

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 15344 of 2013 (P)

PETITIONER(S):

**JITHA G., AGED 25 YEARS,
W/O.DEEPAK.A.D., AYNIKUNNAN HOUSE, KAIPARAMBU P.O.
THRISSUR DISTRICT-680546 (U.P.S.A., S.D.V.H.S.S.
PERAMANGALAM)**

**BY ADVS.SRI.S.M.PRASANTH
SMT.SMITHA GEORGE**

RESPONDENT(S):

- 1. THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR, AYYANTHOLE, THRISSUR DISTRICT-680003.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
THRISSUR, PALACE ROAD, NEAR MODEL GIRLS HIGH SCHOOL
THRISSUR-680001.**
- 4. THE MANAGER,
SREE DURGA VILASAM HIGHER SECONDARY SCHOOL
PERAMANGALAM POST, THRISSUR-680545.**
- 5. KRISHNAPRIYA.S.,
W/O.KRISHNADAS, PARISSERY HOUSES, MULANKUNNATHUKAVU
THRISSUR DISTRICT-680581.**
- 6. MS.NINCY.M.,
HIGH SCHOOL ASSISTANT
SREE DURGA VILASAM HIGHER SECONDARY SCHOOL
PERAMANGALAM POST, THRISSUR-680545.**
- 7. MR.VINAYARAJAN.K.C.,
UPPER PRIMARY SCHOOL ASSISTANT
SREE DURGA VILASAM HIGHER SECONDARY SCHOOL
PERAMANGALAM POST, THRISSUR-680545.**

W.P.(C).NO.15344/2013

**8. MS.THULASI.K.,
UPPER PRIMARY SCHOOL ASSISTANT
SREE DURGA VILASAM HIGHER SECONDARY SCHOOL
PERAMANGALAM POST, THRISSUR-680545.**

**R4 BY ADV.SRI.U.BALAGANGADHARAN
R5 -R 8 BY ADV. SRI.R.S.SARAT
R1-R3 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN
CHAMAPARAMBIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE APPOINTMENT ORDER DT.30.8.2010 ISSUED BY R4.
EXHIBIT P2: COPY OF THE ORDER NO.44/11-12 DT.1.6.2011 BY R4.
EXHIBIT P3: COPY OF THE ORDER NO.B5/2050/2012 DT.7.4.2012 ISSUED BY R3.
EXHIBIT P4: COPY OF THE ORDER NO.7334/10 DATED 21.11.2011 PASSED BY R3.
EXHIBIT P5: COPY OF THE APPEAL DT.3.2.12 SUBMITTED BY THE PETITIONER BEFORE R2.
EXHIBIT P6: COPY OF THE ORDER NO.B3/2245/12/K.DIS DT.17.4.2012.
EXHIBIT P7: COPY OF PETITION DT.20.7.2012 SUBMITTED BY THE PETITIONER BEFORE R4.
EXHIBIT P8: COPY OF LETTER NO.B5/7381/12 DT.8.8.2012 BY R4.
EXHIBIT P9: COPY OF ORDER NO.60930/12/11/G.EDN. DT.25.10.2011 BY R1.
EXHIBIT P10: COPY OF THE REVISION PETITION DT.2.5.2012 SUBMITTED BY THE PETITIONER BEFORE R2.
EXHIBIT P11: COPY OF AFFIDAVIT DT.18.2.2013 SUBMITTED BY THE PETITIONER BEFORE R2.
EXHIBIT P12: COPY OF ORDER NO.GO(RT)NO.1482/2013/G.EDN. DT.30.3.2013 ISSUED BY R1.
EXHIBIT P13: COPY OF ORDER NO.B1-17926/12 DT.6.3.2013 ISSUED BY R2.
EXHIBIT P14: COPY OF G.O.(P).NO.199/2011/G.EDN. DATED 1.10.2011.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.15344 OF 2013 (P)

Dated this the 7th day of July, 2015

J U D G M E N T

The petitioner was appointed as Upper Primary School Assistant [UPSA] in the 4th respondent School with effect from 30.8.2010 in a regular vacancy that resulted consequent to the resignation of one K.P.Anoop. Ext.P1 is the appointment order appointing the petitioner. While the petitioner continued in the School pursuant to her appointment till 31.3.2011, by Ext.P2 communication dated 1.6.2011, the petitioner was prevented from reporting for duty in the academic year 2011-12 by the 4th respondent Manager, who anticipated a division fall in the staff fixation that was to be conducted in the said year. On account of the denial of permission by the 4th respondent Manager, the petitioner could not report for duty with effect from 1.6.2011. In the staff fixation order, that was passed for the said year [Ext.P3], however, there was no division fall and 23 posts of UPSA were retained in the School. It is apparent, therefore, that had the 4th respondent permitted the petitioner to continue in the School, consequent to her appointment with effect from 30.8.2010 to a regular vacancy, the appointment of the petitioner as UPSA would

have been approved subject to satisfaction of other conditions. By Ext.P4 order dated 21.11.2011, the 3rd respondent denied approval to the appointment of the petitioner. It is the stand of the 3rd respondent, in Ext.P4 order, that the appointment of the petitioner was made against the condition in the bond executed by the Manager pursuant to G.O.(P) 10/2010, where under, the Manager had undertaken to appoint a protected teacher to future vacancies in the School. It is relevant to note that the date of the bond executed by the Manager is 18.12.2010, much after the date of actual appointment of the petitioner as UPSA with effect from 30.8.2010. The petitioner therefore preferred Ext.P5 appeal before the 2nd respondent. By Ext.P6 order dated 17.4.2012, the 2nd respondent rejected the appeal for substantially the same reasons as in Ext.P4 order of the 3rd respondent, but also for the additional reason that the resignation of Sri.K.P.Anoop, in whose vacancy the petitioner was appointed, had not been accepted till date. The petitioner, thereafter, preferred Ext.P10 revision petition before the 1st respondent. By Ext.P12 order dated 30.3.2013, the 1st respondent rejected the revision petition finding that the petitioner had service only from 30.8.2010 to 31.3.2011 and therefore, could be approved only on daily wage basis and further, that the Manager of the School should have appointed

protected teachers to vacancies arising in 2011-12. In the writ petition, Exts.P4, P6 and P12 orders are impugned, and the petitioner also claims a promotion to the post of High School Assistant [HSA] in the School consequent to a declaration that she was validly appointed to the School with effect from 30.8.2010 as an UPSA. The petitioner also challenges the appointments of respondents 5 to 8, who were appointed in the School subsequent to the petitioner, and whose appointments also have not been approved by the Educational authorities till date citing the existence of a management dispute in the School.

2. A counter affidavit has been filed on behalf of the 2nd respondent and a statement has been filed on behalf of the Manager. In the counter affidavit filed on behalf of the 2nd respondent, the stand taken is that insofar as the Manager did not permit the petitioner to work in the School with effect from 1.6.2011, the petitioner did not have sufficient service to qualify her as a Rule 51 A claimant for the purposes of appointment to a vacancy which arose with effect from 1.6.2011. It is the submission of the 2nd respondent that the Manager of the School had to appoint protected teachers to vacancies arising in 2011-12 based on the undertaking that was executed by the Manager

on 18.12.2010. It is also observed in the counter affidavit of the 2nd respondent that if the petitioner had continued in the School, then her appointment could have been approved.

3. In a reply affidavit filed in response to the counter affidavit of the 2nd respondent, the petitioner has a clear case that if the Manager had permitted her to work with effect from 1.6.2011, then her appointment would have been approved as already noted in the counter affidavit of the 2nd respondent. The petitioner also relies on Ext.P14 Government order dated 1.10.2011 that contemplates that in cases where a bond has been executed by the Manager, the appointment of the teachers could be approved with effect from 1.6.2011.

4. I have heard the learned counsel for the petitioner, learned counsel for the 4th respondent Manager as also the learned Government Pleader for the official respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that this is a case where the petitioner's appointment as UPSA with effect from

30.8.2010 in the 4th respondent's School, was against a regular vacancy that arose consequent to the resignation of Sri.K.P.Anoop. Inasmuch as it was to a regular vacancy that she was appointed, she could have continued in the School for the subsequent academic year also subject to any division fall, that was noticed during staff fixation which would have entailed a retrenchment of the petitioner. In the instant case, it is not in dispute that in the staff fixation order for the next academic year, there was no reduction in staff strength which necessitated a retrenchment of any teacher in the School. It is also evident that, but for the insistence of the 4th respondent, pursuant to Ext.P2 communication dated 1.6.2011, that the petitioner shall not to report for duty in the School, the petitioner could have legally continued in the School from 1.6.2011 pursuant to her appointment by Ext.P1 appointment order. No doubt, the issue of approval to the appointment of the petitioner would depend upon the provisions of the Kerala Education Rules, as also the Government orders issued from time to time. I find, however, that in the orders denying approval to the appointment of the petitioner in the School with effect from 1.6.2011, the denial is by treating the appointment as a fresh appointment with effect from the said date. In the case of the petitioner, as already noticed, her appointment has to be treated as

continuous with effect from 30.8.2010 and not with effect from 1.6.2011. The said aspect assumes importance when one considers that the bond executed by the Manager pursuant to G.O.(P) 10/2010 is dated 18.12.2010, much after the date of the appointment of the petitioner on 30.8.2010. The stand of the Educational authorities in Exts.P4, P6 and P12 that approval could not be granted to the appointment of the petitioner, since it was made in violation of the conditions in the bond executed by the Manager, cannot hold up against the petitioner because her appointment was with effect from 30.8.2010, much before the date of execution of the bond by the Manager. The requirement of appointing a protected teacher to vacancies arising in the School in the academic year 2011-12 would arise only if the appointment of the petitioner was to a vacancy that arose in 2011-12. In the instant case, it is clear that the petitioner was appointed to a vacancy that arose in the academic year 2010-11 and not 2011-12. Therefore, the other reason cited in the orders impugned in the writ petition, namely, that the manager should have appointed protected teachers to vacancies arising in 2011-12, also cannot hold up against the petitioner. Resultantly, I am of the view that Exts.P4, P6 and P12 orders, that are impugned in the writ petition, must necessarily be quashed as legally unsustainable. I do

so. The writ petition is, accordingly, allowed by quashing the said orders and directing the 3rd respondent to consider the application for approval to the appointment of the petitioner with effect from 30.8.2010 in the 4th respondent's School by treating her as having continuous service from 30.8.2010 onwards and de hors the artificial break that was created consequent to Ext.P2 communication that was issued by the 4th respondent to the petitioner, which prevented her from joining duty with effect from 1.6.2011 in the School. The 3rd respondent, while considering the case of the petitioner, for approval of her appointment as UPSA, with effect from 30.8.2010, shall look into the aspect of whether there was any protected teacher that remained to be appointed in a vacancy that arose in the year 2010-11 for the purposes of G.O.(P) 10/2010. If there were protected teachers that remained to be appointed during the said year, the 3rd respondent shall also enquire as to whether the fact of such protected teacher being available, was intimated to the Manager of the School as was required in the Circulars issued by the Director of Public Instructions. The 3rd respondent shall thereafter pass orders in the matter of approval of the appointment of the petitioner within a period of three months from the date of receipt of a copy of this judgment. I further make it clear that, consequent to the finding in this judgment that it

was on account of the actions of the 4th respondent Manager that the petitioner could not continue in the school beyond 31.03.2011, there will be a direction to the 4th respondent Manager to reinstate the petitioner as an UPSA in the School, subject to the condition that the petitioner's entitlement to salary and other benefits will be based on the decision by the 3rd respondent pursuant to the directions in this judgment. I leave open the issue with regard to the entitlement of the petitioner for promotion as HSA to be agitated in proceedings after the 3rd respondent takes a decision in the matter of approval.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp