

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 12787 of 2012 (W)

PETITIONER:

P.SREEJISHA
WIFE OF JAYACHANDRAN, HIGH SCHOOL ASSISTANT (MATHS)
AHAMMED KURUKKAL MEMORIAL HIGH SCHOOL, KOTTOOR
INDIANOOR-676503, KOTTAKKAL, MALAPPURAM DISTRICT.

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

RESPONDENTS:

- 1.THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
- 2.THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM DISTRICT-676519.
- 3.THE MANAGER,
AHAMMED KURUKKAL MEMORIAL HIGH SCHOOL, KOTTOOR,
INDIANOOR-676503, KOTTAKKAL, MALAPPURAM DISTRICT.
4. THE HEADMASTER
AHAMMED KURUKKAL MEMORIAL HIGH SCHOOL, KOTTOOR
INDIANOOR-676503, KOTTAKKAL, MALAPPURAM DISTRICT.

R1 & R2 BY GOVERNMENT PLEADER SRI.R.PADMARAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1. TRUE COPY OF THE OPTION FOR HIGHER GRADE DATED 18.7.2009.

EXHIBIT-P2. TRUE COPY OF THE LETTER OF THE HEADMASTER DATED 6.4.2010
ALONG WITH STATEMENT OF FIXATION OF PAY OF THE PETITIONER
DATED 6.4.2010.

EXHIBIT-P3. TRUE COPY OF THE LETTER NO.B2/10450/2010/L.DIS.DATE
28.10.2010.

EXHIBIT-P4. TRUE COPY OF THE REPRESENTATION FILED BEFORE THE
GOVERNMENT DATED 15.11.2010.

EXHIBIT-P5. TRUE COPY OF THE GOVERNMENT ORDER DATED 8.3.2012.

EXHIBIT-P6. TRUE COPY OF THE G.O.(MS.)NO.62/73/S.EDN.DATED 2.5.1973.

EXHIBIT-P7. TRUE COPY OF G.O.(MS.)NO.74/68/EDN.DATED 24.2.1968 OF THE
GOVERNMENT.

EXHIBIT-P8. TRUE COPY OF THE LETTER NO.75389/ESTT.C.1/09/FIN.DATED
4.9.2010.

EXHIBIT-P9. TRUE COPY OF THE LETTER OF THE ACCOUNTANT GENERAL DATED
10.5.2011.

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.

= = = = =

W.P.(C).No.12787 of 2012

= = = = =

Dated this the 12th day of November, 2015

JUDGMENT

1.This writ petition is filed challenging Ext.P5 order of the Government rejecting the petitioner's claim for grant of time bound higher grade w.e.f. 15.07.2009, the date on which she completed 8 years of service as H.S.A.(Maths). The contention of the petitioner is that she was initially appointed as H.S.A. (Maths) in the Rahmanina High School, Ayanchery on 25.11.1998. She was retrenched due to division fall w.e.f. 14.07.2002. She claims that she thus had 3 years, 10 months and 16 days of service in the said school. In the academic years 2002-2003 and 2003-2004, no vacancy arose to accommodate the petitioner in the said school. Thereafter, she was appointed on a regular basis in the Ahammad Kurukkal Memorial High School, Kottoor w.e.f. 01.06.2005. On completing the service of 8 years on an aggregate, the petitioner claimed time bound higher grade w.e.f. 15.07.2009

adding the service which she had earlier rendered in Rahamania High School, Ayanchery as well. The claim preferred by the petitioner was rejected by Ext.P3 order of the second respondent stating that special sanction of the Government is required for considering the service in other management for sanctioning higher grade. The petitioner therefore approached the Government seeking grant of time bound higher grade w.e.f. 15.07.2009. This has been rejected by Ext.P5 letter of the Government stating that the petitioner's initial appointment was in a leave vacancy and she could not have availed leave without the permission of the Government. It is further stated that on inter management transfer, the petitioner would not be eligible to count her earlier service for grant of time bound higher grade. This order is under challenge in this writ petition.

2. Heard learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents 1 and 2. It is the contention of the counsel for the petitioner that the initial appointment of the petitioner in Rahamania

High School, Ayanchery was on a regular basis and that she was retrenched due to division fall and there was no availing of leave, inter management transfer or resignation in her case. She was thereafter appointed regularly to a vacancy which arose in the Ahammed Kurukkal Memorial High School, Kottoor on 01.06.2005. The petitioner is claiming the benefit of counting the earlier period of service rendered by her in Rahamania High School along with the period of service put in by her in Ahammed Kurukkal Memorial High School, Kottoor also for the purpose of availing time bound higher grade. The petitioner relies on Exts.P6 to P9 and P11 Government Orders to contend that she is entitled to treat the earlier period during which she worked in another management also as qualifying service for the purpose of time bound higher grade.

- 3.The first respondent has filed a counter affidavit admitting that the petitioner was initially appointed as H.S.A.(Maths) at Rahmaniya High School for the period from 05.02.1998 to 30.04.1998 and thereafter from 25.11.1998 to 14.07.2002. It is also stated that the above appointment was approved and

that the petitioner was subsequently retrenched from service due to division fall during the year 2002. It is also stated that later, the petitioner was appointed as H.S.A.(Maths) in Ahammed Kurukkal Memorial High School, Kottoor w.e.f. 01.06.2005. At paragraph 5 of the counter affidavit, it is stated that the service of the petitioner as H.S.A (Maths) was approved and she had become a 51(A) claimant under the first management. Therefore, she ought to have sought for permission from the management and the District Educational Officer concerned before taking up employment in another school coming under a different management. This is the reason stated for denying the claim of the petitioner in the counter affidavit. It is further stated in paragraph 6 that unless the petitioner gives relinquishment letter, the Manager will be precluded from appointing a fresh hand since her 51(A) claim would subsist.

4.I have considered the contentions advanced on either side.

The petitioner claims the benefit of the time bound higher grade reckoning her entire service as H.S.A.(Maths) in

different managements on the basis of the provisions contained in Rule 61 of Chapter XIV A KER as well as the Government Orders on the subject. It is brought to my notice that all service including broken spells which count for increment are liable to be counted for grade promotions as well. Further, the Government Orders issued from time to time have also clarified that even the spells of temporary appointment in leave vacancy are liable to be counted if they are on the same time scale and in the same post.

5.The provision under Rule 51(A) Chapter XIVA, KER with regard to the relinquishment and taking up other employment in another educational agency would only operate to make the petitioner ineligible to claim the benefit of re-appointment under that rule. From a reading of Rule 51(A) it is clear that there is no provision which makes it mandatory for a teacher who was relieved for want of vacancy to get prior permission from the management from which she was retrenched to take up another appointment. It is true that if she takes up regular appointment in another management, she will not be entitled

to claim the benefit of Rule 51(A). However, this cannot be pressed into service to deny the claim of the petitioner that she is entitled to count the period of approved service in the first management towards grant of time bound higher grade.

6. In any view of the matter, Ext.P5 Government Order proceeds on the basis that the initial appointment of the petitioner was in a leave vacancy and that she could not have been appointed in the second management without the permission of the Government. Going by the pleadings and the counter affidavit filed by the first respondent, this is apparently a mistake of fact. The petitioner admittedly had approved service from 25.11.1998 to 14.07.2002 in a regular capacity in the Rahamania High School, Ayanchery. She is claiming the counting of this period towards time bound higher grade. In the above circumstances, Ext.P5 order is vitiated by error of fact and law apparent on the face of record. The same is set aside.

7. The writ petition is disposed of directing the Government to take up Ext.P4 claim raised by the petitioner, in view of the

fact that she had approved service in a regular vacancy from 25.11.1998 to 14.07.2002 and was appointed in a regular vacancy in the Ahammed Kurukkal Memorial High School, Kottoor w.e.f. 01.06.2005. The claim of the petitioner shall be considered in the light of Rule 61(4) of Chapter XIV A Kerala Education Rules as well as the Government Orders on the subject including those relied on by the petitioner. Final orders, as directed above, shall be rendered, after hearing the petitioner, within a period of two months from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the writ petition, complete in all respects, before the first respondent to enable the Government to take an appropriate decision in the matter.

sd/-

Anu Sivaraman, Judge

sj

TRUE COPY

P.A.TO JUDGE