

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 26412 of 2006 (T)

PETITIONER :

K.S.BEENA, W/O.GOPINATH.V., LP.S.A.B.M.P.V.KANJIRAKODE
KEZHUKKUT HOUSE, VARAVOOR P.O., THRISSUR.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.C.X.ANTONY BENEDICT

RESPONDENTS :

1. THE STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.
2. THE ASSISTANT EDUCATIONAL OFFICER,
WADAKKANCHERRY.
3. THE MANAGER,
B.M.P.V.KANJIRAKKODE.
4. K.P.AMBIKA, HEADMISTRESS,
B.M.P.V.KANJIRAKODE.

R3 BY ADV.SRI.A.M.BABU
R3 BY ADV.SRI.B.K.PURUSHOTHAMAN
R1& 2 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSLIE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPOINTMENT ORDER DATED 4.6.2004 ISSUED TO THE PETITIONER

EXT.P2 : COPY OF THE STAFF FIXATION ORDER DATED 9.7.2004 SANCTIONED BY THE 2ND RESPONDENT

EXT.P3 : COPY OF THE ORDER DATED 30.9.2004 OF THE 2ND RESPONDENT

EXT.P4 : COPY OF THE APPEAL DATED 25.10.2004 SUBMITTED BY THE 3RD RESPONDENT TO THE DISTRICT EDUCATIONAL OFFICER, CHAVAKKAD

EXT.P5 : COPY OF THE ORDER DATED 13.10.2005 OF THE D.E.O., CHAVAKKAD

EXT.P6 : COPY OF THE ORDER DATED 8.2.2005 OF THE 2ND RESPONDENT

EXT.P7 : COPY OF THE REPRESENTATION DATED 9.1.2006 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT

EXT.P8 : COPY OF THE ORDER DATED 29.7.2006 OF THE FIRST RESPONDENT

EXT.P9 : COPY OF THE ORDER DATED 6.12.2005 OF THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM

EXT.P10 : COPY OF THE ORDER DATED 5.5.1994 OF THE D.P.I., THIRUVANANTHAPURAM

RESPONDENTS' EXHIBITS :

EXT.R3(1) : COPY OF THE ORDER NO.K.DIS/G.2220/04 DATED 16.9.04 OF THE AEO, VADAKKANCHERRY

EXT.R3(2) : COPY OF THE ORDER NO.B1/10206/2004 L. DIS. DATED 31/3/2005 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, CHAVAKKAD

EXT.R3(3) : COPY OF THE JUDGMENT IN W.A.NO.89/2006 DATED 18.10.2006

EXT.R3(4) : COPY OF THE RESIGNATION LETTER OF THE PETITIONER DATED 3.1.2005

EXT.R3(5) : COPY OF THE APPLICATION FOR ADMISSION DATED 25.10.2004

/TRUE COPY/

P.A TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.26412 of 2006

Dated this the 12th day of March, 2015

J U D G M E N T

The petitioner was appointed as a Lower Primary School Assistant ('LPSA' for short) in the school of the 3rd respondent on 04.06.2004 as per Ext.P1. The petitioner was appointed to a vacancy that arose consequent to the promotion of the 4th respondent as Headmistress. Ext.P2 is the staff fixation order for the year 2004-05. According to the petitioner, 9 posts have been sanctioned as per Ext.P2, of which, 7 posts are posts of LPSAs and one post is of the Headmaster. Therefore, it is contended that, there were sufficient posts for accommodating the petitioner. However, by Ext.P3 dated 30.09.2004, approval of the petitioner's appointment was rejected. The reason stated is that, the promotion of the 4th respondent as proposed was rejected. Though Ext.P4 appeal was preferred, by Ext.P5 the appeal was also dismissed. Thereafter, a representation was made to the 1st respondent, that has also been rejected by Ext.P8.

2. According to the learned counsel for the petitioner, the petitioner had worked from 04.06.2004 to 24.12.2006 under the 3rd respondent. One post of LPSA was abolished on 08.02.2005. Therefore, it is contended that she is entitled to salary for the period that she has worked. It is also pointed out that pursuant to Ext.R3(3) judgment of a Division Bench of this Court, the 4th respondent's

appointment was later on approved. Therefore, there is no impediment in granting salary to the petitioner for the period that she had worked.

3. A counter affidavit has been filed on behalf of the 1st respondent. What is stated is that, the petitioner had been appointed to a non-existent vacancy. The 4th respondent was promoted without any justification. Thereafter, instead of retrenching the petitioner, she was permitted to continue in service. Her appointment was not approved by the Government at any point of time. Therefore, she is not entitled to be paid salary. Adv.Sri.A.M.Babu appears for the 3rd respondent.

4. Heard. It is not in dispute that, the petitioner was appointed to the post that had arisen consequent to promotion of the 4th respondent as Headmistress. It is true that her appointment was not approved at that time. It is also true that her appointment was not approved. But the fact remains that, the appointment of the 4th respondent has subsequently been approved pursuant to Ext.R3(3) judgment of the Division Bench that has been produced along with the counter affidavit of the 3rd respondent. Since the petitioner was appointed to the resultant vacancy caused by the promotion of the 4th respondent as Headmistress, it is only appropriate that the petitioner's claim for salary for the period during which she had worked is considered afresh in the light of the fact that, the 4th respondent's appointment was

subsequently approved. Therefore, it is necessary that Ext.P8 is reconsidered in the light of the change in circumstances as evident from Ext.R3(3) judgment.

In view of the above, Ext.P8 is set aside. The 1st respondent is directed to consider the representation of the petitioner afresh and to decide whether she should be paid salary for the period that she had worked or not. Appropriate orders in the matter shall be passed as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment, after affording an opportunity of hearing the petitioner also.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV