

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C).No. 15854 of 2015 (F)

PETITIONER:

* (SOORYA KUMARI.P) SOORIYA KUMARI P.
W/O. SASIDHARAN MASTER, TEACHER,
S.V.A.U.P SCHOOL, CHELAMBRA, NANDARATH HOUSE
ARIYUR P.O., MALAPPURAM-676 312.

BY ADV. SMT.M.BINDUDAS

RESPONDENTS:

1. SMT. M.V SUSHEELA
PALLIPARAMB, MALAPPURAM-673 634.
 2. THE DISTRICT EDUCATIONAL OFFICER,MALAPPURAM,
** (MALAPPURAM) DISTRICT, PIN-(676 504).
 3. DEPUTY DIRECTOR OF EDUCATION, (PARAPPANANGADI), ***
MALAPPURAM DISTRICT, PIN-676 504.
 4. THE ASSISTANT EDUCATIONAL OFFICER,MALAPPURAM,
*** (MALAPPURAM) DISTRICT, PIN-(676 504).
 5. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
 6. K.SUNIL KUMAR,TEACHER,S.A.V.U.P. SCHOOL,CHALAMBRA,
PALLIPARAMB P.O., MALAPPURAM-673 634.
- * THE NAME OF THE PETITIONER IS CORRECTED AS “SOORIYA KUMARI P.”
- ** THE PLACE 'MALAPPURAM' AND THE PINCODE '676504' OCCURING IN THE
ADDRESS OF 2ND RESPONDENT ARE DELETED AND SUBSTITUTED BY
'TIRURANGADI' AND '676 306' RESPECTIVELY
- *** THE PLACE 'PARAPPANANGADI' AND THE PINCODE '676504' OCCURING IN
THE ADDRESS OF 3RD RESPONDENT ARE DELETED AND SUSTITUTED BY
'MALAPPURAM' AND '676505' RESPECTIVELY

**** THE PLACE 'MALAPPURAM' OCCURING IN THE ADDRESS OF 4TH
RESPONDENT IS DELETED AND SUBSTITUTED BY 'PARAPPANANGADI'

THE AFORESAID CORRECTIONS ARE CARRIED OUT AS PER ORDER DATED
24.6.2015 IN I.A. NO. 7944/2015

R1-R6 BY ADV. SRI.JIJI THOMAS
R1-R6 BY ADV. SRI.P.R.ASHOK KUMAR
R1-R6 BY ADV. SMITHA JIJI PAMPACKAL
R BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15854 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE APPOINTMENT ORDER DT.17-9-1982.

**EXT.P2 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE R1 DT.28-4-2015.**

**EXT.P3 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER
BEFORE R1 DT.5-5-2015.**

**EXT.P4 : TRUE COPY OF THE APPEAL MEMORANDUM SUBMITTED BEFORE
A.E.O.PARAPPANANGADI DT.15-5-2015**

RESPONDENT(S)' EXHIBITS

**R6(A) A COPY OF THE MINUTES OF STAFF MEETING OF THE PETITIONER'S
SCHOOL DATED 19.3.2015**

R6(B) COPIES OF THE RELINQUISHMENT LETTER DATED 1.5.2015

R6(C) A COPY OF THE RELINQUISHMENT LETTER DATED 1.5.2015

R6(D) A COPY OF THE RELINQUISHMENT LETTER DATED 1.5.2015

R6(E) A COPY OF THE RELINQUISHMENT LETTER DATED 1.5.2015

R6(F) A COPY OF THE RELINQUISHMENT LETTER DATED 1.5.2015

R6(G) A COPY OF THE SENIORITY LIST AS ON 1.1.2014

R6(H) A COPY OF THE LETTER DATED 28.4.2015 SEND BY THE PETITIONER

R6(I) A COPY OF THE APPOINTMENT ORDER OF 6TH RESPONDENT DATED 1.6.2015

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 15854 of 2015 (F)

Dated this the 2nd day of December, 2015

J U D G M E N T

The petitioner is the senior most in the category of L.P.S.A.(Lower Primary School Assistant)/U.P.S.A. (Upper Primary School Assistant) in the first respondent's School, who was entitled to be posted as Headmistress, when a vacancy arose on 01.05.2015. The post of H.M. fell vacant in the School on retirement of the earlier incumbent. The Manager did not appoint the petitioner and appointed the 6th respondent, who is junior to the petitioner. Aggrieved by the same, the petitioner approached this Court.

2. The learned Government Pleader produced an order of the Assistant Educational Officer, Malapuram which reads as under :

ഉത്തരവ് നമ്പർ ത.തി സി/2095/15 തീയതി 2.6.2015

എസ്. വി. എ. യു. പി. എസ്. ചേലേമ്പ്ര പ്രധാനാധ്യാപകൻ ശ്രീ. എൻ. രാജൻ 30.04.2015ന് വിരമിച്ച ഒഴിവിൽ ശ്രീ. കെ. സുനിൽകുമാർ നെ 01.05.2015 മുതൽ പ്രധാനാധ്യാപകനായി നിയമിച്ച് നിയമനാംഗീകാരത്തിനുള്ള പ്രൊപ്പോസൽ ഈ ഓഫീസിൽ സമർപ്പിക്കുകയുണ്ടായി. അപേക്ഷ പരിശോധിച്ചതിൽ താഴെപറയുന്ന ന്യൂനതകൾ കണ്ടെത്തിയിരിക്കുന്നു.

1. എൽ.പി.എസ്.എ തസ്തികയിൽ ജോലി ചെയ്യുന്ന സീനിയർ അധ്യാപികയായ ശ്രീമതി പി.സുര്യകുമാരിയുടെ പ്രധാനാധ്യാപക സ്ഥാനക്കയറ്റത്തിനുള്ള അവകാശം മറി കടന്ന് കൊണ്ടാണ് ശ്രീ. കെ. സുനിൽകുമാർ നെ പ്രധാനാധ്യാപകനായി സ്ഥാനക്കയറ്റം നൽകി നിയമിച്ചിരിക്കുന്നത്.

2. സൂചന (2) കൽ പ്രകാരം ശ്രീമതി പി. സുര്യകുമാരി സ്ഥാനക്കയറ്റത്തിന് അവകാശം ഉന്നയിച്ചിരിക്കുന്നു.

3. ശ്രീമതി സി.കെ. ഭവാനി, യു.പി.എസ്.എ, ശ്രീമതി സി. മീര, യു.പി.എസ്.എ, ശ്രീമതി. കെ. ലീല, യു.പി.എസ്.എ, ശ്രീമതി. എ. സുഹറ, എൽ.പി.എസ്.എ, ശ്രീമതി, പി.കെ. വിജയലക്ഷ്മി, യു.പി.എസ്.എ എന്നീ സീനിയർ അധ്യാപികമാരെ മറി കടന്ന് കൊണ്ടാണ് ജൂനിയറായ ശ്രീ. കെ. സുനിൽകുമാർ നെ പ്രധാനാധ്യാപക സ്ഥാനക്കയറ്റം നൽകി

നിയമിച്ചിരിക്കുന്നത്.

മേൽ കാരണങ്ങളാൽ ശ്രീ. കെ. സുനിൽകുമാറിന്റെ
01.05.2015 മുതൽ പ്രധാനാധ്യാപക തസ്തികയിലേക്കുള്ള
നിയമനാംഗീകാരം നിരസിച്ച് ഉത്തരവാകുന്നു.

3. A reading of the order would indicate that there are also other teachers, who are senior to the 6th respondent and the Manager has appointed the 6th respondent, totally overlooking the seniority and the Provisions of the Kerala Education Rules, 1959(for brevity 'KER'). Rule 34(b) of Chapter XIV A of KER prescribes that there shall be a common seniority list for LPSA and UPSA, for promotion as Headmaster/Headmistress. The action of the first respondent Manager is in total violation of the provisions of the KER and in total disregard of the order issued by the Assistant Educational Officer, extracted herein above.

4. A counter affidavit has been filed by the Manager in which it is stated that the petitioner was unwilling to take up the responsibility of the Headmistress. However, there is no document produced. The Manager relies on Ext.R6(a), a purported staff meeting carried on in the presence of the petitioner herein and the decision by the entire staff to select the 6th respondent as the Headmistress. There is no such provision for selection of the Headmaster/Headmistress by holding a staff meeting.

5. The petitioner also denies any meeting having taken place and if at all, denies her presence thereat. In any event there being no such provision in the KER even her presence cannot be taken as a relinquishment. It is also to be noticed that in the case of the other

teachers, the manager has obtained written letters of relinquishment. The other senior teachers are said to have relinquished the post as evidenced by Exts.R6(b) to R6(f). That is no reason to find the petitioner having relinquished the higher post.

6. The learned Government Pleader points out that though the petitioner had in fact relinquished the claim in the year 2009, that cannot operate for all time, since a relinquishment has to be made at the time when the vacancy arises, going by the Full Bench decision of this Court in **Usha Thayyil v. State of Kerala - 2009 (4) KLT 1 (FB)**.

7. The learned counsel would then rely on Ext.R6(h) to contend that though the vacancy arose on 1.5.2015, the communication demanding promotion,

was received only on 05.05.2015 and the petitioner had not gone to the school to take charge as on 1.5.2015. The said contention is only to be rejected since even according to the Manager, on 19.3.2015 a decision was taken to promote the 6th respondent to the post of Headmistress. If the Manager had an intention to appoint the petitioner, then definitely, the petitioner should have been informed of such promotion and asked to report in the school for taking charge. The 6th respondent also was appointed as in-charge Headmaster on 30.4.2015, as contended by the learned Government Pleader, looking at the records of the AEO.

8. Considering the entire circumstances, this Court is unable to countenance the argument of the Manager. Hence the petitioner is deemed to be promoted as Headmistress on 01.05.2015, the entire

pay and allowances for one month shall be paid to the petitioner and the same shall be recovered from the Manager under Rule 7(4) of Chapter III of the Rules. The petitioner's promotion shall be regularised and approved and the petitioner shall be deemed to have retired as Headmistress.

The writ petition is allowed with the above direction. No costs

Sd/-
K.VINOD CHANDRAN,
JUDGE