

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 12633 of 2011 (D)

PETITIONER:

**ANILAKUMARI.S.,
UPPER PRIMARY SCHOOL ASSISTANT
KUMARAVILASOM SREE NARAYANA DHARMA PARIPALANA
YOGAM UPPER PRIMARY SCHOOL, ULİYAKOVIL
KADAPPAKKADA.P.O., KOLLAM DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SMT.REVATHY P.NAIR**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM, PIN-695 001.**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
KOLLAM, KOLLAM (PO), PIN-691 001.**
- 4. THE MANAGER,
KUMARAVILASOM SREE NARAYANA DHARMA PARIPALANA
YOGAM UPPER PRIMARY SCHOOL, ULİYAKOVIL
KADAPPAKKADA.P.O., KOLLAM DISTRICT, PIN-691 008.**
- 5. THE HEADMASTER,
KUMARAVILASOM SREE NARAYANA DHARMA PARIPALANA
YOGAM UPPER PRIMARY SCHOOL, ULİYAKOVIL
ADAPPAKKADA.P.O., KOLLAM DISTRICT, PIN-691 008.**

R1-R3 BY ADV. GOVERNMENT PLEADER SRI. T.R. RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF THE APPOINTMENT ORDER DATED 7.6.2005**
- P2: TRUE COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 2004-2005
DATED 20.10.2004**
- P3: TRUE COPY OF THE ORDER NO.B2/1138/06/K.DIS.DATED 28.04.2006**
- P4: TRUE COPY OF THE REVISION PETITION DATED 21.6.2006**
- P5: TRUE COPY OF THE ORDER NO.D.DIS.58176/06/RA(4)/DPI DT.11.7.2007**
- P6: TRUE COPY OF THE REVISION PETITION FILED BEFORE THE GOVT.
DT.30.8.2007**
- P7: TRUE COPY OF THE LETTER NO.65866/L2/07/G.EDN DATGED 12.11.2008**
- P8: TRUE COPY OF THE LETTER NO.D.6459/07 DATED 11.12.2008**
- P9: TRUE COPY OF THE G.O. (RT) NO.1641/09/G.EDN. DATED 24.4.2009**
- P10: TRUE COPY OF THE LETTER NO.RA(4)/32565/09/DPI DT.14.8.2009**
- P11: TRUE COPY OF THE MEMO DATED 7.6.2005 ISSUED BY THE MANAGER**
- P12: TRUE COPY OF THE LETTER NO.D-4770/06 DATED 19.09.2006**
- P13: TRUE COPY OF THE REPRESENTATION FILED BEFORE THE GOVERNMENT
DT.13.08.2010**
- P14: TRUE COPY OF THE LETTER NO.6532/L2/2011/G.EDN. DATED 26.02.2011**

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 12633 of 2011 (D)

Dated this the 18th day of December, 2015

J U D G M E N T

The petitioner, an Upper Primary School Assistant (UPSA), seeks salary due from 8.7.2006 to 31.5.2009, when she claims to have continued in the 4th respondent school, but, had not admittedly signed the attendance register. The petitioner's contention is that she was refused permission to sign the attendance register. The petitioner relies on Exts.P8 and P12 to further buttress her contention.

2. The facts leading to the unfortunate circumstance, in the above case, are that the petitioner was appointed as a UPSA on 7.6.2005 in the vacancy that occurred in the school on promotion of a UPSA to the post of Headmistress in the previous year. There

was some confusion regarding, whether the promoted teacher was a LPSA or UPSA and there was considerable delay in getting approval of her appointment. Consequently, the petitioner's approval was rejected. The rejection of approval was challenged in appeal, which was rejected by Ext.P3. In Ext.P3 it was found that the Headmistress was a LPSA and there could be no consequent appointment to the post of UPSA. The said view was affirmed in a revision filed by the petitioner before the Joint Director, as is evident at Ext.P5. The petitioner challenged these orders before the Government, which was eventually considered and allowed in favour of the petitioner by Ext.P9. In compliance of Ext.P9, approval was granted by the A.E.O. in Ext.P1, with effect from 7.6.2005. The approval was dated 6.11.2009, with effect from 7.6.2005. However, the approval was granted only

between 7.6.2005 to 7.7.2006.

3. The petitioner contends that since there was dispute with respect to the approval of the petitioner's appointment, the petitioner had been continued in the School without being allowed to mark the attendance register. The petitioner would also contend that Ext.P8 is an order by the A.E.O., wherein he has stated that the petitioner had been marking her attendance in a postcard and forwarding it to the A.E.O. on each working day. Further, Ext.P12 is relied upon to contend that the A.E.O. had found the petitioner engaged in examination duty in Class VII on 25.8.2006. The said communication, sent by the A.E.O. to the Headmistress, also contains a statement that the Headmistress had specifically stated to the A.E.O. that the petitioner had been attending to work on all working days.

4. The fact remains that the Manager himself had appointed the petitioner as per Ext.P1 from 7.6.2005, but, however, later when the approval was granted by the Government, a fresh appointment order was issued at Ext.P11 showing the petitioner's employment between 7.6.2005 to 7.7.2006. The approval was granted by the A.E.O. on 6.11.2009 for the appointment between 7.6.2005 to 7.7.2006. The petitioner, though contends that she was refused permission to sign the attendance register from 8.7.2006, obviously had not approached any of the educational authorities or this Court raising such a contention at that time. Again, it is to be noticed that the approval granted by the A.E.O., was only for a specific period. The petitioner also did not challenge the same as provided in the KER.

5. Ext.P8 refers to a postcard having been sent on each working day to the office of the A.E.O. That,

however, would not prove the attendance of the petitioner in the school. Ext.P12 is with respect to the engagement of the petitioner on one particular day, ie, 25.8.2006. The statement made by the Headmistress to the A.E.O., as revealed from Ext.P12, also would have to be substantiated. Admittedly the petitioners appointment was not approved by the AEO, at the initial stage and her continuance could have been only if there was a stay by the educational authorities, before whom a statutory remedy is provided, or if there is an order from this Court exercising jurisdiction under Art:226. What comes to fore in the above case is that, if at all the petitioner's version is to be believed and the petitioner was not permitted to sign the attendance register after 8.7.2006, but then continued as a teacher in the School, then the liability for salary would not be of the Government but that of the Manager.

6. Ext: P-14 was not a statutory challenge made to Ext:P-11. Ext:P-11 was dated 06-11-2009 and Ext:P-14 was the result of Ext:P-13 representation dated 13-08-2010. The learned Government Pleader has produced the entire files leading to Ext.P14, before this Court. The attendance registers are produced, which indicate that the petitioner had been signing the attendance register only from 07.06.2005 to 07.07.2006, which period has been approved by Ext:P-11. The attendance register indicates, memo having been issued by the Manager canceling the appointment on 07-07-2006 and the same is noticed in the attendance register also. In such circumstance, the Government cannot be mulcted with any liability for salary. If the petitioner has worked for the said period, the petitioner would have to take appropriate steps against the Manager, for recovery of the said amounts,

before a civil forum.

7. The petitioner relies on a decision of this Court reported in **Lekha K.R. v. District Educational Officer - ILR 2015 (4) Kerala 388** wherein a learned Single Judge had found that if a person is illegally kept out of duty, the person is entitled to be paid compensation, equivalent to her salary during the period she was kept out of service and the amount can be recovered as compensation from the person who prevented the teacher from discharging his duty. It is trite that such recovery can be made from the Manager under Rule 7 of Chapter III of Kerala Education Rules, 1959, or from the Headmistress on the basis of the disciplinary proceedings initiated against the Headmaster/Headmistress.

8. The KER provides for situations in which a teacher has been illegally kept out of employment or

from a promotion post, which was his rightful due, to be paid the salary by the Government and recovered from the Manager. But here the petitioner cannot be said to have been illegally kept out of employment since the approval of her appointment stood rejected by the AEO, and also in appeal. The Manager also kept her out of employment as is revealed from the attendance register, which cannot be said to be illegal. Immediately on her approval being effected on 06-11-2009, she was taken back in employment and also continued thereafter.

9. Herein, the petitioner though claims to have been not permitted to sign the attendance register, has not taken any steps to get her attendance marked while the petitioner's approval was pending before the various statutory authorities. Even assuming the petitioner's version to be correct, the petitioner has

chosen to attend the school without marking the attendance; in which circumstance, the petitioner cannot claim any relief against the Government, who has the liability of paying teachers who have approved service in the aided schools. The petitioner's approval, as was noticed, was only for a specific period and the same granted in Ext.P11 was never challenged before the statutory authority or this Court. In such circumstance, there can be no fault found in Ext.P14, which, again, is on a representation filed by the petitioner to the Secretary to Government. The representation itself is dated 13.8.2010, when the petitioner's approval by Ext.P11 was on 6.11.2009. The petitioner ought to have taken statutory remedies within the time provided in the KER, which also could not have evoked any result, since the petitioner on facts is found to be dis-entitled.

10. The petitioner is now stated to be appointed on 1.6.2009 and continuing on approved service. Looking at the files and also the admitted facts, the petitioner can only be deemed to have abandoned service from 07.07.2006. No approval can be granted for the period in which she alleges that she had been continued in the school without marking the attendance.

The writ petition would stand dismissed. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE