

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 18101 of 2015 (K)

PETITIONER(S):

**SHEEJA MOL G., AGED 43 YEARS
D/O. GOPINATHAN, KUNNATHU HOUSE, PURAKKAD PO
AMBALAPPUZHA, ALAPPUZHA DISTRICT 688 561**

BY ADV. SRI.P.M.MOHAMMED SHIRAZ

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTEDBY SECRETARY TO GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM 695001**
- 2. THE HEAD MISTRESS
GOVERNMENT LOWER PRIMARY SCHOOL
THOTTAPPALLY 688 563**
- 3. THE PARENT TEACHER ASSOCIATION GOVT.
LPS THOTTAPPILLY, REPRESENTED BY ITS PRESIDENT
GOVERNMENT LOWER PRIMARY SCHOOL
THOTTAPPALLY 688 563**
- 4. THE PRESIDENT
PURAKKAD GRAMA PANCHAYATH, PURAKKAD PO PIN-688561**
- 5. JALEELA
PRE-PRIMARY TEACHER GOVT LP SHCOOL
THOTTAPPALLY ALAPPUZHA 688 563**

**R4 BY ADV. SRI.S.SANAL KUMAR
R4 BY ADV. SRI.M.T.SURESHKUMAR
R4 BY ADV. SMT.T.JSEEMA
R4 BY ADV. SMT.BHAVANA VELAYUDHAN
R4 BY ADV. SMT.SMITHA PHILIPOSE
R1-R3 BY ADV. GOVERNMENT PLEADER SMT. A. LOWSY
R5 BY ADV. SMT.M.S.KIRAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1; TRUE PHOTOCOPY OF CERTIFICATE DATED 19.9.1994 ISSUED TO PETITIONER**
- EXHIBIT P2: TRUE PHOTOCOPY OF REPRESENTATION DATED 24.7.2012 OF THE PETITIONER**
- EXHIBIT P3: TRUE PHOTOCOPY OF LETTER NO.B/2659/12 DATED 30.11.2012 OF TH ASSISTAHT EDUCATIONAL OFFICER, AMBALAPPUZHA**
- EXHIBIT P4: TRUE PHOTOCOPY OF REPRESENTATION DATED 12.9.2014 OF THE PETITIONER**
- EXHIBIT P5: TRUE PHOTOCOPY OF LETTER DATED 11.11.2014 OF SECRETARY, PURAKKAD GRAMA PANCHAYATH**
- EXHIBIT P6: TRUE PHOTOCOPY OF THE APPLICATION DATED 30.1.2015 SUBMITTED BY THE PETITIONER**
- EXHIBIT P7: TRUE PHOTOCOPY OF AWARD DATED 22.3.2015 OF THE LOK ADALAT**
- EXHIBIT P8: TRUE PHOTOCOPY OF REPRESENTATION DATED 22.5.2015 OF THE PETITIONER**
- EXHIBIT P9: TRUE PHOTOCOPY OF G.O(MS) NO.146/2013/GEN.EDU DTD. 25.04.13**
- EXHIBIT P10 TRUE PHOTOCOPY OF GO (MS) NO.385/2012/G. EDN DATED 7.12.2012**
- EXT.P11 COPY OF THE QUERY DATED 23.09.14 SUBMITTED BY MR. GOPINATH K.**
- EXT.P12 COPY OF THE REPLY DATED 17.10.14 GIVEN BY THE 2ND RESPONDENT.**
- EXT.P13 COPY OF THE G.O(RT) NO.245388 G.EDN. DTD. 5.7.88**
- EXT.P14 COPY OF PRE-PRIMARY TEACHERS TRAIING COURSE CERTIFICATE NO. 4046 DTD. 29.5.98 OF THE 5TH RESPONDENT.**
- EXT.P15 COPY OF THE LIST OF P.P.T.I**

CONTD .. 2..

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EXT.P16 COPY OF THE QUERY DTD. 12.12.12 OF THE PETITIONER.

EXT.P17 COPY OF REPLY NO. A 1-10089-12 DTD. 24.12.12 OF THE
SECRETARY, PURAKKAD GRAMA PANCHAYATH

RESPONDENT(S)' EXHIBITS

ANNEXURE R2(A) COPY OF THE NOTICE DTD. 18.6.12

ANNEXURE R2(B) COPY OF THE PRE-PRIMARY TEACHERS TRAINING COURSE
CERTIFICATE.

ANNEXURE R2(C) COPY OF THE MARK LIST OF THE PETITIONER's

ANNEXURE R2(D) COPY OF THE SSLC CERTIFICATE OF THE 5TH
RESPONDENT.

EXT.R5(A) COPY OF THE JUDGMENT DTD. 1.8.12 IN W.A NO.205/2011

EXT.R5(B) COPY OF THE ORDER DTD. 10.10.13 IN W.A NO.205/2011 OF
THIS HON'BLE COURT

EXT.R5(C) COPY OF THE EXTRACT ORDER NO.A5/10443/2014 DTD.
30.8.14

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.18101 of 2015 - K

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Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the respondents 2 to 4 are not complying with the award passed by the Lok Adalat constituted by the District Legal Services Authority, Alappuzha and Taluk Legal Services Committee, Ambalappuzha.

2. The brief facts leading to the said award of the Lok Adalat are that the petitioner was appointed as a Pre-Primary Teacher in the academic year 2004-05 in the Pre-Primary Section of the 2nd respondent school. The Pre-Primary Section was closed down at the end of the academic year 2006-07. The petitioner was hence thrown out and it is the submission that when the same was re-opened, in the academic year 2012-13; the petitioner was not aware of the same.

3. In any event, immediately on the re-opening of the school on 20.06.2012, the petitioner filed a representation before the Headmistress contending that she, an earlier appointee is entitled to be considered to the post of Pre-Primary Teacher. The representation was on 24.07.2012. Admittedly, the appointment was to be on a temporary basis. The petitioner had been before various authorities and eventually the petitioner approached the Taluk Legal Services Committee, Ambalappuzha, with a pre-litigation petition, which was referred to the Lok Adalat. Before the Lok Adalat, the President of the Parent Teachers Association(P.T.A), Headmistress and the Secretary of the Local Self Government Institutions as also the A.E.O appeared. The Headmistress, the Secretary of the Panchayath as also the representative of the A.E.O endorsed the award along with the petitioner. The award reads thus:-

Parties agree to conduct a fresh interview for the post of Pre-Primary Teacher in Government L.P.S Thottappally for the academic year commencing from June 2015 and by publication of proper notice as per rules.

Petitioner will be permitted to participate in the said interview.

Hence the petitioner had a claim for consideration atleast with the commencement of the academic year 2015-16. However no selection was conducted in pursuance to and in compliance with the award of the Lok Adalat. The petitioner claims that such a selection has to be conducted.

4. The learned Government Pleader however raises a contention that there could not have been any appointment made to the 2nd respondent school since even by Ext.P10, the post of one Teacher and one Ayah is available only in units where there are 30 children and it is also clarified in paragraph 6 that no primary schools will be allowed to be opened in the State without prior approval of the Government. Hence there could not have been any fresh selection conducted especially since on facts, it is submitted that the 2nd respondent school has only 25 children in the Pre-Primary Section. It was only due to that circumstance the incumbent, the 5th respondent was continued.

5. In fact, it is to be noticed that the Government Order No. G.O(MS) No. 385/2012/G.Edn. dated 07.12.2013 produced at Ext.P10 can only be applied prospectively. The 5th respondent was appointed on 20.06.2012, at the commencement of the academic year. Hence, Pre-Primary Section in the 2nd respondent school cannot be said to be a new one. As things stand, it has been brought on record that the 5th respondent does not have the qualification as prescribed in Ext.P10. Ext.P10 Government Order specifically says that the teacher's qualification shall be a pass in SSLC and a Certificate obtained after undergoing training in the Pre-Primary Teachers Training Institution recognized by the Government. The Government is entitled to fix such qualifications since as per the Government Order, following the judgment of this Court, in a writ appeal produced at Exts.R5(a) and (b) the Government is paying the remuneration of Rs.5,000/- per month to all Pre-Primary Teachers in the schools attached to the Government schools run

by the P.T.A.

6. The 5th respondent does not have the qualification since admittedly the training she underwent is not under a recognised institution. The 5th respondent's certificate is produced at Annexure R2(b), which is not a Government recognised institution and the registration with the Government is only with respect to the registration as a Society. Even the 5th respondent admits that the institution in which she underwent training does not have Government recognition. The contention however is that many persons continuing in the Pre-Primary Section do not have the recognition and that those who are continued as on the date of the writ appeal judgment was directed to be continued.

7. Directions were issued in Ext.R5(a) by a Division Bench and clarifications were made by order dated 10.10.2013, Ext.R5(b) in the very same writ appeal. The gist of the earlier judgment as noticed by the Division Bench in Ext.R5(b) is that if

there is a Pre-Primary Section in a Government School and if the Headmaster/Headmistress of that school has certified that a particular person had been working as a Pre-Primary Teacher or Ayah, as the case may be as on 01.08.2012, such person will have to be paid at the rate of Rs.5,000/- per month, if that person is a Pre-Primary Teacher. The 5th respondent obviously had been working as Pre-Primary Teacher on 01.08.2012. But however, she does not have the essential qualification as prescribed in Ext.P10 order.

8. The Division Bench reiterated with the settled position that no wisdom can be squeezed into by the executive, either by way of Government Orders or otherwise to diffuse this settled judicial order. In such circumstance, the prescription of a qualification by the Government as per Ext.P10 cannot unsettle the 5th respondent who has been continuing as a Pre-Primary Teacher on 01.08.2012, is the contention. In fact the judgment in Ext.R5(a) specifically finds that the minimum wages fixed for Pre-

Primary School Teachers in aided schools in 2010, was as much as Rs.2.500/- per month and the prescription of "Rs.5,000/- per month for a Pre-Primary School Teacher, who has S.S.L.C as educational qualification and compulsory Pre-Primary School training from Government or recognised institutions is in any way high by any standards" (sic). Hence even the Division Bench intended that the amounts should be paid only to those persons, who are qualified with the essential qualification of S.S.L.C as also the compulsory Pre-Primary school training from Government or recognised institutions.

9. In such circumstance the 5th respondent cannot be allowed to continue. The 5th respondent would not be entitled to any pay from December 2015 onwards. Respondents 2, 3 and 4 would be entitled to notify a selection properly in the notice board of the school and by other means on 01.12.2015. The said direction is passed since the restriction with respect to Ext.P10 Government Order cannot apply to the 2nd respondent school,

since the school already had a Pre-Primary Section prior to that order. Hence, de hors Ext.P10, the selection shall be conducted. The petitioner shall make an application, to avoid a further contention by the petitioner that she had not been notified of the selection, within one week from 01.12.2015. The petitioner would be entitled to make the application before the 2nd respondent, to the post of Pre-Primary Teacher and she would be considered along with any other applications filed before the 2nd respondent in pursuance to the notification. The selection shall be done in accordance with law.

The writ petition is allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/19/11/2015

// true copy //

P.A to Judge.