

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 17560 of 2011 (T)

PETITIONER:

**BASARIYA.K,W/O.M.T.ABDUL KHADER,
AGED 34 YEARS,L.G.ARABIC TEACHER (RELIEVED),
TRITHALA HIGH SCHOOL,TRITHALA (RESIDING AT
MOORKATHAZHATH HOUSE,P.O.TRITHALA,
VATTATHANI,PALAKKAD DISTRICT).**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

- 1. THE STATE OF KERALA,REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY,THIRUVANANTHAPURAM-695014.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPPALAM,PALAKKAD DISTRICT-679101.**
- 4. THE MANAGER,DR.K.B.MENON MEMORIAL HIGH SCHOOL,
TRITHALA,PALAKKAD DISTRICT-679534.**
- 5. SRI.M.KRISHNA DAS,PEON,DR.K.B.MENON MEMORIAL HIGH SCHOOL,
TRITHALA,PALAKKAD DISTRICT,PIN-679534.**

R1-R3 BY GOVT. PLEADER SRI.P.K.ABDUL REHMAN

R4 BY ADVS.SRI.SANTHEEP ANKARATH

SMT.N.P.ASHA

R5 BY ADVS.SRI.S.M.PRASANTH

SRI.M.MANOJKUMAR (CHELAKKADAN)

SMT.ASHA BABU

SMT.AMMU CHARLES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-01-2015, ALONG WITH WPC.26283/2013, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE PROCEEDINGS ORDER NO.454/07 OF THE
MANAGER DATED 31.12.2007.

EXT.P2:TRUE COPY OF THE REPRESENTATION FILED BEFORE THE 4TH
RESPONDENT DATED 5.9.2010 .

EXT.P3:TRUE COPY OF THE REPRESENTATION FILED BEFORE THE 3RD
RESPONDENT DATED 5.9.2010.

EXT.P4:TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
W.P.(C) NO.31430/2010C DATED 14.10.2010.

EXT.P5:TRUE COPY OF THE ORDER NO.B2/9532/10 OF THE 3RD RESPONDENT
DATED 24.11.2010.

EXT.P6:TRUE COPY OF THE REVISION PETITION FILED BEFORE THE
GOVERNMENT DATED 10.12.2010.

EXT.P7:TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
W.P.(C) NO.38170/2010U DATED 23.12.2010.

EXT.P8:TRUE COPY OF THE HEARING NOTE SUBMITTED BY THE PETITIONER
DATED 30.3.2011.

EXT.P9:TRUE COPY OF THE G.O(RT)NO.1795/11/G/EDN OF THE GOVERNMENT
DATED 16.5.2011.

EXT.P10:TRUE COPY OF THE LETTER OF THE MANAGER DATED 23.5.2013.

RESPONDENT'S EXHIBITS:

EXT.R5(a):TRUE COPY OF THE JUDGMENT DATED 17.9.2007 IN
W.P(C) NO.27511/2007.

EXT.R5(b):TRUE COPY OF THE APPOINTMENT ORDER DATED 3.6.2013 IN
RESPECT OF THE PETITIONER.

EXT.R(c):TRUE COPY OF THE PROMOTION ORDER DATED 2.6.2012 ISSUED TO
SRI.T.P.BHASKARAN.

//TRUE COPY//

P.S. TO JUDGE

A.M.SHAFFIQUE, J

*** * * * ***

**W.P.C.Nos.17560 of 2011
& 26283 of 2013**

Dated this the 16th day of January 2015

J U D G M E N T

Petitioners have approached this Court seeking for a declaration that there is a preferential claim over the post of Full Time Menial which vacancy had occurred on 01/06/2010 in the School managed by the 4th respondent.

2. The facts involved would show that the petitioner in W.P.(C) No.17560/2011 was appointed as Lower Grade Arabic Teacher in the school with effect from 30/09/1999 to 31/12/2007 against a leave vacancy. Apparently, she is a claimant under Rule 51 A of Chapter XIV A of the Kerala Educational Rules (for short 'KER'). One post of Full Time Menial has arisen in the school on 01/06/2010 due to retirement vacancy and she staked a claim for the same, which is denied by the educational authorities. Therefore, this *writ petition* is filed.

3. In the Counter affidavit filed by the 5th respondent it is inter alia contended that the vacancy that had arisen was that of a Full Time Menial and that he was appointed in the said post by the management with effect from 01/06/2010. According to the 5th respondent, he is entitled to be regularised with effect from the said date. This fact had been submitted by the Government also.

4. Counter affidavit has been filed by the 2nd respondent inter alia stating that the petitioner cannot claim preferential appointment to a post of non-teaching staff.

5. W.P.C.No.26283 of 2013 has been filed by the 5th respondent in W.P.C.No.17560/2011 claiming regularisation with effect from his date of appointment that is 01/06/2010. Petitioner, in that case, challenges Exts.P2, P3, P5 and P7 by which his appointments were not approved by the educational authorities. In the counter affidavit filed by the respondents, it is stated that his appointment can be regularised with effect from 01/06/2011, but on account of pendency of W.P.C.No.17560/2011, no orders could be

passed. According to the 2nd respondent, vacancy had arisen only with effect from 01/06/2011 and therefore the appointment can be regularised only from the said date.

6. Petitioner contends that the Government did not regularise his appointment with effect from 01/06/2010 on account of pendency of the *writ petition* filed by Sri..Muhammed Ameen, who was promoted as H.S.A (English) from the post of Clerk. The said appointment was not regularised by the Government which resulted in filing of the *writ petition*. Petitioner's regularisation with effect from 01/06/2010 or 01/06/2011 apparently depends upon the outcome of the decision in that writ petition as well. Under such circumstances, according to the petitioner, though his appointment can be regularised with effect from 01/06/2011, as matters stand now, if the writ petition filed by Sri.Muhammed Ameen is allowed and he is entitled to be promoted to the post of H.S.A., consequently vacancy will arise in the post of Full Time Menial on 01/06/2010, in which event, it will be possible for the authorities to approve the

appointment of the petitioner with effect from 01/06/2010.

7. Having regard to the aforesaid factual contentions urged on either behalf, as far as the claim made by the petitioner in W.P.C.No.17560/2011 is concerned, the claim is that she is entitled for appointment as a Full Time Menial by changing category from teaching post to non-teaching post. Reference is made to Rule 7 of Chapter XXIVB of KER and also Rule 51A of Chapter XIVA of KER.

8. Petitioner in W.P.C.No.26283/2013, while filing Counter affidavit in W.P.C.No.17560/2011 has relied upon the judgment of the learned Single Judge of this Court in W.P.C.No.27511/2007. As per the said judgment, it is mentioned that though preferential claim is possible, there cannot be any preferential claim by a teaching staff to non-teaching staff under Rule 51A of Chapter XIVA of KER. There cannot be any doubt about this proposition as well. A teaching staff cannot claim the benefit of Rule 51A to be appointed to the post of non-teaching staff or vice versa.

9. Under these circumstances, claim of the petitioner

in W.P.C.No17560/2011 is liable to be rejected and accordingly the said *writ petition* is dismissed.

10 As far as the claim of the petitioner in W.P.C.No.26283/13 is concerned, Government has admitted that he can be regularised with effect from 01/06/2011.

Hence there will be a direction to the Government to pass appropriate orders approving the petitioner's appointment within a period of two months from the date of receipt of a copy of this judgment. It is also made clear that subject to the finality of the *writ petition* filed by Sri.Muhammed Ameen, if the petitioner is entitled for claiming that his regularisation should be with effect from 01/06/2010, that right is left open to be decided in appropriate proceedings. With the above observation, W.P.C.No.26283/13 is disposed of.

(A.M.SHAFIQUE, JUDGE)

jsr

