

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No.16529 of 2013 (M)

PETITIONER'S:

1. **K.K.USHA,HSST (SENIOR),
NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA,NANMINDA P.O.,KOZHIKODE DISTRICT.**
2. **K.K.SHAJI,HSST (SENIOR),
NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA,NANMINDA P.O.,KOZHIKODE DISTRICT.**
3. **K.P.DAMODARAN,HSST (SENIOR),
NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA,NANMINDA P.O.,KOZHIKODE DISTRICT.**
4. **A.V.HARISH,HSST (SENIOR),
NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA,NANMINDA P.O.,KOZHIKODE DISTRICT.**

BY ADV.SRI.GEORGE POONTHOTTAM

RESPONDENT'S:

1. **THE DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING,SANTHI NAGAR,
THIRUVANANTHAPURAM-695001.**
2. **THE REGIONAL DIRECTOR,HIGHER SECONDARY EDUCATION,
REGIONAL OFFICE,KOZHIKODE-673001.**
3. **THE MANAGER,NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA,NANMINDA P.O.,KOZHIKODE DISTRICT,PIN-673613.**
4. **P.BINDU,PRINCIPAL,NANMINDA HIGHER SECONDARY SCHOOL,
NANMINDA,NANMINDA P.O.,KOZHIKODE DISTRICT,PIN-673613.**

***ADDITIONAL R5 IMPEADED**

**Addl.R5.STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695001.**

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WP(C).No.16529 of 2013 (M)

ADDL. R5 IS IMPEADED AS PER ORDER DATED 09.07.2013 IN IA 9051/2013.

**R1-R2 & R5 BY GOVT. PLEADER SRI.NOUSHAD THOTTATHIL
R3,R4 BY SRI.S.RAMESH BABU (SENIOR ADVOCATE.)
ADVS.SRI.P.RAVINDRA NATH
SRI.N.KRISHNA PRASAD
SRI.IMAM GRIGORIOUS KARAT**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 4.2.2015 ALONG WITH W.P(C) NO.28827/2013 THE COURT
ON 21-05-2015, DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE ORDER NO.C1/2875/HSE/99 DATED 3-8-1999.

**EXHIBIT P1(a)TRUE COPY OF THE ORDER NO.A3/19856/HSE/2001.
DATED 9-5-2002.**

**EXHIBIT P2: TRUE COPY OF THE COMMUNICATION DATED 29-9-2010 GIVEN TO
THE REGIONAL DEPUTY DIRECTOR.**

EXHIBIT P3: TRUE COPY OF THE ORDER NO.A5/4294/13/HSE DATED 25-5-2013.

**EXHIBIT P4: TRUE COPY OF THE COMMUNICATION NO.A5/4294/13/HSE
DATED 16-5-2013.**

**EXHIBIT P5: TRUE COPY OF THE COMMUNICATION NO.ACD. B1/772/HSE/2013
DATED 21-5-2013.**

**EXHIBIT P6: TRUE COPY OF THE ORDER N O. A5/4294/2013/KDIS
DATED 3-6-2013.**

**EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DATED 2-4-2013 GIVEN BY
THE PETITIONERS.**

**EXHIBIT P8: TRUE COPY OF THE REPRESENTATION DATED 2-4-2013 GIVEN BY
THE 1ST PETITIONER.**

**EXHIBIT P9: TRUE COPY OF THE REVIEW PETITION FILED BEFORE THE
GOVERNMENT BY THE 1ST RESPONDENT ON 3.7.2013.**

RESPONDENT'S EXHIBITS:

**EXT.R4(a):TRUE COPY OF THE FINAL SENIORITY LIST AS DULY APPROVED BY
THE DEPARTMENT.**

//TRUE COPY//

P.S. TO JUDGE

pk

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.16529/2013 &
28827/2013

Dated this the 21st day of May, 2015

JUDGMENT

The petitioners in WPC No.16529/2013, who are Higher Secondary School Teachers, allege that they have the required qualification and length of service for being appointed as Principal in the third respondent school. The grievance of the petitioners is that contrary to Sub Rule (3) of Rule 6 of Chapter XXXII KER and the law laid down by this Court regarding the counting of service of HSST (Jr.), the third respondent appointed the 4th respondent as Principal altering the seniority as contained in Ext.P2. All the petitioners are challenging Ext.P3 order of appointment as well as Ext.P6 order by which the approval has been granted consequent to the clarification given as per Ext.P5.

2. In the counter affidavit filed by respondents 1 and 2, it was contended that HSST is the feeder category for promotion to the post of Principal and the seniority has to be reckoned on the basis of HSST service. According to them, since the 4th respondent has no seniority in HSST service, she was not eligible for promotion as Principal.

3. In the counter affidavit filed by respondents 3 and 4, they would contend that Rule 4 of Chapter XXXII KER provides for the method of appointment, viz. promotion from category 2 which is the category of Higher Secondary School Teachers. According to them, category 3, viz. Higher Secondary School Teacher (Jr.) is only a feeder category to category 2. They contend that the rules require promotion from the post of category 2 and therefore, seniority has to be reckoned with reference to the seniority in the category of Higher Secondary School teacher only. The date of appointment and approval of HSST will prevail for the purpose of determination of seniority in

the category of HSST; it is contended.

4. The petitioner in WPC No.28827/2013 is Higher Secondary Teacher who is aggrieved by the denial of promotion to the post of Principal of Higher Secondary School as his service as HSST (Jr.) is not reckoned for the purpose of appointment as Principal.

5. The writ petitioner is challenging Ext.P3 order passed by the first respondent. The petitioner, who joined the service of HSST (Jr.) on 15.9.1998 under the NSS Corporate Management, alleges that persons who have joined service in the Higher secondary school subsequently have been promoted as Principal overlooking his seniority. He alleges that the service rendered by him as HSST (Jr.) is not reckoned for the purpose of appointment as Principal. According to the petitioner, in terms of Rule 6(3) of the Special Rules, the service required is 12 years teaching experience at higher secondary level. The petitioner points out that there is no distinction in the Rule between HSST and HSST (jr.). It is further alleged that Note 1 Rule 6

(3) has provided that even service as teacher in High School, Upper Primary and Lower Primary school is sufficient in case persons referred under Rule 6(3) is not available and these aspects had been considered in detail in a judgment of this Court in WPC No.30005/2005 and connected cases. Placing reliance on the judgment and the provisions of law, the petitioner represented to the Government for a general order and this Court, as per Ext.P2 judgment, directed the first respondent to consider and pass orders on the representation taking into account the judgment of this Court rendered earlier.

6. The grievance of the petitioner is that the first respondent deliberately passed Ext.P3 order violating the law as well as the directions given by this Court in the judgment. It is with this background, the petitioner has come up before this Court.

7. In the counter affidavit filed by the State as well as by the party respondent and the Management, they maintained the stand that it is impossible to

consider the service of the petitioner in HSST (jr.), as the feeder category for promotion as Principal of Higher Secondary School is HSST and not HSST (Jr.).

8. I have heard Mr.George Poonthottam, the learned counsel for the petitioner, Mr.N.Krishna Prasad and Mr.Unnikrishnan, the learned counsel appearing for party respondents, Mr.P.Gopal, the learned counsel for the NSS Corporate Management and Sri.Noushad Thottathil, the learned senior Government Pleader in the matter.

9. For convenience of discussion, the parties can be referred to as they are arrayed in WPC No.28827/2013.

10. Mr.George Poonthottam, the learned counsel for the petitioner would argue that though the Government was required only to issue a general order counting the service period of HSST (jr.) as well for promotion to the post of Principal in terms of the Rule, in the light of the law as declared and interpreted by this Court in WPC Nos.30005/2005 and

21153/2006 considering the Special Rules in the background of not reckoning the service of HSST (jr.) for promotion to the post of Principal, the author of Ext.P3 order has travelled far beyond the limits of jurisdiction and the authority of Government. It was argued that the author of Ext.P3 order has attempted to rewrite the judgment by giving an interpretation as he preferred which is in variance with the rules and law as explained by this Court. Therefore, according to the learned counsel for the petitioner, Ext.P3 is the result of wrong interpretation of law and contrary to the provisions of Special Rules and the law as declared by this Court.

11. The petitioner joined the service of HSST (jr.) on 15.9.1998. Persons who are junior in service under the Corporate Management of NSS have been promoted as Principal on the ground that they were initially appointed as HSST (Sr.) and the petitioner was made HSST (sr.) subsequent to their appointment as HSST. When the service period as HSST (jr.) is

counted for seniority, the petitioner would become senior to several others who were promoted as Principal. Therefore, the petitioner is seeking the indulgence of this Court to set aside Ext.P3 order and direct the Government to issue orders to count the service of HSST (jr.) for the purpose of seniority to the post of Principal by way of promotion as the denial of experience of HSST (jr.) would affect the large number of similarly placed persons.

12. It was strenuously argued by Mr.Unnikrishnan, the learned counsel for respondents 4 to 8 that Rule 37 of Chapter XIVA KER mentions about the seniority and Rule 4 of Chapter XXXII KER deals with the method of appointment. It was argued that serial No.1 is the category of Principal and the first method is by promotion from category 2, i.e. HSST under the respective educational agency. Therefore, according to the learned counsel, it means that promotion as Principal has to be given to the senior-most HSST.

13. Mr.P.Gopal, the learned counsel for the NSS Corporate Management submitted that the petitioner is Sl.No.26 in the combined seniority list of HSST as on 1.1.2011 under the NSS Corporate Management whereas additional respondents 4 to 8 are Sl.Nos. 7 to 11 in the seniority list. Therefore, additional respondents are far seniors than the writ petitioners in the post of HSST. It was also submitted that the writ petitioner did not raise any objection to the seniority list, so far which was prevailing under the NSS Corporate management for the last 14 years and therefore, it is a settled seniority.

14. Ext.R9(b) is the copy of the judgment of this Court in WPC No.30005/2005 and connected cases. In the aforesaid case wherein the State was a party, one of the respondents took a contention that as per Note III of Rule 6(1), she is entitled to preference in the matter of promotion, since she had the longest period of teaching experience as an HSST. The second contention was that teaching experience as an HSST

equivalent to that of HSST (jr.) is arbitrary and discriminatory. Meeting the said arguments, the learned single judge of this Court observed as under:

“Regarding the first contention from the language used in the Rule, I am not satisfied that an HSST has to be preferred for promotion to Principal as against an HSST (jr.). I am of the opinion that the preference mentioned in the rule is as between experience in the Higher Secondary level and High School/U.P. School/L.P.School level and not as between as HSST and an HSST (jr.). Teaching experience in the Higher secondary level can be both as HSST and HSST (Jr.). The language used in the Rules makes it abundantly clear. Instead of saying “Preference shall be given to HSST” the words used are “Preference shall be given based on teaching experience at Higher Secondary school level”, making it clear that the distinction intended is between teaching experience at Higher Secondary level and High/UP/LP school level. If it was otherwise, the words used would have been “Preference shall be given to HSST” or “HSST shall be preferred to HSST (Junior)”. I also note that in Ext.P6 [in WPC No.21153/2006] order amending the special rules, after amending the minimum approved teaching experience as 12 years at Higher Secondary level, in the absence of persons having the said qualification, persons having teaching experience at High/UP/LP school level also were made eligible to be considered, provided they have minimum service of six years either as HSST or HSST (Junior). Therefore, the intention of the rule making authority is to treat teaching experience as HSST and HSST (junior) at par for the purpose of promotion to the post of Principal.

Consequently, there is no merit in the first contention of Smt.Geetha Baby.

The second contention also does not find favour with me. Essentially, there is no qualitative difference between the teaching experience as an HSST and an HSST (jr.). Both teach the same students and the same syllabus prescribed for their respective subjects. Perhaps, an HSST may be teaching more number of periods than an HSST (jr.) which is the only difference between the duties and functions of the two. But that alone does not make the teaching experience as HSST superior to that of HSST (Jr.) and the prescription of equated teaching experience bad on the ground of arbitrariness or discrimination as such, especially, when the method of appointment is by selection by a selection committee. (This prescription has been changed by Ext.P6 (in WPC No.21153/2006) amendment in 2009 and sub rule 1 of Rule 4 prescribing selection by selection committee as the method of appointment has been deleted from the rule retrospectively from 6.1.2006.). When the rule making authority gave more importance to quality than quantity, that cannot be faulted on the ground of arbitrariness and discrimination. Therefore, that cannot be ground for declaring that equated prescription as violative of the fundamental rights of HSSTs.

15. For denying the service period of the petitioner as HSST (jr.), the author of Ext.P3 has imported the concept of probation required to be rendered by HSST (jr.).

16. As rightly pointed out by the learned counsel

for the petitioner, it has absolutely no application in law when the probation is declared. The same probation is to be undergone by HSST (sr.) as well. Irrelevant judgments were relied on by the third respondent to justify the stand. Rule 3 of Special Rules has also been imported and found that HSST and HSST (jr.) are two distinct and separate units. It has nothing to do with the matter which is required to be decided. As it was held by this Court, the intention of rule making authority was to treat teaching experience as HSST and HSST (jr.) at par for the purpose of promotion to the post of Principal. The author of Ext.P3 had no justification to hold otherwise.

17. Rule 3 is liable to be interfered with for yet another reason also. As per rule 6(3) of the Special Rules, what is provided is approved teaching experience of 12 years at higher secondary level under the same educational agency. There is no distinction provided in the rule as between HSST (jr.)

and HSST (sr.) in sub rule (3) of Rule 6. Further, in the absence of persons having qualification as specified above, approved teaching experience at high school level, upper primary and lower primary schools under the same educational agency also can be considered. When this is the statutory intention, the teaching experience of HSST (jr.) cannot be treated or regarded as inferior to that of High School, Upper Primary and Lower Primary school experience.

18. On a clear reading of Ext.P3, it can be seen that the judgment rendered by this Court in WPC No.30005/2005 and connected cases was distorted to suit the convenience of the author.

19. As per Rule 6, what is required is only 12 years experience in the higher secondary level and that experience does not differentiate between the experience as HSST (sr.) and HSST (jr.). What is provided is only approved teaching experience of 12 years at higher secondary level under the same educational agency. All the petitioners have

approved experience under the educational agency and have the requisite approved teaching experience of 12 years at the higher secondary level when the vacancy arose in the school.

20. The questions as to whether the experience of HSST (jr.) would be excluded and whether there is any qualitative difference in the experience of HSST and HSST (jr) were considered by this Court in the previous writ petition referred to above. This Court declared that there is no qualitative difference in the experience of HSST (sr.) and HSST (jr.). Therefore, there cannot be any differentiation between HSST and HSST (jr.) the senior and junior for the purpose of counting service of length at higher secondary level. The declaration of law as given by this Court is binding on the respondents. Therefore, this Court is of the view that the petitioners are entitled to succeed.

In the result,

a) WPC No.16529/2013 is allowed quashing

Exts.P3 to P6. The third respondent is directed to appoint the first petitioner in view of the seniority in age as between the first petitioner and the 4th respondent and since the service of the first petitioner as HSST (jr.) from 24.8.1998 cannot be ignored for the purpose of length of service and experience while filling up the post of Principal as the first petitioner and the 4th respondent are working under the same category.

b) WPC No.28827/2013 is allowed. Ext.P3 is quashed, as the finding arrived at in Ext.P3 order is opposed to law as declared by this Court through the judgment in WPC Nos.30005/2005 and 21153/2006. The service of HSST (Jr.) has to be counted for the purpose of promotion to the post of Principal by way of promotion.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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P.S.TO JUDGE