

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 13971 of 2014 (V)

PETITIONER(S) :

**P.K.SHEENA,
HEADMISTRESS, KELALUR U.P.SCHOOL, P.O.MAMBARAM,
KANNUR DISTRICT-670 741.**

**BY SRI.PRAVINDRAN (SENIOR ADVOCATE)
ADV. SRI.SREEDHAR RAVINDRAN**

RESPONDENT(S) :

- 1. THE MANAGER,
KELALUR U.P.SCHOOL, P.O.MAMBARAM,
KANNUR DISTRICT-670 741.**
- 2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION, SECRETARIATE,
THIRUVANANTHAPURAM-695 001.**
- 3. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 001.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
THALASSERY NORTH, KANNUR DISTRICT-670 101.**
- 5. K.P.CHITRALEKHA,
SENIOR ASSISTANT, KELALUR U.P.SCHOOL, P.O.MAMBARAM,
KANNUR DISTRICT-670 741.**
- 6. N.SANTHA,
LOWER PRIMARY SCHOOL ASSISTANT, KELALUR U.P.SCHOOL,
MAMBARAM, P.O.MAMBARAM, KANNUR DISTRICT-670 741.**

**R1 BY ADV. SRI.K.PRAVEEN KUMAR
R2 TO R4 BY GOVERNMENT PLEADER SMT.LOWSYA
R5 & R6 BY ADV. SRI.CIBI THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-02-2015,
ALONG WITH W.P.(C).NO.29286 OF 2014 AND W.P.(C).NO.32710 OF 2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE ORDER OF THE APPOINTMENT OF THE PETITIONER AS UPSA DATED 01.04.2007.
- EXHIBIT P2:** TRUE COPY OF THE GOVERNMENT ORDER DATED 03.11.2010.
- EXHIBIT P3:** TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C).NO.37868/10 AND CONNECTED CASES DATED 10.01.2012.
- EXHIBIT P4:** TRUE COPY OF THE ORDER OF THE AEO DATED 17.03.2012.
- EXHIBIT P5:** TRUE COPY OF THE CERTIFICATE OF ACCOUNT TEST LOWER DATED 12.03.2008.
- EXHIBIT P6:** TRUE COPY OF THE APPOINTMENT ORDER DATED 12.04.2012.
- EXHIBIT P7:** TRUE COPY OF THE ORDER RELIEVING THE TEACHER IN CHARGE AND PUTTING THE PETITIONER IN CHARGE AS THE HEADMISTRESS DATED 12.04.2012.
- EXHIBIT P8:** TRUE COPY OF THE ORDER DATED 12.06.2012.
- EXHIBIT P9:** TRUE COPY OF THE APPEAL DATED 06.07.2012.
- EXHIBIT P10:** TRUE COPY OF THE ORDER OF THE DEO REJECTING APPEAL DATED 01.10.2012.
- EXHIBIT P11:** TRUE COPY OF THE APPEAL DATED 22.10.2012.
- EXHIBIT P12:** TRUE COPY OF THE ORDER DATED 13.02.2013.
- EXHIBIT P13:** TRUE COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT DATED 04.03.2013.
- EXHIBIT P14:** TRUE COPY OF THE ORDER DATED 09.05.2014.
- EXHIBIT P15:** TRUE COPY OF THE COVERING LETTER SUBMITTED BEFORE THE ASSISTANT EDUCATIONAL OFFICER DATED 05.06.2014.
- EXHIBIT P16:** TRUE COPY OF THE COMMUNICATION ISSUED BY THE ASSISTANT EDUCATIONAL OFFICER DATED 13.06.2014.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R5(A):** TRUE COPY OF THE APPOINTMENT ORDER PASSED BY THE AEO.

//TRUE COPY//

P.A.TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) Nos.13971, 29286 & 32710 of 2014

Dated this the 24th day of February, 2015

JUDGMENT

These writ petitions are pertain to the appointment of Headmistress in Kelalur U.P. School, Kannur District.

2. The post of Headmaster has become vacant in this School on 1.4.2010. The petitioner in W.P.(C) Nos.13971/2014 and 29286/2014, namely, Smt.P.KSheena, was appointed as UPSA in the School on 1.4.2007. The appointment was not approved initially by the Department. However, the Government as per order dated 3.11.2010 approved the appointment. This approval, according to Smt.P.K.Sheena, relates back to the date of appointment for all other claims in the light of the Full Bench judgment of this Court in **Soman P.S. v. Manager, A.K.M.High School [2013(2) KHC 173]**. Therefore, it is submitted that this would give rise to her for

the claim of appointment as Headmistress as on the date of occurrence of the vacancy.

3. Admittedly, as on the date of occurrence of the vacancy, no other teacher in the School has qualification or eligibility to be appointed as a Headmaster. However, Smt.N.Santha, the writ petitioner in W.P.(C) No.32710/2014, on attainment of age of 50 years, by virtue of an exemption under Rule 44 B (2) of Chapter XIV A of the Kerala Education Rules became eligible for appointment as Headmistress. Smt.N.Santha crossed the age of 50 years on 13.5.2010. The Manager appointed Smt.N.Santha to the post of Headmistress. There were different proceedings challenging the appointment of Smt.N.Santha as Headmistress. The fact remains that Smt.N.Santha's appointment as Headmistress has not been approved by the authorities. It is submitted by Smt.N.Santha, when the post became vacant, the senior most

teacher Smt.Chitralekha was appointed and thereafter, she was replaced by Smt.N.Santha.

4. The question is, who is entitled to be appointed as Headmistress. The date of occurrence of the vacancy, admittedly, was on 1.4.2010. Smt.P.K.Sheena's approval was given effect with effect from the date of her appointment as UPSA. There is no dispute regarding her eligibility for appointment as Headmistress. The case of the contesting respondents is that when the approval was not given to her appointment, when the vacancy arose and during interregnum Smt.N.Santha and others have acquired qualification, they need to be preferred to be appointed as Headmistress and subsequent grant of approval cannot divest right of qualified hands who by passage of time acquired qualification. It is further submitted that the date of occurrence would be relevant for considering the qualification of candidates for

appointment only when there are competing claim of qualified hands. However, when there are no qualified hands as on the date of occurrence of the vacancy, the consideration should be at the time on which, next candidates, who acquires the right for such claim. Since Smt.N.Santha has acquired eligibility within a month of occurrence of the vacancy, Smt.N.Santha is alone entitled for the post.

5. The learned senior counsel appearing for Smt.P.K.Sheena submits that once her approval relates back to the date of appointment as declared by the Full Bench judgment of this Court in **Soman's** case (*supra*), on the date of occurrence of the vacancy Smt.P.K.Sheena was alone eligible. The time taken for approval cannot take away the vested right of Smt.P.K.Sheena as on the date of occurrence of the vacancy.

6. The approval is given for appointment of Smt.P.K.Sheena with effect from the date of appointment.

Smt.P.K.Sheena was alone the candidate eligible for appointment as Headmistress on the date of occurrence of the vacancy. No doubt, when there were no eligible candidates, acquisition of the qualification by the next immediate candidate has to be considered for appointment. In this case, admittedly, on the date of occurrence of the vacancy, Smt.P.K.Sheena has qualification. Therefore, she has right to knock down other claims based on subsequent acquisition. When a right springs back to an anterior date, the right accrued subsequently must yield to the prior right. **One who has the advantage in time should also have the advantage in law, this is the meaning of legal maxim *Qui Prior est Tempore Potior est Jure*.** In view of the above, the claim of Smt.P.K.Sheena's appointment as Headmistress has to be approved.

7. Here also arise a question regarding various appointments to the post of Headmistress during the interregnum. Smt.N.Santha claims her appointment with effect from 13.5.2010. Admittedly, her appointment was not approved. Smt.P.KSheena also claim her appointment as Headmistress with effect from 12.4.2012. Admittedly, the appointment was also not approved. No doubt, in this case, Smt.P.K.Sheena's right can be reverted back with effect from 1.4.2010. But that right would come into effect only when appointment order is issued. Interim orders passed by this Court in various dates would show that Smt.P.KSheena was continuing as Headmistress on the strength of the interim order. The learned counsel for Smt.N.Santha contends that Smt.P.K.Sheena never discharged the duties and responsibilities of Headmistress. I am of the view even assuming that she had not worked, her right to discharge

duties and responsibilities of Headmistress cannot be disputed. If she had been prevented, it is only because of untenable objection raised by Smt.N.Santha. Smt.N.Santha ought to have paved way for Smt.P.K.Sheena to continue in the office. Smt.N.Santha cannot take advantage on her own wrong to deny the benefits to Smt.P.K.Sheena. Therefore, Smt.P.K.Sheena's right with effect from 12.4.2012 cannot be denied based on her qualification as on the date of occurrence of vacancy. Smt.P.K.Sheena has no case that prior to the above period she had worked as Headmistress. Under Chapter-XIV-A of Rule 45(C) of the Kerala Education Rules, a teacher temporarily promoted under the Rule shall be replaced as soon as possible by the members of the service has become entitled for promotion. In this case, though right available to Smt.P.K.Sheena reverts back to 1.4.2010, nevertheless on the date of occurrence of the vacancy, her right has not been

declared. I am of the view, Smt.N.Santha having been appointed as Headmistress till 12.4.2012, the date on which Smt.P.K.Sheena was served with appointment order by the Manager that period could be treated as temporary promotion given to Smt.N.Santha and Smt.P.KSheena is entitled for approval only from 12.4.2012 onwards. Admittedly, Smt.N.Santha has qualification to hold the post.

In the facts and circumstances as above, Smt.N.Santha's appointment with effect from 13.5.2010 till 11.4.2012 shall be approved and she shall be paid all her salary and allowances applicable to the post of Headmistress. Smt.P.K.Sheena will be entitled for salary and other allowances only with effect from 12.4.2012 onwards. Impugned orders by Smt.P.K.Sheena is set aside to the above extent. Needful shall be done to approve the appointment within one month and thereafter, the entire arrears shall be disbursed to both the petitioners within three

months from the date of receipt of a copy of this judgment.

In view of the above, these writ petitions are disposed of.

No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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