

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WP(C).No. 13463 of 2011 (G)

PETITIONER(S):

**PREETHAKUMARI K.V.
D/O.BALAKRISHNAN NAMBIAR, AGED 38 YEARS, UPSA
MATTANNUR H.S.S., MATTANNUR P.O., KANNUR DISTRICT.**

**BY ADVS.SRI.V.C.JAMES
SRI.GEORGE MECHERIL**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN 695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-695001.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY EDUCATIONAL DISTRICT
KANNUR DISTRICT-679001.**
- 4. THE MANAGER, MATTANNUR HIGHER SECONDARY
SCHOOL, MATTANNUR P.O., KANNUR DISTRICT
PIN 679301.**
- 5. SHEENA M.K., H.S.A.(MATHS),
MATTANNUR H.S.S., MATTANNUR P.O.
KANNUR DISTRICT-679301.**
- 6. BINDU, H.S.A., (MATHS),
MATTANNUR H.S.S., MATTANNUR P.O.
KANNUR DISTRICT-679301.**

PJ

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WP(C).No. 13463 of 2011 (G)

**7. SMITHA C.THOMAS, CHILAMBIL HOUSE,
H.S.A.(MATHS), MATTANNUR H.S.S., MATTANNUR P.O.
KANNUR DISTRICT-679 301.**

R1-3 BY GOVERNMENT PLEADER SMT.LOWSY. K.A.

R5-7 BY ADVS. SRI.B.KRISHNAN

SRI.R.PARTHASARATHY

SRI.S.PARAVINDAKSHAN PILLAY

SMT.N.SANTHA

SRI.K.A.BALAN

SRI.PETER JOSE CHRISTO

SRI.S.A.ANAND

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-02-2015,
ALONG WITH WPC.10557/2013 AND CONNECTED CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE APPOINTMENT ORDER/ORDER OF APPROVAL OF APPOINTMENT DATED 25/9/2000 OF THE PETITIONER**
- P2: COPY OF THE COMMUNICATION NO.B4.4908/010/L.DIS.DATED 9/7/10 OF THE R2**
- P3: COPY OF THE JUDGMENT DATED 9/12/2010 IN WPC.33250/10**
- P4: COPY OF THE ORDER NO.B4/10177/2010/K.DIS.DATED 29/3/11.**

RESPONDENTS' EXHIBITS

- R4(A): COPY OF THE REPLY GIVEN BY THE INFORMATION OFFICER, MATTANNUR HIGH SCHOOL**
- R4(B): COPY OF THE GOVERNMENT ORDER G.O.(MSS)NO.132/09/G.ED DATED 17/6/09.**
- R5(C): COPY OF THE APPOINTMENT ORDER OF R5 DATED 25/9/2000**
- R5(D): COPY OF THE APPOINTMENT ORDER OF R6 IN THE LEAVE VACANCY DATED 25/9/2000**
- R5(E): COPY OF THE APPOINTMENT ORDER OF R7 IN THE LEAVE VACANCY DATED 25/9/2000**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

**W.P.(C).Nos. 13463 of 2011, 31748 of 2013,
10557 of 2013 & 16402 of 2014**

Dated this the 16th day of February, 2015

J U D G M E N T

These writ petitions are pertain to the appointment in the vacancies of High School Assistant (English) converted as High School Assistant (Maths) by certain Teachers claiming under Rule 51 A of and Rule 43 of Chapter XVI of Kerala Education Rules (for short 'KER').

W.P.(C) No.31748 of 2013.

This writ petition is filed by one Smt.C.M.Bindu who worked as High School Assistant (Physical Science) in Mattannoor Higher Secondary School with effect from 18.9.2000 to 30.10.2000. By virtue of an amendment made to Rule 51A, with effect from 25.6.2005, she was given re-appointment as UPSA in the same School in the vacancy of UPSA arose during 2006-2007. However, the approval of the appointment was only given with effect from 1.6.2011 onwards by including her in a Teachers' Package. She has

a claim for the approval of her appointment with effect from 4.6.2008 onwards.

2. Apart from this claim, the petitioner has yet another claim under Rule 51A as well as under Rule 43 in respect of the vacancy arose on HSA (English). By creating a new cadre of English, the earlier ratio of 1:1:1, the subject ratio has been changed to 1:1:1:1 by including English. The petitioner made claim a claim under Rule 51A as High School Assistant (Physical Science). Subsequently, the petitioner acquired qualification for teaching English. However, by virtue of the Government Order dated 17.6.2009, the vacancy in HSA (English) has been allowed to be converted to accommodate the claim of the teachers, under Rule 51A in the pre-existing ratio. The petitioner submits that when she has a claim under Rule 51A, the conversion is illegal. The petitioner also relies on the Government Order making it clear that it shall not affect an existing approved teacher of the school, the petitioner has a claim under Rule 43, by virtue of her appointment as UPSA. The petitioner submits that overlooking this claim the

party respondents were appointed by allowing conversion of vacancy HSA (English).

3. W.P.(C) No.16402 of 14 is filed by Smt.Bindu, who is the petitioner in W.P.(C) No.36748/2014 challenging the appointment of 7th respondent in a subsequent vacancy over looking the claim under Rule 43 under Chapter XVI. It is submitted that the 4th respondent left the job and the Manager has engaged some teacher on daily wages basis on the post of HSA (English). This writ petition is essentially filed not to approve the appointment of the 7th respondent and to appoint the petitioner as HSA (English).

W.P.(C) 13463/2011

This writ petition is filed by Preetha Kumari, who is working as UPSA in the Mattannoor Higher Secondary School. Her claim is essentially based on Rule 43 and 51A. Petitioner's claim is that when vacancies in HSA (English) have been converted to HSA (Maths), she is entitled for the post in terms of Rule 51 A as she had a approved service as HSA (Maths). She has also a claim under Rule 43 being a UPSA of the School.

W.P.(C) No.10557 of 2013

This writ petition is filed challenging the appointment given to Smt.C.M.Bindu under Rule 51 A as UPSA. According to the petitioner, the amendment to Rule 51 A is having only prospective application. Therefore, any claim of the petitioner prior to the service as HSA cannot be claimed for appointment as UPSA after the amendment.

2. The core issue in all these writ petitions is also depend upon the interpretation to be given to the Government Order allowing conversion of vacancies in HSA (English). This Government Order is produced as Ext.P20 in W.P.(C) No.31748 of 2013.

3. The Government, by order dated 7.1.2002, created a new cadre of English. On account of this, qualified hands in the English have to be appointed. The creation of new cadre is by making a re-allocation of the periods for the core subjects. English was dealt with by the teachers engaged for core subjects. This created a situation in re-appointing teachers, who were engaged for short term vacancies in terms of Rule 51A. Therefore, by

Government Order produced as Ext.P20 , vacancies arose in core subjects after 16.11.2002 were allowed to be filled up by claimants under 51A, who were appointed before 16.11.2002. It is also stipulated that it shall not affect the existing approved appointees.

4. Smt.C.M.Bindu and Smt.Preetha Kumari have raised their claim while working as UPSA for accommodating their claim under Rule 51A on conversion of the post of HSA (English) as HSA (Maths). It is to be noted that the above said Government Order is a concession to re-appoint the persons, who are kept out of service on account of creation of new cadre of English. This is not essentially to accommodate the claim of any other person who have been appointed in terms of their claim under Rule 51A. The concession by a separate Government Order to accommodate, the claim of certain teachers has to be understood with reference to the objective of the Government Order. The Objective of the Government Order is only to accommodate the persons who are out of service as it may not be possible to claim of re-appointment on account of the creation of new cadre of English. Therefore, persons

who are out of service are directed to be considered by allowing conversion. Admittedly Smt.C.M.Bindu and Smt.Preethakumari are working as UPSA in lower category by virtue of Rule 51 A. Therefore, I am of the view that their claim, based on Rule 51 A, cannot be accommodated in the light of the objectives of the Government Order.

5. Smt.C.M.Bindu has another claim based on the additional qualification in English. She obtained this qualification subsequent to her short term service as HSA (Physical Science). That subsequent qualification cannot be reckoned for the purpose of staking a claim for the post of HSA (English). Therefore, she cannot raise complaint against the conversion with reference to qualification obtained subsequently by her.

6. The claims of Smt.Bindu and Smt.Preethakumari under Rule 43 also do not arise in this case. The conversion was allowed for special purpose. Their claim for HSA (Maths) under Rule 43 cannot be accommodated when such conversion was allowed only for the special purpose to accommodate Rule 51A claimant, who

could not find re-appointment on account of the creation of new cadre of English. Therefore, I am of the view that claim under Rule 43 must yield to the Government Order which was only intend to sustain the claim of the persons, who could not find re-appointment for want of vacancies. The concession cannot be taken to the advantage of the persons to whom concession is not intended.

7. The next point is whether Smt.Bindu is entitled for approval of appointment with effect from the year 2000 onwards. It is to be noted that Smt.Bindu is a claimant under Rule 51A. By recognising her Rule 51A claim, she was appointed in a vacancy arose during 2006-2007. It is admitted that during 2006-2007, there were two additional posts of UPSA. However the same was not sanctioned due to a ban imposed in creation of new divisions. Thereafter the ban was withdrawn by the Government Order dated 12.1.2010. It is admitted that additional division was sanctioned after obtaining bond executed by the Manager. In view of the fact that additional posts were in existence during 2006-2007, the petitioner being a Rule 51 A Claimant, her approval from the date

of appointment cannot be denied. The statutory claim cannot be bye-passed on account of obligation to appoint the protected teacher after lifting the ban. In view of the above, the appointment of Smt.C.M. Bindu has to be approved with effect from the date of appointment as U.P.S.A.

8. Smt.C.M.Bindu has another claim in terms of Rule 43. This issue is raised in W.P.(C) No.16402 of 2014. It is admitted that there is a sanctioned post in HSA (English). It is also admitted that the 7th respondent is not in service now and her appointment has not been approved. Smt.C.M.Bindu has necessary qualification to be appointed as HSA English, necessarily, her claim has to be sustained. Therefore, if there are no other senior claimants, the Manager shall issue appointment order to the petitioner.

9. The next point is by Smt.Preethakumari in terms of a claim under Rule 51A in W.P.(C) No.13463 of 2011. In view of the discussion already aforementioned that the Government Order allowing conversion is only to accommodate claim of the teachers who could not obtain re-appointment for want of vacancies on account of

creation of new cadre of HSA English, these claim of the petitioner under Rule 43 and Rule 51A, cannot be entertained. Admittedly Preethakumari is working as UPSA. Her claim under Rule 43 does not arise to claim a vacancy arising out of a concession given by the Government to accommodate Rule 51A claimants to obtain re-appointment.

10. The next point is to consider the challenge made by Smt.Pramodini. Her main challenge is that amendment to 51A Claim is only made on 17.6.2005 and it is not having retrospective effect. It is submitted that it does not take away the vested right accrued to the petitioner under Rule 51 A. Her case is that she has a claim under UPSA. She worked as a UPSA in this School. It is the case that Smt.C.M.Bindu's claim under 51A to be appointed as UPSA arising out of service as HSA. That claim can be entertained only if such claim arises after amendment to Rule 51A on 17.6.2005. It is the case that since Smt.C.M.Bindu worked as HSA prior to amendment she cannot make any claim to lower category as UPSA. In fact this issue was considered by the Division Bench of this Court

in **Abdulrahiman vs. Government of Kerala** [2009 (2) KLT 105].

The Division Bench of this Court held that the interpretation of the Rule would also enure to the benefit of teachers who were retrenched prior to amendment. The matter was also referred to Full Bench. This Court in W.P.(C) 24773/2009 approved the dictum laid down in Abdulrahiman's case. Therefore, in view of the fact that 51A claim would also enure to the benefit of teachers who were retrenched prior to the amendment from higher category and re-appointed to lower category, the challenge of Smt.Promodini has also to be repelled. In the result these writ petitions are disposed of as follows:

- i) Appointment of Smt.Bindu as UPSA has to be approved with effect from her date of appointment as UPSA from 4.6.2008 onwards. There shall be a direction to the Assistant Education Officer to pass orders to approve the appointment of Smt.Bindu as UPSA from 4.6.2008. Consequently, there shall also be a direction to pay the entire salary and allowances from 4.6.2008 from 31.5.2011. Needful shall be done to pay the arrears of pay

within a period of three months from the date of receipt of a copy of this judgment.

ii) The claim for appointment made by Smt.Bindu and Smt.Preethakumari in terms of Rule 51A in the vacancies which were converted as from HSA (English) to HSA (Maths) have been declined.

iii) The claim for the appointment of Smt.Bindu in terms of Rule 43 has been upheld and the Manager is directed to pass orders appointing her as HSA (English) for the vacancy in the post within a period of four weeks. Thereafter, necessary approval shall be accorded by the District Educational Officer within a further period of two months.

iv) The challenge made by Smt.Pramodhini sustaining the claim of Smt.Bindu as UPSA is rejected. No costs.

**A.MUHAMED MUSTAQUE,
JUDGE**

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