

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 16555 of 2013 (T)

PETITIONER(S):

1. **ROSILINE G.KALLUMKAL**
HIGH SCHOOL ASSISTANT (PHYSICAL SCIENCE)
ST. SEBASTIAN'S HIGH SCHOOL, MANAKADU P.O, THODUPUZHA
IDUKKI DISTRICT - 685 584.
2. **SR. BELSY SKARIA**
HIGH SCHOOL ASSISTANT (SOCIAL SCIENCE)
ST. GEORGE HIGH SCHOOL, KALLANICKAL, THEKKUMBHAGAM P.O
THODUPUZHA, IDUKKI DISTRICT.
3. **SHIJI AUGUSTINE,**
HIGH SCHOOL ASSISTANT (ENGLISH)
ST. SEBASTIAN'S HIGH SCHOOL, VAZHITHALA P.O
THODUPUZHA, IDUKKI DISTRICT.
4. **ANITHA ALEX,**
HIGH SCHOOL ASSISTANT (NATURAL SCIENCE)
ST. SEBASTIAN'S HIGH SCHOOL, VAZHITHALA P.O
THODUPUZHA, IDUKKI DISTRICT.
5. **JOE MATHEW,**
HIGH SCHOOL ASSISTANT (SOCIAL SCIENCE)
ST. JOSEPH'S HIGHER SECONDARY SCHOOL
KARIMANNOOR P.O, THODUPUZHA, IDUKKI DISTRICT.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SADEESAN
SRI.T.S.SHYAM PRASANTH

RESPONDENT(S):

1. **STATE OF KERALA**
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. **THE DEPUTY DIRECTOR OF EDUCATION,**
IDUKKI, THODUPUZHA - 685 584.

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**3. THE DISTRICT EDUCATIONAL OFFICER,
THODUPUZHA, IDUKKI DISTRICT-685 584.**

**4. THE CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY
DIOCESE OF KOTHAMANGALAM, KOTHAMANGALAM - 686 691.**

R1-R3 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER OF APPOINTMENT APPROVAL REFUSED BY THE 3RD RESPONDENT AS PER ORDER NO.B3/3291/10/LD'S DATED 13.12.2010.

EXHIBIT P2: TRUE COPY OF THE ORDER NO.B4/156/11/KDS DATED 25.11.2011 BY THE 3RD RESPONDENT TO THE FIRST PETITIONER.

EXHIBIT P3: TRUE COPY OF THE ORDER NO.B4/2332/11/KDS DATED 12.12.2011 ISSUED BY 3RD RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE ORDER NO.B4/886/2011/KDS DATED 19.09.2011 ISSUED BY 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE ORDER NO.B4/3096/2011/KDS DATED 08.12.2011 ISSUED BY 3RD RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE ORDER NO.B4/1684/2011/KDS DATED 13.09.2011 ISSUED BY 3RD RESPONDENT.

EXHIBIT P7: TRUE COPY OF THE LETTER NO.G/126/12/B-04 DATED 6.12.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT ALONG WITH REVISION PETITION DATED 4.12.12 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P8: TRUE COPY OF THE LETTER NO.G/1205/11/B-03 DATED 6.12.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT ALONG WITH REVISION PETITION DATED 4.12.12 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P9: TRUE COPY OF THE LETTER NO.G/1132/11/B-07 DATED 6.12.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT ALONG WITH REVISION PETITION DATED 4.12.12 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P10: TRUE COPY OF THE LETTER NO.G/1237/11/A-02 DATED 6.12.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT ALONG WITH REVISION PETITION DATED 4.12.12 SUBMITTED BY THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P11: TRUE COPY OF THE LETTER NO.G/28/12/A04 DATED 6.12.2012 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT ALONG WITH REVISION PETITION DATED 4.12.12 SUBMITTED BY THE 5TH PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P12: COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 23.1.2013 IN WP(C) 1631/2013.

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EXHIBIT P13: COPY OF GO(RT) NO.2355/2013/G. EDN., DATED 5.6.2013 ISSUED BY THE 1ST RESPONDENT

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(A): COPY OF THE GOVERNMENT ORDER GO(P) NO.10/10/G.EDN DATED 12.01.2010.

EXHIBIT R2(B):COPY OF THE CLARIFICATION LETTER NO.15566/J2/11/.J.EDN DATED 12.5.2011.

EXHIBIT R2(C):PHOTO COPY OF THE LETTER NO.B5/7557/10 DATED 12.07.2010.

EXHIBIT R2(D):PHOTO COPY OF THE LETTER NO.B5/17398/10 DATED 24.6.2011.

EXHIBIT R2(E):PHOTO COPY OF THE RELEVANT PAGES OF DESPATCH REGISTER.

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.16555 OF 2013

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Dated this the 10th day of June, 2015

JUDGMENT

The petitioners are aggrieved by the refusal to approve their appointments on promotion as High School Assistants (hereinafter referred to as 'HSAs') for short) in various subjects under the 4th respondent Corporate Education agency. Even though they were appointed in different schools in different subjects as High School Assistants by promotion from the post of Upper Primary School Assistants with effect from 1.6.2010, their promotions have been approved only with effect from 1.6.2011. All of them claimed approval with effect from 1.6.2010 i.e, the date with effect from which they were appointed as HSAs, on promotion under Rule 43 of Kerala Educational Rules, 1958 (hereinafter referred to as "KER').

2. Ext.P1 is the order passed by the DEO Thodupuzha by which approval was declined to the promotion granted to the 1st petitioner as HSA (Physical Science) in SSHS Thodupuzha as against a retirement vacancy. The approval was declined on the

ground that the Manager did not comply with the instructions laid down in para v to vi of GO(P)10/10 G.Edn dated 12.1.2010. The appeal before the Deputy Director of Education submitted by the Manager was rejected as per Ext.P2 on 25.11.2011, affirming the order passed by the District Educational Officer and stating that the vacancies which arise on account of retirement, resignation, transfer, promotion, long leave, etc. shall also be included as vacancies against which protected teachers shall be appointed by the Managers, as laid down in GO(P)10/10 G.Edn dated 12.1.2010. While the matter was pending like this, the petitioners were included in the teachers bank and subsequently their appointments were approved with effect from 1.6.2011.

3. In the case of the other petitioners also, the approval was declined and appeals were rejected as in the case of the 1st petitioner.

4. While the Manager thereupon approached the Government in Ext.P7 revision petition. It was stated that the petitioners were granted promotions under Rule 43 of Chapter XIV A KER and the statutory claim under Rule 43 cannot be taken away by executive orders like G.O.(P) 10/2010/GEN. Edn Dated 12.1.2010 or Government Letter No.15566/J2/11G to Edn. Dated 12.5.2011. Similar revision petitions were filed in respect of the

promotions granted to other petitioners also. The petitioners approached this court in W.P.(C)No.1631/2013 and by Ext.P12 judgment this court directed the Government to dispose of the revision petitions – Exts.P7 to P11 therein within a period of 4 months after hearing the teachers, education agency and educational authorities concerned. Thereafter, Government issued Ext.P13 order rejecting the revision petition. Government found that the appointments were made against vacancies caused by retirement, transfer, resignation etc. But it was found that all these appointments were made in violation of G.O.(P) 178/02/Gen.Edn dated 28.6.2000 and G.O.(P) 46/2006 G.Edn. Dated 1.2.2006, according to which the vacancies arising in these schools under the 4th respondent have to be filled up by appointing protected teachers. The Manager filled up these vacancies contrary to the aforesaid Government Orders and hence approval was declined by the educational officers. It was further held that in the Government Letter No.15566/G2/11 G.Edn. dated 12.5.2011 it was clarified that the vacancies will include those arising on account of retirement, resignation, transfer, promotion, long leave etc. The Government further found that the Manager have not complied with the provisions stipulated in the Government Order. The manager should have executed a

bond agreeing to appoint protected teachers equal to the number of appointments made against vacancies which arose in 2006–07 to 2009–10. But the Manager did not fill up the vacancies by appointing protected teachers. Therefore it was found that the promotions made by the Managers from the post of UPSA was contrary to the existing rules. It was further found that all the petitioners were included in the teachers package formulated under G.O.(P) 1/10/2011 G.Edn. and the District Educational Officers have approved their appointments with effect from 1.6.2011. Therefore, it was stated that the service rendered by the claimants up to 31.5.2011 can be given approval only after effecting amendment to the provisions under the KER.

5. The petitioners herein have been working as HSAs in Physical Science, Social Science, English and Natural Science. The petitioners 2 and 5 are working as HSAs in English and Social Science respectively.

6. Petitioners are challenging the orders issued by the educational authorities including that of Government declining approval to their promotion with effect from 1.6.2010 and seeking a direction to the educational authorities to approve the appointments with effect from 1.6.2010 and for consequential benefits.

7. According to the petitioners all of them were appointed as HSAs in recognition of their claim under Rule 43 of Chapter XIV A of KER and there is no provision for appointing protected teachers in preference to Rule 43 claimants. Moreover, it is their contention that the Deputy Director of Education had not forwarded the list of protected teachers to the Manager, therefore, according to them there is no justification for declining approval with effect from 1.6.2010.

8. Government has filed a counter affidavit stating that the Manager did not abide by the provisions contained in G.O.(P) 10/10/G.Edn. Dated 12.1.2010. He refused to execute the bond as provided therein and filled up the vacancies contrary to the provisions therein. According to them all those vacancies were liable to be filled up by appointing protected teachers and there were protected teachers available for such appointments. Any vacancy arising in the school had to be filled up only by appointing protected teachers. Originally Government had imposed ban against appointments against additional division vacancies arising in schools. The Government by order issued on 12.1.2010 lifted the ban on condition that the appointments were made against additional division vacancies of two years from 2006 – 2007 to 2009 – 2010 can be approved on condition

that the Manager executes a bond agreeing to fill up equal number of vacancies by appointing protected teachers. This Government Order further provides that after filling up the vacancies by protected teachers further vacancies shall be filled up in the ratio of 1:1 between protected teacher and new appointments.

9. Therefore it is stated that the petitioners' promotion, made in violation of the Government orders issued by Government, were not liable to be approved. According to them Manager was bound to obey the instructions issued by the Government by time to time.

10. On the basis of direction from this Court, the 2nd respondent filed an additional counter affidavit producing Ext.R2 (c), R2(d) and R2(e). According to them, the list of protected teachers were furnished to the Manager of the Corporate Educational Agency on the basis of letter dated 25.5.2010 of the Manager. The letter forwarding the list of protected teachers is produced as Ext.R2(c) dated 12.7.2010.

11. I heard the learned counsel for the petitioners as well as the learned Government Pleader.

12. According to the petitioners, their appointments made in the year 2010 are liable to be approved since they are Rule 43

claimants having superior claim over protected teachers. The next contention is that the Deputy Director of Education has not furnished the list of protected teachers if any available for appointments at the time when the vacancies arose, even though request was made to the educational authorities. It is also contended that the list of teachers should have been forwarded well before the appointments and at any rate within one week from the date of seeking the same. He relied on the Government Circular No. 38929/G. Edn. Dated 19.11.2009, according to which Deputy Director of Education shall furnish the list of protected teachers, as soon as the Manager request for the same, within a period of one week. It is also provided therein that appropriate disciplinary action shall be taken against the person who does not furnish the list as directed. The learned counsel for the petitioner relying on the judgment of the Division Bench of this Court in State of Kerala and Others v Haseena and Another in [2013 (2) KHC 103] wherein the Division Bench affirmed the judgment of Single Judge in which it was held that it is the duty of the Deputy Directors of Education to furnish the list of protected teachers and in case such list is not furnished to the Managers they are not bound to make appointments of protected teachers.

13. On the other hand the learned Government Pleader

argued that the Manager has been consistently violating the Government instructions without executing the bond and without making appointments from the list of teachers, which has been furnished at the earliest. The Manager has requested for the list on 25.5.2010 and the list was furnished by 2.7.2010 at the earliest opportunity. It is argued that when the Manager was aware of the fact that request was pending before the Deputy Director of Education appointments should not have been made without taking the list.

14. Having heard the contentions on either side, it is evident that there were vacancies in the school and there were claimants under Rule 43 eligible for promotion as HSAs in various subjects. At the same time, it is a fact that Manager did not care to execute a bond as provided in the Government Order issued on 12.1.2010.

15. Now that approval is granted with effect from 1.6.2011, question to be considered is whether these appointments could have been approved with effect from 1.6.2010, in the absence of a list of protected teachers.

16. It is seen that one of the petitioners i.e, the 3rd petitioner was promoted as HSA in English. The list of teachers furnished by the Deputy Director of Education does not contain

the name of any protected teacher in English. It is also not possible to have a protected teacher in English, as protection is not available to the teachers appointed subsequent to 2002 and as post in English was created only in the year 2002. Therefore the action of the educational authorities in declining approval to the appointment of the 3rd petitioner is illegal. Therefore her appointment is liable to be approved with effect from 1.6.2010.

17. Similarly the only protected teacher in Natural Science, as per the list is, one Mini Gangadharan. She is retained in the parent school itself by applying ratio of 1:14 between teacher and student. She is continuing in the parent school. Therefore it will not be necessary to appoint her on the place of 4th petitioner. Therefore, the appointment of 4th petitioner as HSA Natural Science cannot be objected and also her appointment is liable to be approved on 1.6.2010.

18. Remaining teachers are petitioners 1,2 and 5 who belong to Physical Science and Social science respectively. In the list furnished that there is only one protected teacher in the subject Social Science. Then the objection is against the appointment of petitioners 2 and 5.

19. As per Clause (8) of G.O.(P)10/10 G.Edn dated 12.1.2010 - Ext.R2(a) the appointment of protected teachers

shall be governed by the Government Orders – G.O.(P) No.178/2004 G.Edn dated 26.6.2004 and 1.2.2006 and G.O.(P) No.46/2006/G.Edn. As per these Government orders it is necessary for the educational officer to furnish the list of protected teachers to the Managers. But in this case it is seen that the list of protected teachers has been furnished only in July 2015. The vacancies have arisen with effect from 1.6.2010 and the appointments have been made with effect from that date. As on that date of appointment and within one week of the request made by the Manager no list was made available. Therefore, going by the dictum laid down in the judgment of the Division Bench (supra) it cannot be said that the appointment of the petitioners were not liable to be approved, especially when the appointment have already been approved with effect from 1.6.2011 as per orders issued by Government themselves. Moreover, while rejecting the revision petitions Government have only said that the question of regularisation of the period of service rendered by the petitioners till 1.6.2011 can be approved only after effecting amendment to the provisions in KER. All the petitioners except the 3rd petitioner were appointed with effect from 1.6.2010. As far as the 3rd petitioner is concerned, even though the list of protected teachers was furnished in July 2010

ie. prior to her appointment on 20.10.2010, there is no protected teacher available in the subject English.

In the above circumstances, the impugned orders Ext.P1 to P6 and Exts.P6 to P13 shall stand quashed. It is declared that appointments of petitioners as HSAs are liable to be approved with effect from 1.6.2010. The concerned Educational Officers shall issue orders approving the appointments of the petitioners, accordingly if it is otherwise legal and petitioners shall be granted all consequential benefits within a period of 3 months from the date of receipt of a copy of this judgment.

Hence the Writ Petition is accordingly allowed.

Sd/-
P.V.ASHA, JUDGE

SKV