

IN THE HIGH COURT OF KERALA AT ERNAKULAM

**PRESENT:
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 17300 of 2014 (J)

PETITIONER:

**T.HARIDAS
H.S.A (MATHS)
SAHODARAN MEMORIAL HIGHER SECONDARYSCHOOL, CHERAI
ERNAKULAM - 683 514.**

**BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DISTRICT EDUCATIONAL OFFICER
ERNAKULAM - 682 030**
- 3. THE MANAGER
SAHODARAN MEMORIAL HIGHER SECONDARY SCHOOL
V.V.SABHA EDUCATIONAL AGENCY, CHERAI
ERNAKULAM - 683 514.**

ADDITIONAL RESPONDENTS IMPLEADED

**ADDLR4 SMT. P.K. LATHEESHA, H.S.A. (MATHS)
SAHODARAN MEMORIAL HIGHER SECONDARY SCHOOL,
CHERAI, ERNAKULAM 683 514**

**ADDLR5 THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM 682 030**

**ADDL.R4 IS IMPLEADED AS PER ORDER DATED 30.11.2015 IN IA 6846/2015.
ADDL.R5 IS IMPLEADED AS PER ORDER DATED 15.12.2015 IN IA 18104/2015**

**R3 BY ADV. SRI.A.T.ANILKUMAR
R1, R2 & ADDLR5 BY GOVERNMENT PLEADER SUMITHA VINOD
ADDL.4 BY ADV. SRI.K.K.ASHKAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE APPOINTMENT ORDER DATED 23.7.99 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT
- EXT.P-2: TRUE COPY OF ORDER NO.ACD.A6/19455/01/HSE DATED 4.11.2003 ISSUED BY THE DIRECTOR OF HIGHER SECONDARY EDUCATION
- EXT.P-3: TRUE COPY OF JUDGEMENT DATED 11.1.2010 IN O.P NO.4114/2001 OF THIS HON'BLE COURT.
- EXT.P-4: TRUE COPY OF THE JUDGEMENT DATED 23.3.2010 IN W.A. NO.177/2010 OF THIS HON'BLE COURT.
- EXT.P-5: TRUE COPY OF AFFIDAVIT DATED 2.6.11 FILED BY THE 3RD RESPONDENT IN CONT.CASE (C) NO.453/2011 BEFORE THIS HON'BLE COURT.
- EXT.P-6: TRUE COPY OF CERTIFICATE DATED 10.6.2011 FILED BY THE 3RD RESPONDENT IN CONT.CASE (C) NO.453/2011 BEFORE THIS HON'BLE COURT.
- EXT.P-7: TRUE COPY OF COMMUNICATION DATED 4.7.2011 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT
- EXT.P-8: TRUE COPY OF THE JUDGEMENT DATED 5.7.2011 IN CONT.CASE (C) NO.453/2011 OF THIS HON'BLE COURT.
- EXT.P-9: TRUE COPY OF THE ORDER DATED 28.12.12 ISSUED BY THE 3RD RESPONDENT
- EXT.P-10: TRUE COPY OF THE JUDGEMENT DATED 14.1.2013 IN CONT.CASE(C) NO.875/2012 OF THIS HON'BLE COURT
- EXT.P-11: TRUE COPY OF G.O(P)199/2011/G.EDN DATED 1.10.2011 ISSUED BY THE 1ST RESPONDENT
- EXT.P-12: TRUE COPY OF THE ORDER NO.B5-10973/11/D.DIS DATED 29.12.2011 ISSUED BY THE 2ND RESPONDENT
- EXT.P-13: TRUE COPY OF CIRCULAR DATED 6.6.12 ISSUED BY THE GOVERNMENT
- EXT.P-14: TRUE COPY OF G.O(P) NO.313/2013/G.EDN. DATED 29.11.2013 ISSUED BY THE GOVERNMENT
- EXT.P-15: TRUE COPY OF D.DIS 8879/2013 DATED 14.5.2014 ISSUED BY THE 2ND RESPONDENT

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**EXT.P-16: TRUE COPY OF ORDER DATED 27.10.2014 ISSUED BY THE 2ND
RESPONDENT**

**EXT.P-17: TRUE COPY OF APPEAL MEMORANDUM FILED BY THE PETITIONER
BEFORE THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 17300 of 2014 (J)

Dated this the 15th day of December, 2015

J U D G M E N T

The petitioner is continuing as H.S.A.(Maths), allegedly, by virtue of a judgment in a writ petition filed by another and affirmed in an appeal by the petitioner.

2. I heard the learned Counsel for the petitioner and the learned Government Pleader. None appeared for the Manager or the additional 4th respondent when the matter was heard.

3. The brief facts to be noticed are that the petitioner was appointed as a Higher Secondary School Teacher (Maths), by Ext.P1 on 23.7.1999. By Ext.P2 the petitioner was also approved by the educational authority. A claimant under Rule 43 of Chapter XXXII of Kerala Education Rules, 1959 (for brevity 'KER'),

seeking by-transfer appointment on the 1:3 ratio, challenged the appointment of the petitioner which eventually resulted in a judgment in O.P.No.4114/2001. By Ext.P3 judgment, the claimant for by-transfer appointment, was found to be entitled to the said post. The said claimant was directed to be appointed as H.S.S.T (Maths) and to do complete justice, the petitioner was directed to be appointed in the next arising vacancy in the school. An appeal, filed by the petitioner, was dismissed as per Ext.P4. The reservation, of the next arising vacancy to the petitioner, was not interfered with by the Division Bench.

4. Subsequently, two vacancies of H.S.A. (Maths) arose in the school on 1.4.2011, by virtue of retirement on 31.3.2011. The petitioner sought appointment to the same and filed a contempt case. In the contempt case,

the Manager filed an affidavit (Ext.P5) dated 2.6.2011, wherein, it is specifically contended that two vacancies of H.S.As, which arose by virtue of retirement on 31.3.2011, have been kept vacant. A further affidavit (Ext.P6) was filed on 10.6.2011, wherein, the said contention was reiterated. However, the Manager had appointed additional 4th respondent as H.S.A. (Maths) who was a claimant under Rule 43 of Chapter XIV A of KER. The contempt case was closed on 5.7.2011 as per Ext.P8, since the petitioner was appointed in a leave vacancy. Again, a contempt was filed which ended with Ext.P10, wherein, it was recorded that the petitioner had been given appointment.

5. The approval of the petitioner's appointment was rejected by Ext.P16 order when the writ petition itself was pending. It was found that the proposal for appointment was verified with the Rules and orders in

force and in the academic year 2010-2011 four regular posts of H.S.A.(Maths) were sanctioned and the 5th post was retained under 1:40 ratio to accommodate an existing teacher. On retirement of one H.S.A.(Maths) on 31.3.2011, the School was eligible for four posts of H.S.A.(Maths) and four teachers were already on the roll. Hence, the petitioner's appointment could not be approved, was the reason for rejection. In fact, there were two retirement vacancies; one of which was filled up by a Rule 43 claimant, who is the additional 4th respondent.

6. The petitioner's contention in the writ petition is that the judgment of the learned Single Judge, as affirmed by the Division Bench, granted the petitioner a right to be appointed to the next arising vacancy and that cannot be upset by a Rule 43 claimant. It is also contented that the Manager filed a false affidavit before

this Court, by contending that none were appointed to the retirement vacancy, which is belied by the fact that the additional 4th respondent was appointed. As to the false affidavit filed the petitioner would be entitled to seek appropriate remedy, but, that need not detain this Court from deciding on the petitioners eligibility.

7. The additional 4th respondent is a Rule 43 claimant and has a statutory right under the KER, which cannot be upset even by a decision of this Court, especially when the same is intended at doing complete justice and not in accordance with the statutory provisions. The reservation of the next arising vacancy could only be in the next arising vacancy, where there is no statutory claim as created by the KER. In such circumstance, the petitioner's claim against the additional 4th respondent is negatived.

8. The contention with respect to the 5th additional post is dependent upon the staff fixation orders to be passed in the year 2011-2012. It is also to be noticed that Ext.P16 order does not reject the petitioner's approval for reason of the appointment of the additional 4th respondent. The additional 4th respondent's vacancy is definitely entitled to the said person, who is a promotee and has a statutory claim under Rule 43. With respect to the petitioner's claim for the 5th post, the appeal definitely has to be considered.

9. The writ petition is dismissed, as far as the claim against the additional 4th respondent, leaving open the other contentions to be urged in appeal. There shall be a direction to the Deputy Director of Education, Ernakulam, to consider Ext.P17 appeal, in accordance with law, after affording an opportunity of

hearing, within three months from the date of receipt of the certified copy of this judgment. It is made clear that there is no observation on merits, which shall be decided by the 1st respondent. No Costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE