

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 21189 of 2009 (P)

PETITIONER:

**SOBHANA K.B., MUSIC TEACHER,
JANATHA HIGH SCHOOL, THEMPAMOODU, ATTINGAL
TRIVANDRUM.**

**BY ADVS.SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY,
GENERAL EDUCATION (K), DEPARTMENT
SECRETARIAT, TRIVANDRUM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
TRIVANDRUM.**
- 3. THE HEADMASTER, JANATHA HIGH SCHOOL,
THEMPAMOODU, ATTINGAL, TRIVANDRUM.**

R1 & R2 BY GOVERNMENT PLEADER SRI. T.R. RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE ORDER DATED 7.5.1994 ISSUED BY THE 2ND RESPONDENT
- P2 : TRUE COPY OF THE ORDER DATED 23.7.1994 ISSUED BY THE 2ND RESPONDENT
- P3 : TRUE COPY OF THE ORDER DATED 21.2.1995 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS, TVM.
- P4 : TRUE COPY OF THE ORDER GO(MS) NO.60/96/G.EDN. DATED 15.2.1996 ISSUED BY THE 1ST RESPONDENT
- P5 : TRUE COPY OF THE REPRESENTATION DATED 17.7.1996 BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- P6 : TRUE COPY OF THE ORDER GO(MS) NO.254/01/G.EDN. DT.19.1.2001 ISSUED BY THE 1ST RESPONDENT
- P7 : TRUE COPY OF THE REPRESENTATION DATED 15.1.1996 BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- P8 : TRUE COPY OF REPRESENTATION DT. 19.9.1996 BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- P9 : TRUE COPY OF REPRESENTATION DT.15.11.2007 BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- P10 : TRUE COPY OF LETTER NO.57736/K3/08/G.EDN. DT.6.5.2009 ISSUED BY THE 1ST RESPONDENT
- P11 : TRUE COPY OF THE ORDER G.O.(MS) NO.104/1969/.EDN. DT.6.3.1969 ISSUED BY THE 1ST RESPONDENT
- P12 : TRUE COPY OF THE ORDER G.O.(MS) NO.412/97/G.EDN. DT.16.10.1997 BY THE 1ST RESPONDENT

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 21189 of 2009 (P)

Dated this the 15th day of September, 2015

J U D G M E N T

The petitioner entered service as a Music Teacher on regular appointment with effect from 26.6.1984 in the 3rd respondent School, which is an aided school. The petitioner was rendered surplus with effect from 15.7.1993, consequent to the staff fixation for the year 1993-94. In such circumstance, the petitioner was thrown out of the employment of Music Teacher. The petitioner challenges the same, which concluded with Ext.P3 Order.

2. It was found that as per Rule 6(4) of Chapter XXIII of Kerala Education Rules, 1959 (for brevity 'K.E.R.'), an additional post of special teacher could be sanctioned only if there is at least 5 periods in a week for the particular branch. The number of periods available for Art/Music was 9½ for the said academic year, for which only one post under the Art group was admissible. The Deputy Director,

hence, allowed the continuance of one Drawing post and abolished the post of Music teacher, for want of minimum number of 5 periods per week. The said order at Ext.P3 was not challenged.

3. Subsequently, on representations being made by the Teachers' Association, the Government came out with Ext.P4, G.O.(MS) No.60/96/G.Edn. dated 15.2.1996 which offered an amount of protection to aided school teachers appointed on or after 1.8.1984 and had completed 7 years of service on or before 15.7.1995. In pursuance of the deployment ordered to such teachers as per Ext.P4 Government Order, the Government also brought out Ext.P12 Government Order G.O. (MS) No. 412/97/G.Edn. dated 16.10.1997, in which the period during which the incumbent was out of job was to be treated as eligible leave or leave-without-allowance as contemplated in G.O.(MS) No.104/69/Edn. dated 6.3.1969. It was in consonance with the above Government Orders, Ext.P10 has been ordered,

treating the thrown out period of the petitioner from 15.7.1993 to 19.3.1998 as eligible leave or leave-without-allowances. The petitioner cannot raise any claim for salary for the said period, since the subsequent Government Orders were only in mitigation of the grievances of the teachers who were send out from service validly, on Staff Fixation Orders requiring division fall.

4. The petitioner's contentions based on Rule 6(4) of Chapter XXIII with respect to a complete High School being mandated to have a post of the Drawing Teacher cannot be considered, especially since the Drawing Teacher who was transferred and posted in the post from which the petitioner was thrown out was admittedly senior to her. The petitioner's contention is that there was a Music Teacher in the other school who ought to have been terminated and not the Drawing Teacher. However, to understand the veracity of the said contentions, the Corporate Management is not in the party array. Further, the petitioner was thrown out in

the year 1992 and the petitioner did not challenge the same then. The petitioner was thrown out due to the division fall in one of the schools of the Corporate Management and the admitted senior of the petitioner had been continuing. The protection granted in Exhibit P1 was on the strength of G.O. (MS) No.60/96/G.Edn. The regularisation for past period was as per G.O.(MS).No.412/97/G.Edn. and qualified, insofar as granting regularisation, without any monetary benefits.

5. The learned counsel for the petitioner would refer to Ext.P6 Order to contend that on a similar situation salary was paid. However, a reading of Ext.P6 would indicate that, that was a revision made by the Deputy Director under Rule 12 C (2) of Chapter XXIII of K.E.R., that too, on 17.10.1997, which order was found to be illegal. Further, the same was in the post of Lower Grade Hindi teacher and not an Art/Craft teacher, which is a specialist teacher under the provisions of the K.E.R.

In such circumstance, the writ petition is devoid of any merit and the same is dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE