

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

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

WP(C).No. 20662 of 2006 (I)

PETITIONER(S) :

**SUNITHA K., W/O. DINESH K.N.,
AJJARKODI HOUSE, NIRCHAL P.O., VIA. KUMBALA,
KASARGOD DISTRICT.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
KASARGOD.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
KASARGOD.**
- 4. THE MANAGER,
MAHAJANA SANSKRIT COLLEGE HIGH SCHOOL, NEERCHAL,
NEERCHAL VILLAGE & POST, KASARGOD TALUK,
KASARGOD DISTRICT.**
- 5. ANNAPOORNA S.,
H.S.A. (HINDI) (NOT APPROVED), MAHAJANA SANSKRIT
COLLEGE HIGH SCHOOL, NEERCHAL, NEERCHAL VILLAGE &
POST, KASARGOD TALUK, KASARGOD DISTRICT.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.REJI JOSEPH
R4 BY ADV. SRI.K.G.GOURI SANKAR RAI
R5 BY ADVS. SRI.P.SHRIHARI
SMT.P.VAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-10-2015, THE COURT ON 10-12-2015 DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE REPRESENTATION DATED 02.02.2006 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE ACKNOWLEDGEMENT DULY SIGNED BY THE MANAGER.

EXHIBIT P3: TRUE COPY OF THE ACKNOWLEDGEMENT CARD DULY SIGNED BY THE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE LETTER DATED 12.07.2006 ISSUED BY THE MANAGER.

EXHIBIT P5: TRUE COPY OF THE DECISION REPORTED IN JANNET VARGHESE V. STATE OF KERALA & OTHERS ILR 2006(3) KERALA 247.

RESPONDENT(S)' EXHIBITS :

EXHIBIT R5: TRUE COPY OF G.O(P)NO.31/2006/GE. DATED THIRUVANANTHAPURAM 19TH JANUARY 2006.

EXHIBIT R5(A): TRUE COPY OF THE TRANSFER CERTIFICATE ISSUED BY THE PETITIONER.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFIQUE, J

W.P.C.No.20662 of 2006

Dated this the 10th day of December 2015

J U D G M E N T

This writ petition is filed seeking the following reliefs:

“i) To issue a writ of certiorari quashing Ext.P4 as unjust, illegal and unconstitutional;

ii) to issue a writ of mandamus directing 4th respondent to appoint the petitioner as H.S.A (Hindi) in Mahajana Sanskrit College High School, Neerchal in Kasargod District

iii) to issue a writ of mandamus directing 4th respondent to revert/repost the 5th respondent as Primary School Teacher (Hindi) in the school managed by the 4th respondent;”

2. Ext.P4 is an order issued by the Manager of the School, taking the view that the promotion of the 5th respondent will prevail over the claim made by the petitioner under Rule 51A of Chapter XIVA of the Kerala Educational Rules (hereinafter referred to as 'the Rules').

3. The short facts involved in the writ petition would disclose that the petitioner worked as H.S.A (Hindi) in the School managed by the 4th respondent from 15/07/1996 to 13/12/1996.

Thereafter, for want of vacancy, her services were discharged. According to her, she is a claimant under Rule 51A of Chapter XIVA of the Rules. A vacancy of H.S.A (Hindi) has arisen on account of retirement of Smt.Shankari on 31/03/2006. Instead of appointing the petitioner, Manager appointed the 5th respondent by giving promotion and took a view that she had a better claim under Rule 43 of Chapter XIVA of the Rules than that of the petitioner, who was a claimant under Rule 51A. According to the petitioner, after amendment of Rules 43 and 51A of Chapter XIVA of the Rules as per G.O.(P) No.187/2005/G.Edn. dated 17/06/2005, which was published in the Gazette on 25/06/2005, Rule 51A claimants have a preferential right than that of Rule 43 claimants. The contention is that this aspect of the matter was not considered by the Manager during the relevant time.

4. Counter affidavit has been filed by the Government authorities supporting the stand taken by the petitioner.

5. Counter affidavit has been filed by respondents 4 and 5 denying the claim made by the petitioner. It is contended by the 4th respondent that the petitioner, at the relevant time, was working as Head Mistress in a permanent vacancy in another

School and therefore she was not entitled for the benefit of Rule 51A claimant. The 5th respondent further contended that the petitioner was not entitled for a better claim than that of the 5th respondent.

6. Heard Learned counsel for the petitioner and the learned Government Pleader.

7. It is clear from the factual circumstances involved in the matter that, in view of the fact that Rules 43 and 51A have been amended, promotion under Rule 43 is subject to Rule 51A. Under such circumstances, the claim made by Rule 51A claimant is well established. This aspect of the matter has been considered by this Court in **Jannete Varghese v. State of Kerala and Others** [2006(3) ILR Kerala 247] wherein it has been held that after the amendment of the rule, the claimant under Rule 51A will have precedence over the claims under Rule 43.

8. The 5th respondent has also a case that a minimum period of one year service is required for making a claim under Rule 51A. But, it is evident from the statutory provision that the said amendment had come into effect only after the rights have been accrued on the petitioner, which is also a settled position of

law. Under such circumstances, I am of the view that the writ petition is liable to be allowed.

Accordingly, this writ petition is allowed. Ext.P4 is set aside and there will be a direction to the 4th respondent to appoint the petitioner as H.S.A (Hindi) in the post which became vacant on 31/03/2006 and consequential orders shall be passed as far as the 5th respondent is concerned.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

//True Copy//

PA to Judge