

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 13316 of 2012 (L)

PETITIONER(S):

K.N.USHA AGED 54 YEARS
W/O. DR. A.V. VELAYUDHAN NAIR, AMBAT HOSUE
CHELAMATTOM, OKKAL.P.O., PERUMBAVOOR
ERNAKULAM DISTRICT (NOW WORKING AS HEADMISTRESS
D.B.H.S., THRIKKARIYOOR KOTHAMANGALAM).

BY ADV. SRI.ALEXANDER JOSEPH

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF GENERAL EDUCATION, STATE SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE DPUTY DIRECTOR OF EDUCATION,
KAKKANAD, ERNAKULAM-682030.
3. THE DISTRICT EDUCATIONAL OFFICER
KOTHAMANGALAM, ERNAKULAM-686691.
4. THE MANAGER
TRAVANCORE DEVASWOMBOARD HIGH SCHOOLS, NANTHANCODE
THIRUVANANTHAPURAM-695001.

R4 BY ADV. SRI.G.BIJU

R3 BY ADV. GOVERNMENT PLEADER SMT. M.J. RAJASREE

R4 BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE DEVASWOM BOARD

R BY SRI.G.BIJU,SC,TRAVANCORE DEVASWOM BOARD

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

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1 TRUE COPY OF THE LETTER NO. B3-8428/2011 DATED 8-12-2011 TO THE 4TH RESPONDENT BY 3RD RESPONDENT.

EXT.P2 TRUE COPY OF THE EXPLANATION DATED 21-12-2011 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P3 TRUE COPY OF THE REPRESENTATION DATED 22-3-2012 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P4 TRUE ORDER DATED 12-4-2012 IN I.A. NO. 3033/2012 IN WPC NO. 1294/09.

RESPONDENTS' EXHIBITS :

EXT.R3(a): TRUE PHOTOCOPY OF THE GOVERNMENT ORDER G.O.(RT) NO.3522/08/G.EDN DATED 31.7.2008

EXT.R3((b): TRUE PHOTOCOPY OF THE OFFICE LETTER NO. B3 - 8428/11 DATED 8.12.2011

EXT.R3(c): A TRUE COPY OF THE OFFICE LETTER NO.B3-8428/11 DATED 15.2.2012

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 13316 of 2012

Dated this the 10th day of December, 2015

J U D G M E N T

The petitioner, the headmistress of a school, who was retired from service on 31.03.2014; while the writ petition was pending, seek disbursement of DCRG, which she has not been paid till date. The controversy occurred since the petitioner while working as HSA(Mathematics) was promoted as Headmistress of the school and in the resultant vacancy one T.S Babu was transferred and appointed, on 01.11.2008. The Headmistress in accordance with the transfer order by the management, and consequent joining in duty, submitted bill for the payment of salary for the said teacher appointed in her vacancy which was sanctioned by the Department and paid.

2. Subsequently by Ext.P1, the District Educational Officer found that the order of appointment of Sri. T.S Babu was never sent to the educational authority for approval. Hence on the

ground that the disbursal of salary to the said T.S Babu was not proper, withheld the salary of the petitioner, who submitted the bill as also that of the HSA(Maths), Sri. T.S Babu. The petitioner submitted an explanation as per Exts.P2 and P3 which did not evoke any response. In the meanwhile, HSA (Mathematics)-T.S Babu filed a writ petition, before this Court challenging the earlier denial of approval to his appointment as HSA(Mathematics) from 2004 to 2006. The said writ petition was numbered as W.P(C) 1294/2009, in which Ext.P1 was produced, along with an I.A and this Court passed Ext.P4 order directing disbursal of the salary from December 2011 onwards. It was also directed that the management shall furnish the required clarifications within that time.

3. W.P(C) No.1294/2009 filed by T.S Babu was allowed by a common judgment in W.P(C) Nos.1294/2009 and 1491/2009. Though various other issues were considered in the aforesaid

judgment, what is relevant for the present case is that the appointment of Sri. T.S Babu as HSA (Maths) for the period from 02.06.2004 to 14.09.2006 in DBHS Vamanapuram, again under the 4th respondent Management was approved. Consequential orders also have been passed which is produced as Ext.R3(a) in the counter affidavit filed by the Government. In such circumstance, appointment of Sri. T.S Babu having been approved, then the only issue is whether the transfer was proper. The objections even seen from Ext.P1 is that the Headmistress had failed to submit the order appointing T.S. Babu. as HSA (Maths) on transfer to DBHS Thrikkariyoor , to the educational authority.

4. The learned counsel for the manager also submits that the defect was insofar as the manager having reappointed the person and not transferred him as such, since at that point of time, his earlier appointment was not approved. In the present situation, since the appointment of Sri. T.S Babu in the earlier period has

been approved, then, the appointment by transfer, of the said HSA (Maths), in DBHS, Thrikkariyoor on 01.11.2008 has to be taken as an appointment made on transfer and in any event, there is no reason why the petitioner's DCRG is withheld.

5. In the writ petition, on 30.07.2012 another learned Single Judge has passed an order which is extracted herein:-

“This application is filed by the petitioner in the writ petition for a direction to the respondent s to pay to the petitioner the salary withheld on the ground that the petitioner, as the headmaster of the school, submitted salary bill for the irregular appointment of a High School Assistant. Admittedly, this Court has already directed payment of salary to that H.S.A. That being so, there is no justification for withholding the salary of the petitioner. Further, the respondents may initiate disciplinary proceedings against the petitioner, if she has

committed any misconduct. There is no provision for withholding salary for the work done by the petitioner on that ground. In the above circumstance, there would be an interim direction to respondents 1 to 3 to release the salary due to the petitioner with arrears, as and when bills for the same are presented by the petitioner. The same would be subject to the result of the writ petition.

6. It is also trite that the proceedings for recovery against the Headmistress can only be taken in a proper disciplinary proceeding under Rule 67 of Chapter XIV A if any recovery has to be effected. It is also pertinent that this Court has again when the matter came up on 24.02.2015 directed the Government Pleader to get instruction as to whether any disciplinary proceeding has been initiated against the petitioner. Obviously no disciplinary proceeding are initiated, since nothing is placed on record to indicate the same. The petitioner is also retired as on 31.03.2014.

In such circumstance, there is no reason why the petitioner's DCRG should be withheld. Ext.P1 would stand set aside for all the reasons stated above. There shall be a direction to the Government to disburse the DCRG and all other benefits not paid as yet; on retirement of the petitioner, within a period of three months from the date of receipt of a certified copy of this judgment.

Writ petition is disposed of. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge