

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 17179 of 2015 (V)

PETITIONER(S):

**T.R.LALITHAMANI AMMA AGED 45 YEARS
W/O.RAMESH T.R, THEKKEKKARA HOUSE, NARANGANAN P.O
KOZHENCHERRY, PATHANAMTHITTA 689 642
(HIGH SCHOOL ASSISTANT (SOCIAL SCIENCE) DEVASWOM
BOARD HIGHER SECONDARY SCHOOL
THIRUVALLA)**

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM 695 001.**
- 3. THE DEPUTY DIRECTOR (EDUCATION)
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
PATHANAMTHITTA AT THIRUVALLA 689 101.**
- 4. THE DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER
THIRUVALLA 689 101.**
- 5. THE CORPORATE MANAGER/SECRETARY
TRAVANCORE DEVASWOM BOARD SCHOOLS
DEVASWOM BUILDINGS, NANTHANCOD
THIRUVANANTHAPURAM 695 001.**

**R4 BY ADV. GOVERNMENT PLEADER, SMT. LOUSY A.
R BY SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE DEVASWOM BOA**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE APPOINTMENT ORDER DATED 4.6.12 ISSUED BY RESPONDENT NO.5.
- EXHIBIT P2. COPY OF THE ORDER DATED 23.7.12 PASSED BY RESPONDENT 4.
- EXHIBIT P3. COPY OF APPELLATE ORDER DATED 26.1.12 PASSED BY RESPONDENT 3.
- EXHIBIT P4. COPY OF THE COMMUNICATION DATED 13.1.12 ISSUED BY RESPONDENT 5.
- EXHIBIT P5. COPY OF THE ORDER DATED 4.4.13 ISSUED BY RESPONDENT 4.
- EXHIBIT P6. COPY OF THE STATUTORY REVISION PETITION SUBMITTED AGAINST EXT.P5 ORDER.
- EXHIBIT P7. COPY OF THE ORDER DATED 4.3.15 PASSED BY RESPONDENT NO.2.
- EXHIBIT P8. COPY OF THE STAFF FIXATION ORDER DATED 18.8.10 ISSUED BY RESPONDENT NO.4 IN RESPECT OF DEVASWOM BOARD HIGHER SECONDARY SCHOOL, THIRUVALLA.
- EXHIBIT P9. COPY OF THE GOVERNMENT CIRCULAR DATED 6.6.12.
- EXHIBIT P10. COPY OF THE JUDGMENT DATED 4.3.13 IN WPC 902 OF 2013(K) PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P11. COPY OF THE JUDGMENT DATED 6.2.14 IN WPC 2909 FO 2014 (K) PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P12. COPY OF THE JUDGMENT DATED 3.3.14 IN WPC 17308 OF 2013 (K) PASSED BY THIS HONOURABLE COURT.
- EXHIBIT P13. COPY OF THE ORDER BEARING NO.B5/5232/13/K.DIS DATED 25.7.14 ISSUED BY RESPONDENT NO.4.
- EXHIBIT P14. COPY OF THE ORDER BEARING NO.B5/6381/14/K.DIS DATED 25.7.14 ISSUED BY RESPONDENT NO.4.
- EXHIBIT P15. COPY OF THE JUDGMENT DATED 3.11.11 IN WPC 16491/10 PASSED BY THIS HONOURABLE COURT.

RESPONDENT(S)' EXHIBITS

nil

// True copy //

das

PA to Judge

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 17179 of 2015

Dated this the 26th day of June, 2015

JUDGMENT

The petitioner, who is a High School Assistant (Social Science) under the Devaswom Board Higher Secondary School, Thiruvalla, was promoted by the 5th respondent as such, against a retirement vacancy pursuant to the retirement of Kumari C.Shylaja. The said appointment of the petitioner was, however, not approved by the educational authority, initially, on the ground that the petitioner did not possess the Kerala Teachers Eligibility Test qualification. In an appeal preferred by the petitioner, against the said order rejecting approval, the 3rd respondent set aside the order of the 4th respondent and directed the grant of approval to the appointment of the petitioner as HSA with effect from 04.06.2012. This direction was issued in the wake of the Government Order dated 20.09.2012, that exempted teachers like the petitioner from acquiring a test qualification. Thereafter, when the papers of the petitioner were forwarded to the 4th respondent for approval, the 4th respondent again rejected the request for approval, this time on the ground that there were two High School Assistants, one in the subject Hindi and the other in Natural Science, along with two UPSAs, who were found to be in excess in the Devaswom Board Higher Secondary School, and the said teachers had to be

accommodated before considering the case of the petitioner. It is challenging this order of the 4th respondent, that the petitioner has approached this Court through the present writ petition. It is also pointed out in the writ petition that, challenging the order of the 4th respondent, a revision petition has also been filed by the petitioner, which was dismissed by the 2nd respondent.

2. A counter affidavit has been filed on behalf of the 4th respondent, wherein, the sequence of events leading to the rejection of the request for approval to the appointment of the petitioner is detailed. In paragraph 5 of the counter affidavit, apart from referring to the existence of two other HSAs in different subjects and two other UPSAs, who according to the respondent, were entitled to be appointed to the vacancy that fell due, there is also a reference to the fact that the Manager of the School had given an incorrect undertaking before the approving authority. It is stated that the 5th respondent was bound to submit to the 4th respondent an undertaking to the effect that there was no excess HSA (SS) hand retained as per the provisions of the Government Order No.199/2011 for getting approval to the appointment of the petitioner as HSA (SS) in the school in question.

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

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the writ petition in its challenge against Ext.P5 original order and Ext.P7 order in review, must necessarily succeed. The reasons given by the educational authority for denying approval to the appointment of the petitioner as HSA(SS) is that there were two other teachers in different subjects, who were awaiting appointment. It is now settled through the decision of this Court in Ext.P15 judgment that the vacancy to the post of HSA (SS) can be filled only by an HSA (SS). In other words, there cannot be a filling up of the vacancy that arises in the post of HSA (SS) with an has in any other discipline. In that view of the matter, I quash Exts.P5 and P7 and direct the respondents to approve the appointment of the petitioner forthwith, to the vacancy of HSA (SS), that arose in the school with effect from 04.06.2012 onwards.

The writ petition is allowed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE