

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 16605 of 2011 (A)

PETITIONER:

P.A. BINDHU,
D/O. LATE. KRISHNAVENI,
PALLATH HOUSE, THOTTIPAL P.O., PARAPPUKKARA VIA
THRISSUR DISTRICT, PIN-680310
(U.P.S.A, K.S. UPS, THOTTIPAL)

BY ADVS. SRI.P.K.MADHUSOODANAN
SRI.P.M.BINOY KRISHNA

RESPONDENTS:

1. THE ASSISTANT EDUCATIONAL OFFICER,
IRINJALAKKUDA-680310.
 2. THE STATE OF KERALA,
REP.BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION (K) DEPARTMENT,
THIRUVANANTHAPURAM-PIN-695 001.
 3. THE MANAGER,
KARSHAKA SAMAJAM UPPER PRIMARY SCHOOL,
THOTTIPAL P.O., THOTTIPPAL,
THRISSUR DISTRICT, PIN-680310
- R3 BY ADVS. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN
R1 & R2 BY SR. GOVERNMENT PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE JUDGMENT DATED 19-12-2008 IN WPC No.11172/2008.
- EXT- P2- TRUE COPY OF THE REGISTERED LETTER DATED 29-01-2009 ISSUED BY THE 3RD RESPONDENT.
- EXT- P3- TRUE COPY OF THE ORDER DATED 02-02-2009 IN RP No.96/2009 IN WPC No.11172/2008.
- EXT- P4- TRUE COPY OF THE JUDGMENT DATED 20-08-2010 IN WA No.2791/2009.
- EXT- P5- TRUE COPY OF THE ORDER IN C.C.C No.403/2009.
- EXT- P6- TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 18-12-2009.
- EXT- P7- TRUE COPY OF THE ORDER DATED 13-07-2010 OF THE 1ST RESPONDENT.
- EXT- P8- TRUE COPY OF THE ORDER DATED 18-08-2010 IN C.C.C No.946/2010.
- EXT- P9- TRUE COPY OF THE ORDER DATED 20-11-2010 OF THE 3RD RESPONDENT APPOINTING PETITIONER AS LPSA.
- EXT- P10- TRUE COPY OF THE LETTER DATED 06-01-2010 OF THE 1ST RESPONDENT TO THE 3RD RESPONDENT WITH COPY TO THE PETITIONER.
- EXT- P11- TRUE COPY OF THE LETTER DATED 10-02-2010 OF THE 1ST RESPONDENT TO THE 3RD RESPONDENT WITH COPY TO THE PETITIONER.
- EXT- P12- TRUE COPY OF THE LETTER DATED 18-01-2011 OF THE 1ST RESPONDENT TO THE 3RD RESPONDENT WITH COPY TO THE PETITIONER.
- EXT- P13- TRUE COPY OF THE REPRESENTATION BEFORE THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 16605 OF 2011-A

DATED THIS THE 12th DAY OF MARCH, 2015.

J U D G M E N T

The petitioner sought appointment in the 3rd respondent's school raising a claim under Rule 51B of Chapter XIVA K.E.R, on the basis that her mother who was under employment of 3rd respondent died-in-harness. The District Education Officer through his proceedings dated 22-10-2007 found that the petitioner is eligible to be appointed in the 3rd respondent's school under Rule 51B in any of the available vacancies. But the 3rd respondent refused to give appointment to the petitioner, which constrained her to approach this court in a writ petition filed in the year 2008. In Ext.P1 judgment this court found that it is the obligation of the 3rd respondent to comply with the order passed by the DEO. Therefore the writ petition was disposed of by directing the 3rd respondent to offer appointment to the petitioner based on the proceedings of the DEO, as expeditiously as possible, at any rate within 8 weeks from the date of production of copy of the said

judgment. But, instead of complying with the directions contained in Ext.P1 judgment, the 3rd respondent had issued Ext.P2 letter to the petitioner intimating that a review petition was filed against Ext.P1 judgment. In the review petition the 3rd respondent contended that he had already approached the Government with a revision petition against the order passed by the DEO and hence the direction could not be complied with. In Ext.P3 order passed by this court in the review petition it was observed that, the 3rd respondent has no case that there was any order passed by the revisional authority restraining implementation of the order passed by the DEO. Hence this court directed to offer appointment to the petitioner based on the order of the DEO, subject to outcome of the revision which is pending before the Government. Despite disposal of the review petition the 3rd respondent had not offered appointment to the petitioner. Hence the petitioner was again constrained to approach this court invoking provisions under the Contempt of Courts Act. During pendency of the contempt of court case, the Government have rejected the revision

petition on 27-06-2009. The 3rd respondent filed a writ petition challenging the order of the Government before this court, as W.P (c) No.21384/2009. This court dismissed the said writ petition through judgment dated 12-11-2009 and the 3rd respondent was directed to appoint the petitioner within a period of 3 weeks. Against the dismissal of W.P (c) No.21384/2009 the 3rd respondent filed a writ appeal before the Division Bench, as W.A. No.2791/2009. The writ appeal was also dismissed through Ext.P4 judgment, observing that in the contempt of court proceedings the 3rd respondent had undertaken that the petitioner would be appointed within 3 days and that recording such submission the contempt of court case was disposed of on 10-12-2009. Hence it is observed that the filing of writ appeal is an abuse of the process of court. However, the Division Bench had considered the contention raised regarding the delay caused in preferring claim for appointment under Rule 51B. But this court observed that the application was made by the petitioner soon after she had attained majority and subsequently she has passed the

teachers training course. Thereafter the petitioner had filed the representation seeking appointment on 17-10-2003, in any of the vacancy arising. Noticing that various reminders were submitted thereafter by the petitioner and there was continued inaction on the part of the 3rd respondent; and also the subsequent filing of writ petition by the petitioner, this court had refused to examine correctness of the arguments with respect to the alleged delay. It was further observed that, in view of Ext.P1 judgment which has become final, it is not warranted to examine the dispute regarding the belated claim. Ultimately this court found that the 3rd respondent is not entitled to back out from the commitment made before this court in the contempt of court case, to appoint the petitioner within 3 days, and accordingly the writ appeal was dismissed.

2. Meanwhile, during pendency of WA No.2791/2009 the Division Bench has issued an interim order on 09-12-2009, directing appointment of the petitioner. Based on such direction and in purport of compliance of the judgment in CCC No.403/2009, the 3rd respondent had

appointed the petitioner as U.P.S.A by virtue of Ext.P6 order, subject to final result in W.A. No.2791/2009. The appointment was made against a vacancy which arose consequent to non-approval of appointment of Smt. V.P. Asha, who was appointed against a regular retirement vacancy. The petitioner joined in service pursuant to Ext.P6, with effect from 21-12-2009 and continued as such. But the 3rd respondent had failed to submit proper records before the Educational Officer for getting the appointment approved. Subsequently the 3rd respondent had terminated the petitioner based on an allegation that the vacancy against which she was appointed has ceased to exist, with effect from 31-03-2010. Thereupon that the petitioner again filed another contempt of court case as CCC No.946/2010 alleging non-compliance of Ext.P1 judgment and Ext.P3 order. In Ext.P8 order a learned Judge of this court found that action on the part of the 3rd respondent in this regard will prima facie amount to contempt of court and therefore further steps for proceeding under the Contempt of Courts Act is warranted. Therefore the matter was referred to the

Division Bench for further steps. The 3rd respondent thereupon issued another order of appointment dated 20-11-2010 appointing the petitioner as L.P.S.A in a vacancy available from 01-06-2008 onwards. It was clarified in Ext.P9 appointment order that the same is made subject to decision in SLP No.31908/2010 filed by the 3rd respondent before the hon'ble Supreme Court. Pursuant to the said appointment the petitioner joined as L.P.S.A in the 3rd respondent school with effect from 23-11-2010. But the 3rd respondent has not taken any steps to get the appointment approved by sending the requisite documents to the Educational Officer, despite various directions issued by the educational authorities to submit the documents for consideration of approval of the appointment and despite submission of Ext.P13 representation by the petitioner before the 1st respondent. Under the above mentioned circumstances this writ petition was filed seeking direction to the 3rd respondent to forward all necessary documents for approval of appointment of the petitioner as required under Rule 8 (i) & Rule 8 (2) of Chapter XIVA K.E.R. and to

disburse the salary due to the petitioner for the period she had worked.

3. It is noticed that the 3rd respondent had filed SLP No.31908/2010 before hon'ble Supreme Court challenging Ext.P4 judgment of the Division Bench in W.A No.2791/2009. Through an interim order the hon'ble Supreme Court had stayed operation of Ext.P4 judgment. Learned counsel appearing for the 3rd respondent submitted that the civil appeal arising out of the above said SLP was disposed of by the hon'ble Supreme Court through a common judgment which is reported as **Sreejith L. V. Deputy Director (Education) Kerala and others (2012) 7 SCC 248**. The hon'ble Apex court observed that, mother of the petitioner died-in-harness on 04-09-1979 and the petitioner had attained majority on 06-12-1991 and passed S.S.L.C examination in the year 1993 and Teacher Training Course in the year 2003. The petitioner then applied for a compassionate appointment on 09-09-2005 and the request was turned down by the 3rd respondent. Hon'ble Supreme Court noticed the contention that the

petitioner was a married woman and she was thus a member of another family. Hence it was contended that the High Court went in error in dismissing the petition filed by the Manager disregarding the contention that the application for compassionate appointment was made after 14 years of attainment of majority. The hon'ble Apex Court held that, there is merit in the contention urged and that there is no proper explanation forthcoming on the side of the petitioner with respect to the delay caused. The hon'ble Supreme Court observed that, the orders passed by the DEO directing appointment of the petitioner and the confirmation of the order by the Government and the judgment passed by this court in the writ petition and in the writ appeal are therefore unsustainable. In the result civil appeal arising out of SLP No.31908/2010 was allowed and the judgment and orders passed by the High Court and the orders passed by the Government in revision and also order passed by the DEO were quashed.

4. In view of the above mentioned circumstances it is evident that the very order passed by the DEO itself was

quashed by the hon'ble Supreme Court and the entitlement of the petitioner with respect to the claim under Rule 51B stands negatived. Therefore the relief sought for in this writ petition to direct the 3rd respondent to forward documents for approval of her appointment cannot survive and no relief can be granted by issuing any such direction. Hence the writ petition is liable to be dismissed.

5. Learned counsel for the petitioner made an appeal to this court to direct payment of salary due to the petitioner for the period during which she had actually worked in the 3rd respondent's school. While considering such a request, basically it is to be noticed that the entitlement of the petitioner for appointment based on the claim under Rule 51B was negatived by the hon'ble Supreme Court. The 3rd respondent was directed to appoint the petitioner as teacher in the school, only based on the order passed by the DEO. The said order and all the subsequent judgments confirming the said order had already been quashed by the hon'ble Supreme Court. Therefore it has to be observed that the petitioner had

worked in the school not based on any legal entitlement. Despite appointment of the petitioner based on the interim direction issued by this court, none of the educational authorities have granted approval for such appointment. Learned counsel for the petitioner contended that, despite several directions issued by the educational authorities the 3rd respondent had failed to forward the requisite documents seeking approval of the appointment of the petitioner. But it is pertinent to note that all along the 3rd respondent was challenging the entitlement of the petitioner to claim appointment in his school based on Rule 51B. Therefore it cannot be contended that the 3rd respondent Manager is responsible or guilty of restraining the educational authorities from considering the question of approval of appointment of the petitioner. As long as the appointment of the petitioner stood not approved by the competent educational authority, the Government cannot be compelled to make payment of the salary due to the petitioner for the period she worked, under the direct payment system applicable to the 3rd respondent's school.

This is especially so when the claim of the petitioner with respect to her entitlement for appointment against the vacancy in question was ultimately negated by the hon'ble Supreme Court. Learned counsel contended that, at any rate the 3rd respondent had utilised service of the petitioner in the school and therefore he is bound to pay salary to the petitioner for the period she had worked in the school. As already observed, the 3rd respondent was all along agitating against the claim of the petitioner under Rule 51B and he became compelled to appoint the petitioner only by virtue of directions issued by this court. Therefore in exercise of Article 226 of the Constitution of India this court cannot issue any direction to the 3rd respondent to pay salary to the petitioner for the period during which she had actually worked. However, such a claim raised by the petitioner against the 3rd respondent will fall within the ambit of her civil right, which the petitioner can seek to enforce through appropriate proceedings under common law, to the extent it is allowable.

6. Learned counsel for the petitioner argued that the claim for salary of an employee for the period he had actually worked is an enforceable right, salary being a recompense for the service rendered. Therefore it is contended that the claim cannot be turned down based on a plea that the appointment was not approved by the authorities. It is contended that even in the absence of the petitioner the post would have been manned by another person to whom the authorities have to meet the liability regarding his salary. In this connection learned counsel for the petitioner had placed reliance on a decision of this court in **Valsamma Joseph v. Manager, St.Thomas College and others [1993 (2) KLJ 750]**. But, as observed above, when the appointment was not approved and when the claim for appointment raised by the petitioner had already been negatived, this court cannot arrive at any finding that the petitioner is entitled for getting salary for the period during which she had actually worked, because the said employment cannot be termed as one rendered based on any legal or regular appointment. Learned

counsel for the petitioner had referred to various legal precedents where this court in **Annamma v. State of Kerala [1987(1) KLT 882]** and in **Kochu Kunju and Others v. State of Kerala and Others [1986 KLT 1281]** had issued specific directions for payment of salary for the period during which the petitioners therein had worked based on interim orders passed by this court, despite the fact that claim raised in those petitions were ultimately negatived in the respective judgments. So also, the learned counsel had drawn attention of this court to a decision of the hon'ble Supreme Court in **Sushila Bhikaji Sawant v. State of Maharashtra [LAWS(SC)-2006-2-86]** wherein the hon'ble apex court had clarified that there will be responsibility for payment of amounts due to a person who was found to have wrongly appointed. But in the case at hand, on the facts enumerated as above, this court cannot consider any such relief even based on equity principles, because the decision nullifying the order of the DEO was taken by the hon'ble Supreme Court in the civil appeal. Since no request was made on behalf of the petitioner

before the hon'ble Supreme Court raising any claim with respect to payment of salary for the period during which the petitioner had worked based on orders of this court, it may not be possible for this court to consider such claim based on equity principles in the present writ petition. Therefore request made by the petitioner in this regard is declined.

In the result, the writ petition deserves no merit and the same is accordingly dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG/MJL

True copy

P.A. to Judge