

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 21979 of 2005 (N)

PETITIONER:

**BIJI B. ANAND, U.P.SCHOOL ASSISTANT,
POLACHIRACKAL HIGH SCHOOL,
P.O.PADAGIRI, NELLIAMPATHY,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
SRI.M.V.BIPIN**

RESPONDENT(S):

- 1. STATE OF KERALA, REP.BY
THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
PALAKKAD.**
- 5. THE MANAGER, POLACHIRACKAL HIGH SCHOOL,
P.O.PADAGIRI, NELLIAMPATHY, PALAKKAD DISTRICT.**

R2 TO R4 BY GOVERNMENT PLEADER SRI.SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE APPOINTMENT ORDER OF SMT.TANUJA S
DATED 6.6.1998.
- EXT. P2 : TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER
DATED 6.6.1998.
- EXT. P3 : TRUE COPY OF THE APPOINTMENT ORDER DATED 1.3.1999 OF THE
PETITIONER.
- EXT. P4 : TRUE COPY OF THE APPOINTMENT ORDER DATED 1.6.1999 OF THE
PETITIONER.
- EXT. P5 : TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT NO.4 ON
4.5.1999.
- EXT. P6 : TRUE COPY OF THE ORDER DATED 15.9.1999 PASSED BY THE
RESPONDENT NO.4.
- EXT. P7 : TRUE COPY OF THE ORDER DATED 23.9.2000 ISSUED BY THE
PETITIONER.
- EXT. P8 : TRUE COPY OF THE ORDER DATED 6.2.2004 PASSED BY THE
RESPONDENT NO.2.
- EXT. P9 : TRUE COPY OF THE ORDER DATED 17.3.2005 PASSED BY THE
RESPONDENT NO.1.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21979 of 2005

Dated this the 15th day of September, 2015

J U D G M E N T

The petitioner has approached this Court alleging that though she was appointed as UPSA against a leave vacancy from 06.06.1998, her appointment was not approved by the authorities without assigning any reason.

2. In the counter affidavit filed by the State, it is contended as follows;

The petitioner was appointed by the 5th respondent as UPSA for the period from 06.06.1998 to 06.06.2003 in the leave vacancy of Smt.Rachel Chacko. The 4th respondent rejected the approval of appointment on the ground that the 5th respondent did not produce the copy of order sanctioning leave to Smt. Rachel Chacko. Later, Smt.Rachel Chacko was terminated from service with effect from 06.06.1998, which has been approved by the 4th respondent as per order No.B4-2959/99/L.Dis., dated

15.08.1999. Consequent to the termination of Smt.Rachel Chacko, one Smt.Thanuja S., senior 51A claimant, who was working in the leave vacancy of Smt.Elsy P. Oommen with effect from 13.05.1996, has been shifted against the termination vacancy. Earlier, Smt.Thanuja has been appointed as UPSA with effect from 13.06.1996 to 06.06.2001 in the leave vacancy of Smt.Elsy P. Oommen. The shifting of Smt.Thanuja against the termination vacancy has also been approved by the 4th respondent. According to them, there was an unfilled leave vacancy for the period from 06.06.1998 to 06.06.2011 consequent to the shifting of Smt.Thanuja. Meanwhile, the petitioner was appointed as UPSA with effect from 01.03.1999 in the vacancy consequent to the promotion of one Sri.R.Sugathan Pillai, who has been promoted as HSA (Malayalam) with effect from 01.03.1999 from the cadre of UPSA. The 4th respondent approved the said appointment as per Order No.K.Dis.B4-2957/99 dated 31.05.1999. The petitioner was reappointed with effect

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from 01.06.1999 in the same vacancy, which has also been approved by the 4th respondent. On 15.03.1999, the 5th respondent submitted a proposal before the 4th respondent seeking approval of appointment of the petitioner as UPSCA for the period from 06.06.1998 to 05.06.2001 in the remaining portion of leave vacancy of Smt.Elsy P. Oommen for the period from 13.06.1996 to 06.06.2001. The 4th respondent rejected the approval of appointment of the petitioner on the ground that the 5th respondent has not shifted the petitioner to the leave vacancy on 06.06.1998 and there was no established vacancy on 06.06.1998. The termination of Smt.Rachel Chacko was approved by the 4th respondent only on 15.09.1999. Moreover, the proposal for approval of appointment of the petitioner from 06.06.1998 was submitted before the 4th respondent belatedly, i.e., on 15.03.1999. The 5th respondent has not shifted the petitioner from 06.06.1998 to the remaining portion of leave vacancy of Smt.Elsy P. Oommen up to 05.06.2001

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so far. Hence, the 4th respondent rejected the approval of appointment of the petitioner from 06.06.1998 to 05.06.2001 and the appeal thereon was rejected by the 3rd respondent for the same reason. The revision petition filed before the 2nd respondent was also rejected on the ground that the 5th respondent did not shift the petitioner to the leave vacancy of Smt.Elsy P. Oommen. The 1st respondent also held the same decision in Ext.P9 for the same reasons as stated by the 2nd respondent.

3. Arguments have been heard.

4. The definite case of the petitioner is that her appointment for the period from 19.06.1996 to 04.06.1998 was approved as it was against the leave vacancy of Smt.Rachel Chacko. According to the petitioner, in the meantime, there was another leave vacancy of Smt.Elsy P. Oommen, which was accommodated by one Tanuja S. Later, as Smt.Rachel Chacko was unauthorizedly absent from duty, she was terminated from service, which was approved by the 4th

respondent as per Ext.P6. The petitioner's case is that against the said terminal vacancy of Smt.Rachel Chacko, Smt.Tanuja S. was given appointment and her appointment was in the said permanent vacancy as per Ext.P1, which was later approved by order dated 21.05.1999. After the appointment of Tanuja against the vacancy of Smt.Rachel Chacko, the petitioner was appointed against the vacancy, which was occupied by Tanuja as could be seen from Ext.P2. The stand now taken by the 3rd respondent in Ext.P7 appeal is that the shifting of Tanuja from the post of Elsy P. Oommen has not been approved. According to the learned counsel for the petitioner, the said stand is incorrect. In Ext.P8 revision order, the 2nd respondent would say that even though such a vacancy was there, the 5th respondent has not made any appointment to that vacancy. However, in Ext.P9, the 1st respondent would say that the appointment order or the shifting order was not produced before him as such he was not in a position to give approval of the

appointment of the petitioner against the said vacancy commencing from 06.06.1998. It is evident from Ext.P5 that the factum of appointment of the petitioner against the vacancy of Smt.Elsy P. Oommen with effect from 06.06.1998 was accepted in Exts.P5 & P7. The appointment of the petitioner is clear from Ext.P2 appointment order itself. Therefore, according to the learned counsel for the petitioner, there is no basis in the contention in Ext.P9 that the officials would not agree to the appointment of the petitioner for the period ranging from 06.06.1998 to 28.02.1999.

5. As rightly pointed by the learned counsel for the petitioner, the above findings made by respondents 1 to 4 have no basis to stand; and therefore, the same have to go. The petitioner was properly appointed against the leave vacancy of Smt.Elsy P. Oommen for the period 06.06.1998 to 28.02.1999 and if the said appointment is not approved, it would cause irreparable loss and injury to the petitioner.

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Therefore, the writ petition is allowed. Exts.P5, P7, P8 & P9 are quashed. The respondent concerned is directed to approve the appointment of the petitioner for the period 06.06.1998 to 28.02.1999 under the 5th respondent within a period of one month from the date of receipt of a copy of this judgment. Needless to say, the petitioner shall be entitled to get the consequential monetary benefits also.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-