H.S. [2010 (1) KLT 354]*** and ***Manager, P.H.M. K.M.H.S. v. State of Kerala [2010 (2) KLT SN 76 (Case No.77)]***.

4. The learned counsel for the 4th respondent, however, denies having received the application from the grandfather of the petitioner, for appointment of the petitioner's brother, and further contends that the application filed by the petitioner is grossly delayed. The petitioner is said to have attained majority in the year 1995 and the application admittedly is filed only in the year 2006. The Government Order issued in this regard specifically restricts an application to be filed within two years from the death of the employee or within three years from the date of attaining majority of the applicant.

5. The learned counsel for the petitioner took me through the decision in ***Unnikrishnan*** (*supra*). The widow of a deceased employee sought for an appointment under the compassionate appointment scheme, for her son - the appellant therein, as provided under Rule 51-B, which stood rejected on the ground that it was not in the prescribed format. The Division Bench specifically held that the Manager has a duty to give employment to a claimant under the dying-in-harness scheme, provided "he is otherwise eligible and applies, as per the provisions of the relevant Government Order" (sic). In the present case, it is to be specifically noticed that the application made by the petitioner herein is not in accordance with the Government Order. However, the learned counsel for the petitioner further points out the reliance placed by the Division Bench on ***Baiju Kumar v. D.E.O., Trivandrum*** [2003 (3) KLT 240], in which another Division Bench had held that it is the duty of the Manager to give an appointment under the compassionate appointment scheme, especially since the person eligible to claim such employment would not be aware as to when a vacancy arises, to which such claim could be made.

6. **2010 (2) KLT SN 76 [Case No.77]** is relied upon to contend that definitely there could be substitution and another person can claim appointment if the dependant who originally applied withdraws such claim. There can be no dispute to the said proposition. However, in the above case the issue does not revolve around, whether there could be substitution or not; but depends on whether the application or the substitution, has been sought for within the time stipulated by the Government Order. The said issue is covered by the decision of the Hon'ble Supreme Court in ***Shreejith v. Deputy Director (Education), Kerala [2012 (3) KLT 214 (SC)]***.

7. Dealing with Chapter XIV-A Rule 51B and Chapter XXIV-A Rule 9A, the Hon'ble Supreme Court categorically held that an application for compassionate appointment under the dying-in-harness scheme has to be filed within the stipulated time limit, whether or not a vacancy is available. The decision in ***Baiju Kumar*** (*supra*) was also overruled. ***Unnikrishnan*** (*supra*) was also under challenge in ***Sreejith*** (*supra*), in S.L.P.(C). No.4467 of 2010. While upholding the decision of the Division Bench in ***Unnikrishnan*** (*supra*), the reliance placed on ***Baiju Kumar***

(*supra*) was frowned upon. It was categorically held by the Hon'ble Supreme Court that there was no responsibility on the Manager or the School to go after the legal heirs of a deceased employee and offer compassionate appointment on a vacancy arising. Whether there be a vacancy or not, an application had to be made as provided in the Government Order dated 24.05.1999; within two years of date of death or three years after attaining majority. If such an application is made, *dehors* any defect, the dependant has a sustainable claim against the next available vacancy and if no application is made within the time, the claim would be defeated, was the finding.

8. In the present case, the petitioner's contention is that the petitioner's brother had initially applied for such appointment when the brother attained majority. However, there is nothing to substantiate whether such a claim was made and received by the 4th respondent. It is also to be noticed that even if the petitioner's submissions are accepted, no proceedings were taken to compel the 4th respondent to consider Exhibits P1 and P2 or even Exhibit P3 said to have been filed in the year 1995. After 11 years the petitioner's siblings are said to have given up the

claim for compassionate appointment and agreed to the petitioner's appointment; when again the petitioner had attained majority in the year 1998. The Government Order of 1999 specifically stipulates the application to be made within two years of the death of the employee or three years of attaining majority of the applicant. Even if the petitioner had attained majority before the Government Order, the petitioner, at least, ought to have made an application within three years from the date of the Government Order and the application filed in the year 2006 cannot be said to be one properly made as per the scheme contemplated in the KER. Further, it is also to be noticed that the above writ petition seeking consideration of the application of 2006 has been filed after seven years. Delay on that aspect also stands against the petitioner.

For all the above reasons, the writ petition is found to be devoid of merit and the same would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]