

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 16819 of 2014 (B)

PETITIONER:

C.V KRISHNA DAS, AGED 38 YEARS
S/O K.VELUKUTTY
HIGH SCHOOL ASSISTANT (MATHEMATICS)
CHAMI AYYER HIGH SCHOOL, PERUVAMBA
PALAKKAD DISTRICT 678531.

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENT(S):

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

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM 695014.

3. THE DEPUTY DIRECTOR OF EDUCATION
CIVIL STATION, PALAKKAD DISTRICT 678001.

4. THE DISTRICT EDUCATIONAL OFFICER,
PALAKKAD DISTRICT - 678001.

5. THE MANAGER,
CHAMI AYYER HIGH SCHOOL, PERUVAMBA
PALAKKAD DISTRICT 678531.

6. SMT.BINDU C.V
HIGH SCHOOL ASSISTANT (ENGLISH)
CHAMI AYYER HIGH SCHOOL, PERUVAMBA
PALAKKAD DISTRICT 678531.

R6 BY ADV. DR.GEORGE ABRAHAM
R BY GOVERNMENT PLEADER SRI NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-07-2015, ALONG WITH WPC. 26201/2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER OF THE 6TH RESPONDENT DATED 05-06-2006.

EXHIBIT P2 TRUE COPY OF THE G.O(Rt) NO 2218/2010/G. EDN DATED 27-05-2010 OF THE GOVERNMENT.

EXHIBIT P3 TRUE COPY OF THE JUDGMENT IN W.A NO 478 OF 2013 DATED 03-07-2013.

EXHIBIT P4 TRUE COPY OF THE STAFF FIXATION ORDER 2010-11 DATED 09-02-2011.

EXHIBIT P5 TRUE COPY OF THE STAFF FIXATION ORDER 2006-07 DATED 20-11-2006.

EXHIBIT P6 TRUE COPY OF THE G.O (Rt) NO 2206/2014/G.Edn DATED 07-06-2014 OF THE GOVERNMENT.

EXHIBIT P7 TRUE COPY OF THE REVIEW PETITION FILED BEFORE THE GOVERNMENT DATED 18-06-2014.

RESPONDENT(S) ' EXHIBITS

EXT.R6(a): TRUE COPY OF THE INFORMATION SOUGHT FOR BY THE HUSBAND OF THE RESPONDENT FROM THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD DT.5.7.2014.

EXT.R6(b): TRUE COPY OF REPLY RECEIVED FROM THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER DATED 19.07.2014.

EXT.R6(c): TRUE COPY OF APPOINTMENT ORDER OF SMT.RAMYA.K DT.2.6.2014.

EXT.R6(d): TRUE COPY OF GOVERNMENT ORDER G.O.(Rt)3937/13/G.Edn DT.25.9.2013.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) Nos.16819 of 2014-B and
26201 of 2014-A

Dated this the 1st day of July, 2015

JUDGMENT

Petitioners in both these Writ Petitions are challenging the order Ext.P6 passed by the Government, by which the Government ordered that 6th respondent shall be accommodated in the post of HSA(English) in Chami Ayyer High School, Peruvamba, Palakkad-an aided School under the 5th respondent, against the retirement vacancy of Smt.Kunjamma and to give approval w.e.f 1.6.2011.

2. The petitioner in W.P(C) No.16819 of 2014, is working as High School Assistant (H.S.A) in Mathematics whereas the petitioner in W.P(c) No.26201 of 2014-Smt.Remya, claims to have been working as HSA (English) from June 2014 onwards. Parties are hereinafter referred to as described in W.P (C) No.16819 of 2014. The petitioner has been working as HSA (Maths) from 23.6.1998 onwards.

3. In the staff fixation proceedings for the year 2010-11, he was accommodated in the same school, applying the ratio of

1:40 ratio between teachers and pupils. Ext.P4 staff fixation proceedings show that 9 posts of HSAs, ie. HSA(Physical Science)-2, HSA(Natural Science)-1, HSA(Maths)-2, HSA(Social Science)- 2 and HSA(English)-2, were sanctioned in the year 2010-2011; it would also show that 2 seniormost teachers who were in excess (Ms.Kunjamma Abraham HSA(NS) and Sailaja HSA(SS) were accommodated in the posts sanctioned for English. Similarly M/s.A.R.Ramanathan HSA(Maths), M.C.Latha HSA(SS) and C.V.Krishna Das (petitioner) HSA(Maths) were retained by giving the benefit of 1:40 ratio, as per G.O(Ms.) No.191/10/G.Edn. dated 22.09.2010. Smt.Kunjamma Abraham, who was accommodated in one of the posts sanctioned for HSA (English), retired from service on 31.3.2011.

4. In the meanwhile the Manager had appointed the 6th respondent as HSA(English) in the year 2006. As the appointment of 6th respondent was not approved, on the ground that excess teachers were accommodated in the post of HSA, English, 51B claims were not considered etc., he submitted appeals and revisions. Thereupon he approached this Court in W.P© No.20383 of 2010 which was dismissed by judgment dated

9.1.2013. He took up the matter in W.A.No.478/2013, which was disposed of by a Division Bench of this Court in Ext.P3 judgment taking note of the fact that out of the 15 posts of HSAs, not a single post was occupied by a qualified hand in English. This Court therefore directed the 6th respondent to approach the Government seeking his claim for being accommodated in one of the posts of HSA English, as there was the retirement vacancy of Smt.Kunjamma Abraham. It is pointed out that retirement of Smt.Kunjamma Abraham, HSA was brought to the notice of the Division Bench during the course of hearing. Thereupon this court directed the 6th respondent to make a representation to the Government to be forwarded by the school and directed the Government to consider the same in accordance with the procedure, within a period of 3 months. It was further directed that the respondents shall not recommend or appoint anyone against the vacancy. It was thereafter the Government passed Ext.P6 order in favour of the 6th respondent directing his appointment w.e.f 1.6.2011, with effect from the date of retirement of Smt.Kunjamma Abraham and for approval w.e.f 1.6.2011.

5. The petitioner claims to be accommodated in the post of HSA(English), on the ground that he is accommodated in 1:40 ratio. It is the case of the petitioner that in the staff fixation of the year 2010-11, one teacher in Natural Science, 2 in Mathematics and 2 in Social Science were excess and 2 senior most teachers who were in excess were also accommodated against the post of HSA(English) in terms of G.O(Ms) No.11/2002/G.Edn dated 7.1.02 and the remaining teachers including the petitioner were retained in the School by creating posts under 1:40 teacher student ratio. The petitioner apprehends that on account of the order passed by the Government in favour of the 6th respondent, he will have to continue against a post created under 1:40 ratio when a regular vacancy is available in English. The petitioner has produced Ext.P7 representation stated to be given in terms of Rule 93 of Chapter XIV A KER.

6. According to the petitioner, Ext.P6 offends Note to Rule 6I of Chapter XIVA of the Kerala Education Rules (KER for short) and as per G.O(MS) 11/2002/G.Edn. dated 7.1.2002 by which the cadre of HSA(English) was created. It is stated that

since the introduction of the said cadre, no post is available for appointment of HSA(English). It is further stated that in the year 2012, one HSA(Maths) and one HSA(Social Science) were promoted as HSST from 1.3.2012 and the petitioner Sri Krishna Das has been continuing as the third HSA(Maths) and in accordance with 1:1:1 ratio against a sanctioned post. In effect the petitioner is continuing in a regular vacancy from 1.3.2012 onwards.

7. W.P(c) No.26201/14 is filed by Smt.Remya who was appointed as per Ext.P1 order on 2.6.2014 against the post of HSA(English) in a vacancy which arose on promotion of Smt.M.C.Latha, HSA(SS), who was promoted as HSST w.e.f 2.9.2013. Smt. Remya is also challenging the appointment of Smt.Bindu, the 6th respondent. Her contention is that at the time of appointment of the 6th respondent, there was no vacancy for her and the Government issued orders to accommodate the 6th respondent without looking into the factual circumstances arising in the case. According to her, she is the right person who has been appointed and is continuing with effect from 2.6.2014 against the retirement vacancy. According to her, the order

passed by the Government in favour of the 6th respondent seriously affects her, as no vacancy had arisen consequent to the retirement of Smt.Kunjamma Abraham and hence the 6th respondent is not having any better claim over her, as her appointment was never approved. It is her case that the Government issued orders without considering any of the circumstances. According to her, there were 12 teachers as against 9 posts in the school during 2010-11 and there were 11 teachers as against 9 posts in 2011-12 and therefore on retirement of Smt.Kunjamma Abraham, the 6th respondent could not have been appointed illegally.

8. The 6th respondent has filed a counter affidavit pointing out that she was appointed as HSA(English) as per Ext.P2 w.e.f 1.6.2006, against the vacancy of Smt.Sheela P.Nair. But the appointment was not approved by the Educational authorities on the ground that there were excess teachers in various subjects apart from certain 51(B) claimants. It was on the basis of the direction contained in Ext.P3 judgment that the Government issued orders as contained in Ext.P6, as against the vacancy which arose consequent to the retirement of

Smt.Kunjamma Abraham. She has pointed out that even though there was a direction from this Court not to appoint anybody before his case was considered by the Government, the Manager had appointed the petitioner in W.P© No.26201/14-Remya, contrary to the above direction. She has also pointed out that the Manager had appointed one Smt.Shilpa on 1.6.2012 as HSA (English). It is pointed out that even though 3 posts of HSA (English) have been sanctioned to this school right from 2003, ie. since the creation of post of HSA English, no appointment has been made to the post, as required under Rule 6(I) of Chapter XXIII KER. The Division Bench had also taken note of this aspect while considering the Writ Appeal, consequent to which the above direction was issued.

9. I heard the learned counsel appearing on either side.

10. The petitioners in these 2 Writ Petitions are challenging this Government order on different grounds. According to the petitioner in W.P(c) No.16819/14, who is a Mathematics hand, unless he is accommodated in the post of HSA English, he will have to continue in 1:40 ratio itself or else he will have to face retrenchment in the event of a further

reduction of post, ie. on filling up the post of HSA English by a qualified hand in English. He is not qualified to teach English. Moreover there is no provision for accommodating excess teachers in the HSA(English) post for ever. The post of HSA English was introduced as per the Government Order G.O(Ms) No.11/2002/G.Edn. Dated 7.1.2002, which reads as follows:

“ O R D E R

Separate Category of H.S.A. (English) is not included either in the Special Rules relating to Government Schools issued in G.O. (P) No. 76/80/G. Edn. Or in the K.E.Rs. English language is taught by the teachers of core subjects who possess qualifications such as a Degree in the concerned subject and B.Ed/B.T/L.T. Conferred or recognised by any Universities in Kerala. To remedy the consequent deteriorating standard of English teaching/learning, Government had ordered some measures in the G.O. read as 1st paper above for enabling the gradual creation of a separate cadre of H.S.A. (English). The G.O. Has interalia prescribed the qualification for direct recruitment of H.S.A. (Eng.) as “ A Degree in English language and Literature and B.Ed/B.T./L.T. Conferred or recognised by any University of Kerala”. The P.S.C had suggested the following modification to the qualification prescribed for the post of H.S.A.(English) in the G.O. Dated 7.12.1988.

- (i) A Degree in English Language and Literature
and
- (ii) B.Ed/B.T./L.T. With teaching of English as optional
Subject.

In the absence of those with qualification in item (ii) above, candidates with B.Ed./B.T./L.T. In any other subject will be considered”.

The P.S.C has also advised to effect necessary amendment to the rules, to enable the selection process for in the post of H.S.A .(English). However, no such amendment was issued.

2. The Director of Public Instruction in his letter read as 3rd paper above has now informed Government that the present method of teaching English followed in High Schools is ineffective in the absence of qualified H.S.As in English language, leading to low percentage of pass in the subject. He has forwarded certain proposals considering the need for improving the standard of teaching the subject in the Schools.

3. Government have examined these proposals in detail and are pleased to order as follows:

a) A new cadre of HSA (English) will be created in the Aided and Government Schools by re-allocating the periods of English now allocated to the core subjects (Maths, Science and Social Studies) in a phased manner,

without causing retrenchment of existing H.S.As (core subjects). The new cadre will be created by appointing/promoting qualified hands against the vacancies caused by retirement/additional division/Resignation/leave observing the minimum subject ratio requirement between Maths, Science and Social Studies with a view to achieve the object of distribution of posts envisaged in the table given in the appendix.

b) The qualification to the post of HSA (English) will be fixed as follows:

- i) A Degree in English language and Literature.
and
- ii) B.Ed./B.T./L.T. With English as Optional subject conferred or recognised by any of the Universities in Kerala.

In the Absence of those with qualifications in item (ii) Candidates with B.Ed./B.T./L.T in any other subject conferred or recognised by any of the Universities in Kerala will be considered.

c) The Present order of subject of Science, Maths and Social studies followed for staff fixation of H.S.A.(Core Subjects) will be revised as Social Studies, General Science and Maths as a temporary measure so as to achieve the creation of a separate cadre of the H.S.A. (English) and the D.P.I. Will be authorised to issue specific orders in this regard.

d) In order to implement the Orders at Para3(a) above, a temporary ban on promotion of claimants as per Rule 43 of Chapter XIV A KER will be imposed, exempting those who have the prescribed qualification to be posted as HSA (English)

e) The above Scheme will be implemented from the academic year 2002-2003

4. Formal Amendment in the K.E.Rs and G.O.(P) No. 76/80/G. Edn dated 6-6-1980 will be issued separately.

By order of the Governor

K.Nalini

Additional Secretary to Government"

The post HSA(English) was introduced for the purpose of improving the standard and quality of teaching in English in schools and to see that at least one post of English is there in the High Schools in the State. At the time of introduction of the post, it was provided that the existing teachers in core subjects shall not be adversely affected on account of the introduction of the post and it was directed that the cadre can be created gradually. But as far as the school in question is concerned, no appointment has been made in the post right from 2002, even

though several vacancies occurred thereafter. All along teachers in core subjects were accommodated. The appointment of the 6th respondent in 2006 was a promotion vacancy in English. As against that, approval was declined on the ground of excess teachers. But in the year 2011, as can be seen from Ext.P4 staff fixation order, Ms.Kunjamma Abraham who was HSA(Natural Science) and Smt.Shailaja(Social Science) were accommodated against the 2 posts of HSA(English).

11. Therefore on retirement of Kunjamma Abraham from service on 31.3.2011 the post of HSA(English) which was occupied by her, even though she was a HSA(Natural Science), became vacant. Therefore there was a clear vacancy in the post of HSA(English). Staff fixation order has been issued sanctioning 2 posts of HSA(English) in terms of Rule 6I of Chapter XXIII KER, which provides as follows:

“6.I Sanctioning of posts of High School Assistant (English): Notwithstanding anything contained in any other rule in this Chapter the post of High School Assistant (English) shall be sanctioned on the basis of the periods allocated to English, observing minimum subject requirement. ”

12. Regarding the importance of the post of HSA(English),

this Court in para.11 of **Minimole v. Sate of Kerala** [2012(4) KLT 719] held as follows:

“11. When R.6.I of Chapter XXIII K.E.R. clearly provides for creation of the post of H.S.A. (English), that also by observing minimum subject requirement, there cannot be any quarrel that a H.S.A.(English) can be appointed in the post. Therefore, it is obvious that a qualified hand alone can be appointed in terms of R.6.1 of Chapter XXIII K.E.R.”

13. In the above circumstances there is no reason for interfering with the orders passed by the Government on the basis of the claims raised by the petitioner in W.P(c) No.16819 of 2014. Moreover it is stated in the Writ Petition itself that he has been accommodated in a regular post of HSA(Mathematics), ie. applying 1:45 ratio, at least by 2012.

14. As far as the petitioner in W.P(c) No.26201 of 2014 is concerned, she was appointed only as per Ext.P1 order in June, 2014. The petitioner has not produced any orders by which approval has been declined. It is seen from her own contention and from Ext.P5 that there were 2 posts of HSA English sanctioned in the staff fixation for the year 2010-11. When the

6th respondent who was originally appointed as per Ext.P2 on 5.6.2006, was accommodated against the vacancy which arose on retirement of Kunjamma Abraham in the year 2011 and was teaching the students of the school from 2006 onwards, Smt.Remya cannot have any right to claim that vacancy of 2011. She cannot have any grievance as against the order passed in favour of the 6th respondent. According to her, she is the rightful claimant for the post of HSA(English) since she was appointed on 2.6.2014 against a promotion vacancy. She cannot have any superior claim over the 6th respondent who has been working in the School from 2006 onwards on the basis of appointment order issued by the Manager. Petitioner admittedly was appointed only in 2014. There is no provision seen in KER which justifies the claim of the petitioner. The petitioner does not have any right to get any preference over the 6th respondent.

15. The learned counsel appearing for the 6th respondent, relied on the judgments in **Geetha S. v. Geo Thomas K. and Others** [2009 (4) KHC 296]] and a Full Bench decision of this Court in **Soman v. Manager, A.K.M. High School** [2013 (2) KHC 173] and asserted that the appointment of the 6th

respondent, who was appointed at an earlier point of time, was entitled to be absorbed in the next regular vacancy with due preference and just because her appointment was not approved, the Manager cannot ignore her and resort to a fresh appointment. The relevant portions of paragraph 6 of the judgment in **Geetha S. v. Geo Thomas K. and Others** (supra) on this aspect reads as follows:

“6. In the light of the above provisions, the Manager could have made the appointments/retrenchments only in accordance with Rule 51 of Chapter XIV-A of the KER quoted above and Ext.R6(a) order mentioned above. The Manager could not take shelter behind the plea that when the regular vacancy arose, the appointment of the appellant in the maternity leave vacancy was not approved. xxxxxxxxxxxxxxxxxxxxxxxx The legal position that the Manager cannot deny promotion or re-appointment for the reason that original appointment was not yet approved, is covered by the Division Bench decision of this Court in **Joshi v. Krishna P.Rajan**, 2006 (4) KLT SN 63(case no.85).”

16. This issue was considered in **Soman v. Manager, A.K.M. High School** (supra) by the Full Bench, in which also it was held that the claim for appointments under Rule 51A of Chapter XIVA KER based on original appointment to a short term

vacancy beyond two months' duration will not be lost. In this case, the 6th respondent has been continuing in the school right from 2006 on the basis of order of appointment issued by the Manager whereby she gained experience in teaching in the very same school.

17. The petitioner in W.P© No.26201 of 2014 who was appointed in 2014, did not substantiate how she can have any superior claim over the 6th respondent or how she can be said to be aggrieved by the order passed by the Government in favour of 6th respondent.

18. The petitioners sought for disposal of their review petitions filed under Rule 93. But I find that no review is possible on an order passed under Rule 92. In fact the order Ext.P6 itself is issued on a review of the order passed under Rule 92 of Chapter XIVA KER. Moreover it is seen that the petitioner Krishna Das in W.P(c) No.16819 of 2014 does not have a grievance as at present. As far as the petitioner in W.P(c) No.26201 of 2014 is concerned, her claim is only based on her appointment in 2014 in the very same post as against the appointment of the 6th respondent made in 2006 and approval

w.e.f 1.6.2011. Therefore the prayer for a direction to consider the review petition is also rejected. There is no reason to interfere with Ext.P6 order. Hence the Writ Petitions fail.

In the above circumstances, the Writ Petitions are dismissed.

Sd/-
(P.V.ASHA, JUDGE)

rtr/