

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 14371 of 2013 (V)

PETITIONER(S):

**SAPNA.M,
UPPER PRIMARY SCHOOL ASSISTANT
KADAMBUR EAST U.P. SCHOOL, P.O. EDAKKAD
KANNUR DISTRICT.**

BY ADV. SRI.POOVAMULLE PARAMBIL ABDULKAREEM

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM-695014.**
- 3. THE DISTRICT EDUCATIONAL OFFICER
KANNUR-67001.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER
KANNUR SOUTH, KANNUR DISTRICT, PIN 670001.**
- 5. THE MANAGER
KADAMBUR EAST UPPER PRIMARY SCHOOL, P.O.KADAMBUR
KANNUR-670663.**

R1-4 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** TRUE COPY OF THE APPOINTMENT ORDER DATED 1/6/2009.
- EXHIBIT-P2:** TRUE COPY OF THE ORDER DATED 1/10/2009 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT-P3:** TRUE COPY OF THE APPEAL DATED 14/10/2009 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 3RD RESPONDENT.
- EXHIBIT-P4:** TRUE COPY OF THE ORDER DATED 8/6/2010 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P5:** TRUE COPY OF THE APPEAL DATED 24/6/2010 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 2ND RESPONDENT.
- EXHIBIT-P6:** TRUE COPY OF THE ORDER DATED 7/6/2011 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT-P7:** TRUE COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 2009-10.
- EXHIBIT-P8:** TRUE COPY OF THE STAFF FIXATION ORDERS FOR THE YEAR 2010-11.
- EXHIBIT-P9:** TRUE COPY OF THE PROCEEDINGS DATED 13/12/2011 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT-P10:** TRUE COPY OF THE ORDER DATED 26.12.2011.
- EXHIBIT-P11:** TRUE COPY OF THE SENIORITY LIST PREPARED BY THE 5TH RESPONDENT.
- EXHIBIT-P12:** TRUE COPY OF THE REVISION DATED 25/1/2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT-P13:** TRUE COPY OF THE JUDGMENT DATED 11/5/2012 PASSED BY THIS HON'BLE COURT IN WP(C) NO.11020/2012.
- EXHIBIT-P14:** TRUE COPY OF THE ORDER NO.G4/24131/DPI/K.DIS. DATED 9/7/2012 PASSED BY THE 2ND RESPONDENT.
- EXHIBIT-P15:** TRUE COPY OF THE GO (RT) NO.4302/12/G.EDN DATED 12/9/2012.
- EXHIBIT-P16:** TRUE COPY OF THE CIRCULAR NO.4545/J2/2007 DATED 18/5/2007.
- EXHIBIT-P17:** TRUE COPY OF THE CIRCULAR NO.13402/J2/12 DATED 10/5/2012.
- EXHIBIT-P18:** TRUE COPY OF THE CIRCULAR NO.58604 DATED 6/11/2012.

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EXHIBIT-P19: TRUE COPY OF GO (RT) NO.1706/12/G.EDN.DATED 9/4/2012.

EXHIBIT P20: TRUE COPY OF THE ORDER DATED 19-6-2013 PASSED BY THE R2
RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14371 of 2013

Dated this the 27th day of March, 2015

J U D G M E N T

The petitioner, who is working as Upper Primary School Assistant in the Kadambur East UP School without salary, has filed this writ petition seeking the following reliefs;

- “i) Issue writ of certiorari or other appropriate writ or order quashing Ext.P2, P4, P6 and Ext.P10 orders as they are illegal and unjustifiable or in the alternative to declare that the same cannot be enforced as against the petitioner.
- ii) Issue a writ of mandamus or other appropriate writ, order or direction directing the 4th respondent to approve the appointment of the petitioner with effect from 1/6/2009 onwards and disburse pay and allowance due to her.
- iii) To declare that the petitioner is entitled to be included in the teachers' package and to get approval of appointment of the petitioner with effect from 1/6/2009 onwards in the scale of pay;
- iv) Issue a writ of mandamus or other appropriate writ, order or direction directing the 4th respondent in the light of Ext.P9 proceedings and disburse monetary benefits to the petitioner with effect from 1/6/2011; and
- v) Grant such other reliefs as this Hon'ble court deems fit and proper in the interest of justice.

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vi) To issue a writ of certiorari to quash Ext.P20 as it is illegal, arbitrary and against the dictum laid down on State or Karnataka Vs. Lalitha.”

2. The petitioner was appointed as UPSA on 01.06.2009 against the retirement vacancy of Smt.Sobhana, who retired from service on 31.05.2009 as UPSA. The appointment of the petitioner was rejected holding the reason that the school is uneconomic and the vacancy should be filled up with a protected teacher and there is a dearth of one TTC holder in the LP section of the school. According to the petitioner, in fact, there was no protected teacher available in the concerned sub district. As per the staff fixation order for the year 2009-10, posts of four LPSA and three UPSA including HM have been sanctioned; and the Government has clarified in letter No.26476/S3/07/G.Edn dated 13.06.2007 that B.Ed holders appointed before amendment, i.e., before 8/6/2000, can be considered either as UPSA or as LPSA. The petitioner points out that Smt.Rajani, a B.Ed holder, who joined service as LPSA in

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the year 1991, is still continuing as LPSA in the school and there is no illegality in her position. The petitioner alleges that now, the 4th respondent wants to shift Smt.Rajani, from LPSA to UPSA as she is B.Ed holder to the post, in which the petitioner was appointed. According to the petitioner, the said Rajani has no claim for UPSA.

3. By Ext.P14, the 2nd respondent directed the 4th respondent to approve the appointment of the petitioner with effect from 01.06.2009 on daily wage basis as per the circular no.13402/J2/12 dated 10.05.2012. In compliance of Ext.P13 judgment of this Court, the 1st respondent issued an order dated 12.09.2012, by which the 2nd respondent is directed to review the appointment made in Kadambur East UP School after implementation of the package and retain minimum number of teachers for the school vide Ext.P15 order. Though Ext.P15 was issued on 12.09.2012, the 2nd respondent has not passed any orders till date implementing the same; it is alleged.

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As per Exts.P17 and P18, the Director of Public Instruction would conduct a review of appointments made in the uneconomic schools and approve the appointment, which comes within the minimum strength required in such schools, on regular basis. The petitioner points out that in an identical case, as per the direction of this Court, the 1st respondent as per Ext.P19 order included a similarly situated teacher in the teachers' package; and almost all other teachers, who were included in Ext.P9 package, were given approval on regular basis with effect from 01.06.2011 onwards. Therefore, according to the petitioner, all impugned orders are liable to be set aside and appointment of the petitioner is liable to be approved on regular basis. It is with this background, the petitioner has come up before this Court.

4. In the statement filed by the 2nd respondent, it is admitted that the petitioner was appointed as UPSA in Kadambur East U.P. School with effect from 01.06.2009 against the retirement vacancy of Smt.E.Shobhana, who

retired from service on 30.04.2009. The Assistant Educational Officer rejected the appointment of the petitioner since the vacancy, in which the petitioner has been accommodated, should have been filled up with a protected teacher in the light of GO(P) No.259/06 G.Edn. dated 12.10.2006 as the school was an uneconomic school. It was stated that though four such posts of LPSA were available in the school, only three teachers having TTC qualification could be accommodated against those posts. Therefore, it was pointed out that there was a shortage of one TTC holder in LP section with regard to the post sanctioned. It was further pointed out that on receipt of Ext.P2 order of the 4th respondent, the 5th respondent filed an appeal before the 3rd respondent; and the 3rd respondent declined the appeal preferred by the 5th respondent upholding the reasons stated in Ext.P2. The appeal preferred by the 5th respondent before the 2nd respondent, the Director of Public Instruction, was also rejected upholding the order of respondents 3 and 4. It is

admitted in the statement that in Kadambur East UP School, four posts of LPSA and three posts of UPSA including HM was sanctioned during 2009-10 and 2010-11; and since the school does not maintain the minimum strength of students, the school was treated as uneconomic. In the light of Government Circular No.13402/J2/12 dated 10.05.12, the Director of Public Instruction directed the 4th respondent to approve the appointment of the petitioner with effect from 01.06.2011 on daily wage basis. It was further pointed out that the Government, as per Order No.GO(P) No.199/2011 G.Edn dated 01.10.2011, has introduced a scientific method of approval of appointment of teachers working without salary. As such, the teachers working without salary in uneconomic schools due to the ban imposed by the Government were also included in the package list in accordance with GO dated 01.10.2011 and the Government has ordered to approve the appointments of these teachers with effect from 01.06.2011. They have

further pointed out that the petitioner's name was earlier included in the teachers' package and the 4th respondent rejected the approval preferred by the Manager on the ground that out of four sanctioned posts of LPSA, only three TTC holders are working in the school as on 01.06.2011. According to them, the petitioner being a B.Ed holder, does not possess the qualification for the post of LPSA as TTC is mandatory for the said post. It is clarified in GO(P) No.188/2000 dated 08.06.2000 that B.Ed qualified teachers working as LPSA prior to the issue of the GO dated 08.06.2000 would be permitted to continue as LPSA. Therefore, according to them, being a B.Ed qualified person, the petitioner's appointment was against the spirit of the GO dated 08.06.2000. It was stated that the petitioner filed a revision petition before the 1st respondent and subsequently, filed WP(C) No.11020/2012 before this Court and this Court, by judgment dated 11.05.2012, directed the 1st respondent to consider and pass orders within three months. It was further stated

that the Director of Public Instruction, on receiving direction from the Government vide Order No.4302/12/G.Edn. dated 12.09.2012, examined the case in detail. As such, in the wake of Government Circular No.13402/J2/12 Gl.Edn. dated 06.11.2012, the school did not maintain the minimum strength of students, i.e., from Std.I to VII, the minimum strength required is 105. The minimum strength of the petitioner's school is below 100. Thus, the school still comes under the category of uneconomic after the completion of UID since the minimum strength of the pupils from Std.I to VII is below 100. Therefore, the direction issued by the 2nd respondent to the 4th respondent is in order. It is pointed out that as stipulated in Government Circular No.13402/J2/12 Gl.Edn dated 10.05.2012, in all uneconomic schools, the staff fixation of 2010-11 should be followed. And if vacancies in those schools due to death, retirement, resignation, promotion or transfer and leave exceeding eight months have occurred and fresh

hands were posted, the appointment of these teachers would be considered on daily wages basis only. It is further stated that the Director of Public Instruction has been directed to conduct a review of such appointment and approve the appointment, which comes within the minimum strength required in such schools, as regular basis. As stipulated in the above Government Circular, directions were given to the 4th respondent to approve the appointment of the petitioner with effect from 01.06.2011 on daily wages basis, which is in adherence to the Government Circular, and so, it is in order; according to the 2nd respondent.

5. Arguments have been heard.

6. The appointment of the petitioner was rejected holding the reason that the school is uneconomic and the vacancy has to be filled up with a protected teacher and there was a dearth of TTC holders in the school. According to the learned counsel for the petitioner, the reasons stated in Exts.P2, P4 and P6 are not at all

justifiable in view of Exts.P17 & P18. The learned counsel pointed out that seven posts have been sanctioned in the school during the year 2009-2010, i.e., as per staff fixation order for the year 2009-10, four posts of LPSA and three posts of UPSA including HM were sanctioned. The Government has clarified in letter No.26476/S3/07/G.Edn dated 13.06.2007 that B.Ed holders appointed before amendment, i.e., before 08.06.2000, can be considered either as UPSA and LPSA. Smt. Rajani, a B.Ed holder, who joined service as LPSA in the year 1991, is still continuing as LPSA in the school. According to the learned counsel for the petitioner, there is no illegality in her position. Now, the 4th respondent wants to shift Smt.Rajani from LPSA to UPSA, in which post the petitioner was appointed, as Smt.Rajani is a B.Ed holder. According to the petitioner, the said Rajani has no claim for UPSA and if she is shifted from LP to UP, the same would be contrary to the decision reported in 2011 (1) KLT 663.

7. The aforesaid position was clarified by the 2nd respondent too in Order No.G4/5196/06 dated 06.03.2006, according to which, the teachers appointed before 08.06.2000 need to be considered for appointment as LPSA or UPSA based on their qualification possessed by them. Both of them are eligible to teach in LP section or in UP section. The learned counsel for the petitioner pointed out that though the petitioner was included in Ext.P9 package introduced by the Government, the 4th respondent rejected her approval on flimsy grounds. However, it is to be noted that this Court, by judgment dated 15.01.2015 in WP(C) No.30107/2013 & connected cases, struck down the said G.O.

8. The fact that the school is an uneconomic school, is not in dispute. In the school, four posts of LPSA and three posts of UPSA including HM were sanctioned during year 2009-2010 and 2010-2011. However, the school did not maintain the minimum strength of students. Therefore, the school was treated as

uneconomic. The 4th respondent was directed to approve the appointment of the petitioner with effect from 01.06.2009 on daily wages basis in the light of Government Circular No.13402/J2/12 dated 10.05.2012. The 4th respondent rejected the approval preferred by the manager on the ground that out of the four posts of LPSA, only three TTC holders are working in the school as on 01.06.2011; and since the petitioner is a B.Ed holder, she does not possess the qualification for the post of LPSA as TTC is mandatory for the said post. In GO(P) No.188/2000 dated 08.06.2000, the B.Ed qualified teachers working as LPSA prior to the issue of the GO dated 08.06.2000 would be permitted to continue as LPSA. Therefore, the petitioner's appointment was against the spirit of the said GO. The 4th respondent was directed to approve the appointment of the petitioner with effect from 01.06.2011 on daily wages basis since as specified in Government Circular No.58604/J2/12 Gl.Edn dated 06.11.2012, the school does not maintain the

minimum strength of students. The minimum strength of the petitioner's school is below 100 whereas the minimum strength required is 105 from Std.I to VII. Therefore, the school comes under the category of uneconomic after the completion of UID. Therefore, this Court is of the view that the direction issued by the 2nd respondent to the 4th respondent is in order.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to succeed. Therefore, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-