

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 13959 of 2009 (L)

PETITIONER(S):

**SHILA BEEGAM, AGED 34 YEARS,
W/O.SHAJAHAN, MAVUNKAL PURAYIDAM, ERUMELI.PO.**

BY ADV. SRI.ESM.KABEER

RESPONDENT(S):

- 1. THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
KANJIRAPPILLY.**
- 4. THE MANAGER, VAVAR MEMORIAL HIGH SCHOOL,
ERUMELI.**

ADDL.5TH RESPONDENT:

**SHAJI.K.N., AGED 42 YEARS,
S/O.K.K.NARAYANAN, KINTHANANICKAL HOUSE,
KATTAPPANA SOUTH P.O., IDUKKI DIST.
NOW WORKING AS HS A IN VAVAR MEMORIAL HIGH SCHOOL,
ERUMELI.**

**ADDL.5TH RESPONDENT IS IMPEADED AS PER ORDER DATED
15.6.2009 IN I.A.NO.7194/2009.**

**R,R5 BY ADV. SRI.V.A.MUHAMMED
R,R4 BY ADV. SRI.P.A.MOHAMMED SHAH
R BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMPIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE APPOINTMENT ORDER DATED 4.7.2005.

EXT.P2: COPY OF THE CERTIFICATE ISSUED BY THE HINDI SAHITHYA SAMMELAN PRAYAG, ALLAHABAD DURING APRIL, 2007.

EXT.P3: COPY OF THE APPOINTMENT ORDER DATED 15.7.08.

EXT.P4: COPY OF THE COMMUNICATION DATED 13.1.09.

EXT.P5: COPY OF ORDER OF THE 2ND RESPONDENT DATED 25.3.09.

EXT.P6: COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 17.3.98.

EXT.P7: COPY OF THE LETTER DATED 10.11.07.

EXT.P8: COPY OF THE G.O.(M.S.) NO.180/2008/G.EDN.T.V.MDATED 31.10.08.

EXT.P9: COPY OF THE W.P.(C).NO.35523/08 DATED 04.03.09.

RESPONDENTS EXHIBITS:

EXT.R4-A: COPY OF THE SALARY RECEIPT ISSUED BY THIS RESPONDENT.

EXT.R4-B: COPY OF THE APPOINTMENT ORDER ISSUED BY THIS RESPONDENT DATED 18.5.2009.

EXT.R5(A): COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF JUDICATURE OF ALLAHABAD IN CIVIL MISC. WRIT PETITION NO.16630/2005.

EXT.R5(B): COPY OF THE -DO- IN 42315/1999.

EXT.R5(C): COPY OF THE LETTER OF THE HINDI SAHITHYA SAMMELAN, ALLAHABAD ALONG WITH TRANSLATION.

EXT.R5(D): COPY OF THE -DO- -DO-.

EXT.R5(E): COPY OF THE -DO- -DO-.

EXT.R5(F): COPY OF THE G.O.(MS)NO.28/2010/G.EDN. OF THE GOVERNMENT.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.13959 OF 2015 (L)

Dated this the 27th day of May, 2015

J U D G M E N T

The petitioner was appointed as a Lower Grade Hindi teacher with effect from 4.7.2005. The qualification possessed by the petitioner was essentially a Hindi Siksha Visharad from the Allahabad University, which was prescribed as an alternative training qualification for Hindi teachers in aided Upper Primary/High Schools. The facts in the writ petition would disclose that, to the vacancy that arose consequent to the retirement of a High School Assistant [HSA] (Hindi) with effect from 31.3.2008, the petitioner was promoted as HSA (Hindi) on 15.7.2008 in as much as she was a Rule 43 claimant. By an order dated 12.1.2009, however, the 3rd respondent denied approval to the appointment of the petitioner. The approval is denied primarily on the ground that the Manager did not appoint a protected teacher to the vacancy in question and further, that it was the stand of the 3rd respondent that the recognition to the Siksha Visharad qualification possessed by the petitioner was cancelled by the Government with effect from March, 2006. The petitioner however

relied on Ext.P9 judgment in W.P.(C).No.35523/2008, where the Government order cancelling the Siksha Visharad qualification had been called in question in a batch of cases, and this Court had quashed the Government order canceling the recognition accorded to the aforesaid qualification. When, by Ext.P4 communication dated 13.1.2009, the petitioner was informed by the Headmaster that the 3rd respondent had denied approval to her appointment, she caused an appeal to be preferred against the said order by the 4th respondent Manager. By Ext.P5 order dated 25.3.2009, the appeal preferred by the Manager was rejected by the 2nd respondent. It was thereupon that the petitioner filed the present writ petition contending that Ext.P5 order was illegal and that, despite Ext.P9 judgment which quashed the order of the Government cancelling the recognition accorded to the Siksha Visharad qualification granted by the Allahabad University, steps were being taken by the 4th respondent Manager to appoint the 5th respondent. In the writ petition, Ext.P5 order of the 2nd respondent is impugned.

2. Counter affidavits have been filed by the 4th and 5th respondents. In the counter affidavit filed by the 4th respondent, it is

pointed out that after reverting the petitioner, the 5th respondent was appointed as HSA on 18.5.2009. It is pointed out, in particular, that although there was an interim order of stay against reversion of the petitioner, granted by this Court in the present writ petition, the interim order was received by the 4th respondent only on 4.6.2009, by which time, he had already appointed the 5th respondent as HSA in the School. In the counter affidavit filed by the 5th respondent, it is pointed out that by Ext.R5(f) order dated 9.2.2010, the Government has passed fresh orders withdrawing the recognition that was accorded to the Hindi Siksha Visharad qualification granted by the Allahabad University with effect from March, 2006. It is pointed out, therefore, that the petitioner could not be seen as a person who is duly qualified for the post of HSA (Hindi) for appointment to the vacancy that arose pursuant to the retirement of the HSA (Hindi) teacher with effect from 31.3.2008.

3. I have heard Sri.E.S.M.Kabeer, the learned counsel for the petitioner, Sri.Rinny Stephen Chamaparampil, the learned Government Pleader for respondents 1 to 3, Sri.Muhammed Shah, the learned counsel for the 4th respondent as also Sri.V.A.Muhammed, the

learned counsel for the 5th respondent.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that while the specific case of the petitioner is that she should be treated as qualified for the post of HSA (Hindi) in the vacancy that arose consequent to the retirement of the then incumbent with effect from 31.3.2008, the qualification possessed by the petitioner, although recognised for sometime by the State Government, by Ext.R5(f) order dated 9.2.2010, the Government has withdrawn the recognition granted to the said qualification with effect from March, 2006. That apart, the appointment of the petitioner as HSA (Hindi) was never approved by the Education authorities, who had all along contended that the qualification possessed by the petitioner was not recognised by the State Government. Although by Ext.P9 judgment, this Court had, in a batch of writ petitions, quashed the earlier Government order cancelling the recognition given by the State Government to the qualification possessed by the petitioner, the facts would disclose that even thereafter, the Government passed fresh orders [Ext.R5(f)] withdrawing the recognition granted to the qualification possessed by

the petitioner with effect from March, 2006. Ext.R5(f) order dated 9.2.2010 has not been challenged by the petitioner in the present writ petition. Under the said circumstances, I find that the petitioner cannot claim a promotion to the post of HSA (Hindi) to the vacancy that arose consequent to the retirement of the then incumbent on 31.3.2008, after the date, with effect from which, recognition to the qualification possessed by the petitioner was withdrawn by the State Government. Resultantly, the writ petition fails, and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp