

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 16844 of 2013 (E)

PETITIONER :

SUSEELA.A.
UPPER PRIMARY SCHOOL ASSISTANT,
C.P.N. UPPER PRIMARY SCHOOL, VATTAMKULAM,
MALAPPURAM DISTRICT-679 578.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS :

1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 001.
3. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM-676 505.
4. THE ASSISTANT EDUCATIONAL OFFICER ,
EDAPPAL, MALAPPURAM DISTRICT-676 576.
5. THE MANAGER ,
C.P.N.U.P SCHOOL, VATTAMKULAM P.O.
MALAPPURAM DISTRICT-679 578.
6. MRS.SREEDEVI A.
LOWER PRIMARY SCHOOL ASSISTANT,
C.P.N. UPPER PRIMARY SCHOOL, VATTAMKULAM,
MALAPPURAM DISTRICT-679 578.

R6 BY ADV. SRI.ELVIN PETER P.J.
R6 BY ADV. SRI.T.G.SUNIL (PRANAVAM)
R6 BY ADV. SRI.K.R.GANESH
R5 BY ADV. SRI.PRADEEP KRISHNA
R1-R4 BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16844 of 2013 (E)

APPENDIX

PETITIONER'S EXHIBITS :-

- P1 : COPY OF THE SENIORITY LIST OF TEACHERS OF THE CPNUP SCHOOL,
VATTAMKULAM.
- P2 : COPY OF DEGREE CERTIFICATE ISSUED BY CALICUT UNIVERSITY TO THE
PETITIONER.
- P3 : COPY OF THE B.ED DEGREE CERTIFICATE ISSUED BY BANGALORE UNIVERSITY TO
THE PETITIONER.
- P4 : COPY OF CERTIFICATE DTD.5.5.2006 ISSUED BY THE KERALA PUBLIC SERVICE
COMMISSION.
- P5 : COPY OF CERTIFICATE DTD.20.12.2012 ISSUED BY THE KERALA PUBLIC SERVICE
COMMISSION.
- P6 : COPY OF REPRESENTATION DTD.12.3.2013 OF THE PETITIONER TO THE 4TH
RESPONDENT.
- P7 : COPY OF LETTER DTD.12.3.2013 OF THE 5TH RESPONDENT ISSUED A LETTER TO
THE PETITIONER.
- P8 : COPY OF NOTIFICATION DTD.1.9.2011 OF NATIONAL COUNCIL FOR TEACHERS'
EDUCATION.

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.16844 of 2013

Dated this the 03rd day of June, 2015

JUDGMENT

According to the petitioner, she is the senior most fully qualified Upper Primary School Assistant in the school managed by the 5th respondent, which is an aided school under the jurisdiction of the 4th respondent. One K.P.Shobana, the Headmistress of the school retired on 31.3.2013 and that post became vacant on 1.4.2013. The grievance of the 4th respondent is that, though she was the only teacher in the school who has passed the Account Test (Lower) conducted by Kerala Public Service Commission, ignoring her claim the 5th respondent appointed the 6th respondent as Headmistress with effect from 1.4.2013. The petitioner has submitted Ext.P6 representation before the 4th respondent requesting that she may be posted as Headmistress of the school. Thereafter she has approached this Court in this Writ Petition seeking a declaration that Sub-rule (4) of Rule 45B of the Kerala Education Rules is unconstitutional and against the purpose and scope of the Kerala Education Act and ultravires of the provisions of

the Right of Children to Free & Compulsory Education Act, 2009 (hereinafter referred to as "the Right to Education Act") and the Kerala Right to Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as "the Right to Education Rules"). The petitioner has also sought for other reliefs in this Writ Petition, including a writ of mandamus commanding respondents 4 and 5 to ensure that she is appointed as Headmistress of the School managed by the 5th respondent, cancelling the appointment of the 6th respondent.

2. A counter affidavit has been filed by the 4th respondent stating that, the qualification of teachers and Headmaster is now governed by the provisions under the Right to Education Rules as notified vide G.O.(P)No.100/2011/G.Edn. dated 30.4.2011. The counter affidavit states further that, on a clarification sought by the 4th respondent as to whether exemption from test qualification provided under the Kerala Education Rules is still in force in the light of the provision contained in the Rules notified by G.O. dated 30.4.2011, the 3rd respondent has clarified that the Right to Education Rules has already come into force since 6.5.2011 and the

rules and guidelines contained therein should be strictly adhered to while giving approval to those teachers who have already been promoted as Headmasters and that the Government have already issued orders accordingly while approving the appointment made to the post of Headmistress in such cases.

3. I heard the learned counsel for the petitioner, learned Government Pleader appearing for respondents 1 to 4 and also the learned counsel appearing for the 6th respondent.

4. The learned counsel for the petitioner submits that, in view of the fact that the 6th respondent has already retired from service with effect from 31.5.2015, the grievance of the petitioner will be redressed for the time being, if this Court directs the 4th respondent to consider the request made by the petitioner in Ext.P6 representation within a time limit that may be fixed by this Court.

5. The fact that the 6th respondent has already retired from service on 31.5.2015 is not in dispute. Now the post of Headmistress in the school managed by the 5th respondent is lying vacant. According to the petitioner, she is having the requisite qualification for appointment as Headmistress and the claim made by her in

Ext.P6 representation is still pending consideration before the 4th respondent.

In such circumstances, without going into the rival contentions raised by both sides this Writ Petition is disposed of directing the 4th respondent to consider the claim made by the petitioner for appointment as Headmistress in the school managed by the 5th respondent, as raised in Ext.P6 representation, and take a decision thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this judgment, with notice to the petitioner and also to respondents 5 and 6.

ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge