

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).NO. 16548 OF 2015 (P)

PETITIONER:

SREELEKHA S KURUP,
W/O.M.K.VINOD KUMAR, MAVILETHU HOUSE, THELIYOOR.PO
VENNIKULAM, THIRUVALLA
PATHANAMTHITTA-689544 (HIGH SCHOOL ASSISTANT (MALAYALAM)
DEVASWOM BOARD HIGHER SECONDARY SCHOOL
CHERIYANADU).

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM-695001.

3. THE DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER
KANJIRAPPALLY-686507.

4. THE CORPORATE MANAGER/SECRETARY,
TRAVANCORE DEVASWOM BOARD SCHOOLS, NANDHANCODE
THIRUVANNATHAPURAM-695001.

5. THE HEAD MASTER,
DEVASWOM BOARD HIGH SCHOOL, ERUMELI-686121.

BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .NO. 16548 OF 2015 (P)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 TRUE COPY OF THE PROVISIONAL LIST OF RULE 51A CLAIMANTS UNDER
RESPONDENT NO.4 AS ON 1/6/2008

EXT.P2 TRUE COPY OF THE APPOINTMENT ORDER DATED 6/6/2012

EXT.P3 TRUE COPY OF THE ORDER BEARING ROC NO.5818/12/RA/EDN.DATED
12/6/2013 ISSUED BY RESPONDENT NO.5

EXT.P4 TRUE COPY OF THE APPROVED APPOINTMENT ORDER DATED 1/6/2009 OF
SMT.R.SREEKALA KUMARI

EXT.P5 TRUE COPY OF THE CIRCULAR DATED 10/5/2012 ISSUED BY THE
RESPONDENT NO.1

EXT.P6 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 20/8/2014
IN WP(C) 3740/2014

EXT.P7 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 24/2/2015
IN W.P(C) 30984 OF 2014

EXT.P8 TRUE COPY OF THE ORDER DATED 22/1/2013 ISSUED BY THE RESPONDENT
NO.2

EXT.P9 TRUE COPY OF THE UID VERIFICATION REPORT DATED 15/5/2013 ISSUED
BY RESPONDENT NO.5 OF DEVASWOM BOARD,HIGH SCHOOL,ERUMELI.

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.16548 of 2015
.....

Dated this the 10th day of July, 2015

J U D G M E N T

The petitioner, who is a Rule 51 A claimant in a School under the management of the 4th respondent, was appointed as U.P.S.A in a regular promotion vacancy as per Ext.P2 appointment order. It is not in dispute that the said vacancy arose consequent to the promotion of the earlier incumbent which promotion was also approved by the educational authorities. When it came to the approval to the appointment of the petitioner, however, the 3rd respondent relying on Ext.P5 Circular approved the appointment of the petitioner only on daily wage basis. The said stand of the 3rd respondent was on account of the fact that the School in question was an uneconomic School during the relevant point in time. It is aggrieved by the denial of the regular scale of pay, and a denial of approval on regular basis, that the petitioner has approached this Court in the present writ petition.

2. I have heard the learned counsel for the petitioner, the learned Government Pleader and also the learned Standing counsel for the 4th respondent .

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in the instant case, the approval to the appointment of the petitioner to the vacancy that arose with effect from 04.06.2012 was denied only on the ground that the School in question was an uneconomic School, and therefore, that the appointment to any vacancy that arose could only be of a protected teacher. I note in this connection, that by Exts.P6 and P7 judgments of this Court, it has been held, following the decision of this Court in **Ciji.P.Jose v. State of Kerala and Others [2012 (1) KLT 867]** that when it comes to an inter se claim between a Rule 51 A claimant and a protected teacher, the claim of the Rule 51 A claimant will prevail in the matter of appointment to regular vacancies that arise in an uneconomic School. In that view of the matter, I see no reason why the petitioner cannot be extended the same benefit as was extended to the petitioners in the aforementioned cases. Accordingly, the writ petition is allowed by directing the 3rd respondent to approve the appointment of the petitioner on regular scale of pay basis from 04.06.2012 onwards and to regularise the service with effect from the said date.

The respondents shall do the needful in ensuring that the

petitioner is paid all consequential benefits within a period of three months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

