

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE B.P.RAY

WEDNESDAY, THE 23RD NOVEMBER 2011 / 2ND AGRAHAYANA 1933

WP(C).No. 28735 of 2005(U)

PETITIONER : -

**MANJULA VELLACHERY,
BINDU NIVAS, P.O. ULLIYERI, KOZHIKODE DISTRICT.
(TEMPORARY WORKING AS) KEDAVUR A.M.L.P.SCHOOL
(U.P.S.A), KEDAVUR.**

**BY ADVS. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER**

RESPONDENTS : -

- 1. THE ASSISTANT EDUCATIONAL OFFICER,
THAMARASSERY, KOZHIKODE DISTRICT.**
- 2. MANAGER, KEDAVUR A.M.L.P.SCHOOL,
KEDAVUR, KOZHIKODE DISTRICT.**

GOVERNMENT PLEADER SRI. T.K. SHAIJ RAJ FOR R1

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2011,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JUDGMENT

NONE APPEARS. DISMISSED FOR DEFAULT.

23.11.2011

Sd/- B.P.RAY (JUDGE)

TRUE COPY

P.A. TO JUDGE

DMR/-

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.28735 of 2005

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Dated this the 12th day of November, 2015

JUDGMENT

This writ petition is filed challenging Ext.P6 order insofar as it denies the approval to the appointment of the petitioner as UPSA w.e.f the first date of appointment i.e. 27.11.2003 despite the directions issued by this Court.

2. In the counter affidavit filed by the first respondent, it was contended as follows:

The appointment of the petitioner was not approved by the first respondent since the third respondent who was the legitimate claimant for the regular post was not considered the appointment authority. The third respondent filed W.P(C) No.16702 of 2004 before this Court against the appointment of the petitioner against the regular vacancy. Subsequently the first respondent rejected the appointment of the petitioner with a direction to the manager that senior claims of the

third respondent shall be considered in the first regular vacancy. Later, another regular vacancy arose in the school on 4.10.2004 due to the resignation of a regular teacher to join in Government services. The manager appointed the third respondent as regular teacher against this vacancy with effect from 6.10.2004 and the appointment was approved from the date of appointment by the first respondent as per order dated 24.6.2005. After getting the appointment, the third respondent withdrew her petition filed before this Court and this Court disposed of the petition since the prayer of the petitioner has already been carried out on 30.1.2005.

It was further stated that after approving the appointment of the third respondent from 6.10.2004 onwards, the first respondent called the third respondent and the petitioner to his office for a consensus on approving the appointment of the petitioner from the date of appointment. However, the third respondent was not willing to forfeit her seniority and argued that being the senior 51A claimant, she must be the senior regular teacher in the school. In the meantime, the petitioner filed W.P(C)

No.21318 of 2005 and this Court directed the first respondent to approve the appointment of the petitioner without delay. In order to protect the seniority and to implement the judgment, the first respondent approved the appointment of the petitioner in the original petition with effect from 7.10.2004, the next day the appointment of the third respondent was approved.

It was further stated that the first regular vacancy filled up by the manager by appointing the petitioner from 27.11.2003 was rejected for the reason that another claimant for the post raised her claim. If there are more than one claimant under Rule 51A, the order of preference shall be according to the first appointment. The third respondent was appointed and approved in the school from 4.7.2000 to 31.3.2001 and the petitioner was first appointed from 16.7.2001 to 15.9.2001. Therefore, the claim of the third respondent could not be overlooked for first regular vacancy. This Court while disposing of W.P(C) No.21318 of 2005 in its judgment directed the first respondent to approve the petitioner's appointment without further delay since the third respondent has already been appointed in another regular vacancy. The judgment has been complied

by the first respondent on 23.8.2005.

It was further stated that when the application of the petitioner was rejected from this office, she approached this Court instead of approaching the appellate authorities such as Deputy Director of Education and Director of Public Instruction. The third respondent has not withdrawn her claim for first regular vacancy. She had only withdrawn her writ petition which was filed for getting appointment. After getting appointment her prayer in the petition would not stand. The first respondent is acted only accordance with law and liable to implement the orders of this Court.

It was further stated that if the third respondent is ready to withdraw her claim for appointment from 27.11.2003, the first respondent would approve the appointment of the petitioner from 27.11.2003. After rejecting the petitioner's appointment earlier she had the statutory right to file appeal before the department and Government. In order to implement the judgment within the stipulated period, the first respondent approved the petitioner on the next day. Therefore, the controversy of the seniority was settled.

3. In the counter affidavit filed by the additional third respondent, it was contended as follows:

The writ petition is filed for not approving the appointment of the petitioner as per Ext.P1. The petitioner and the third respondent worked in the second respondent school on temporary basis for the following periods:

	Naseema	Manjula
1	04-07-2000 to 04-09-2000	16-07-2001 to 15-09-2001
2	24-06-2002 to 05-11-2002	08-06-2002 to 17-10-2002
3	10-02-2003 to 12-04-2003	01-11-2003 onwards
4	06-10-2004 onwards	

It was further stated that the appointment of the third respondent on temporary basis as mentioned in Sl. Nos.1, 2, and 3 were approved by the Educational Authority and she received salary also. The petitioner was appointed in a permanent vacancy in the school w.e.f 1.11.2003. This is overlooking the claim of the third respondent under Chapter XIVA Rule 51 A of KER. When this respondent came to know about the appointment violating her claim, she filed a representation to the educational authorities which is produced as Ext.R3(a). After

submitting Ext.R3(a), the second respondent sent a letter to her informing that she is a Rule 51A claimant. The date of the letter was shown as 26.2.2004. However the postal seal would show that it was sent only on 9.3.2003. Copy of the said letter is produced as Ext.R3(b). Immediately on receiving Ext.R3(b), the third respondent sent a letter to the manager saying that she is ready to join in the school. Copy of the letter is produced as Ext.R3(c). The manager returned the letter sent in the school address saying that he is not in station. But, the letter sent in his residential address was accepted by him.. However, the manager refused to appoint the third respondent. From this it is clear that the manager is trying to avoid the petitioner by sending a letter giving a prior date. Therefore, the third respondent again submitted Ext.R3(d) representation before the first respondent dated 10.3.2004. Since the third respondent has not obtained appointment, she filed W.P(C) No.16702 of 2004 before this Court. When the writ petition was pending, the third respondent got appointment w.e.f 6.10.2004. However, her claim under Rule 51A was not considered, in the light of her temporary appointment from 4.7.2000 to 4.9.2000. Therefore, the claim of the third respondent under Rule 51A

is not withdrawn because she would lose seniority. The writ petition was withdrawn as evidenced by Ext.P3 only because the appointment was received. That does not mean that the third respondent relinquished her seniority and 51A claim. Therefore, Ext.P4 is not a relinquishment of her 51A claim. She is entitled to the seniority above the petitioner and that she is also entitled to the appointment with effect from the date on which the regular vacancy occurred in the school. Hence the stand of the first respondent is correct.

It was further stated that after Ext.P5 judgment, the first respondent has considered all the aspects and passed Ext.P6 order which is perfectly legal and there is nothing to interfere in it. Therefore, they prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. The petitioner is an aided school teacher. The dispute is between the petitioner and the third respondent for the post of LPSA which arose on 27.11.2003. The service details of the petitioner and the third respondent as could be seen from Ext.P6 are as follows:

Manujla Vellacherry (petitioner)	P.K.Naseema (3 rd respondent)
16.7.2001 to 15.9.2001	4.7.2000 to 4.9.2000
8.6.2002 to 17.10.2002	24.6.2002 to 5.11.2002
13.1.2003 to 12.3.2003	10.2.2003 to 12.4.2003

6. The third respondent Naseema was appointed in a Leave Without Allowance (LWA) vacancy from 4.7.2000 to 31.3.2001. However, she resigned her job in order to contest election as a candidate from Ward No.X in Kizhakkoth Grama Panchayat. She submitted the resignation letter on 4.9.2000 and the resignation came into effect from 5.9.2000. When a regular vacancy arose in the school on 27.11.2003 on account of retirement of Molykutty Thomas, the manager appointed the petitioner. This was done in recognition of her right under Rule 51A of Chapter XIVA KER.

7. Naseema, the third respondent, objected to the above appointment and approval was not granted. Thereafter Naseema had filed a writ petition before this Court as W.P(C) No.16702 of 2004 for a direction to the respondents to appoint the petitioner being the

seniormost claimant under Rule 51A to the permanent post of L.P school teacher which fell on 1.11.2003. The petitioner was the second respondent in that writ petition. In that writ petition, the case of the third respondent that she is the seniormost claim and the appointment was made overlooking her seniority. The above writ petition was dismissed as infructuous.

8. The third respondent has filed a memo to the effect that aforesaid writ petition was filed to appoint her in recognition of her claim under Rule 51A of KER and that after the filing of the writ petition, she was appointed in the above post. She further stated that the writ petition had become infructuous. Thus, the writ petition was dismissed as infructuous by Ext.P3 order by this Court on 20.1.2005.

9. The third respondent was appointed as LPSA w.e.f 6.10.2004 and it was approved w.e.f 6.10.2004 as evident from Ext.P2. However, the petitioner's appointment was not approved. The learned counsel for the petitioner would point out that though the

appointment of the third respondent was subsequent to the petitioner's appointment, the appointment of the third respondent was given approval. Therefore, the petitioner approached the AEO with a request which was rejected by Ext.P4 on the ground that the claim of the third respondent is still subsisting. Against that, the petitioner approached this Court and this Court as per Ext.P5 directed the AEO to consider the approval of the petitioner. This Court directed the petitioner also to inform the AEO that Naseema is no more a Rule 51A claimant as she was already working in the school.

10. The grievance of the petitioner is that in spite of the direction from this Court, the AEO has issued Ext.P6 rejecting the approval of petitioner's appointment w.e.f 27.11.2003. The stand taken by the AEO is that the right of the third respondent is still subsisting and the petitioner can be given approval subsequent to the appointment of Naseema.

11. It is crucial to note that the third respondent though worked

from 4.7.2000 to 5.9.2000 she has resigned from the post. As per Rule 54 of Chapter XIVA and Rule 62 of XIVC, the third respondent is not entitled to raise any claim by virtue of the above appointment. The resignation entails forfeiture of past service and she cannot take advantage of the above service for any purpose. That means, once resignation is submitted, the service rendered is not a service at all. Therefore, all her claims based on the service from 4.7.2000 to 5.9.2000 are without any legal basis and this was the reason for accepting the subsequent appointment offered in Ext.P2. This was also the reason for relinquishing all her claims as per Ext.P3 judgment. Therefore, as rightly pointed out by the learned counsel for the petitioner, the first respondent has gone wrong in upholding the seniority claims of the third respondent.

12. It is evident that as the previous service of the third respondent stands forfeited, the petitioner is the seniormost claimant under Rule 51A in the school. She was appointed against one regular

vacancy created on retirement with effect from 27.11.2003. The AEO cannot arbitrarily grant approval w.e.f 7.10.2004 which date does not relate to any vacancy or any post. Though the learned counsel for the third respondent placed reliance on the temporary appointment from 4.7.2000 to 4.9.2000 it is not explained that how this period could be reckoned for any purpose as she had resigned and the above service was forfeited. By the dismissal of W.P(C) No.16702 of 2004 claiming appointment w.e.f 27.11.2003, all her claims with regard to the aforesaid vacancy is lost and she has not challenged the appointment of the petitioner in that writ petition.

13. Therefore, on a consideration of the materials now placed on record, this Court is of the view that the petitioner is entitled to the reliefs prayed for.

In the result, the writ petition is allowed. Ext.P6 order is quashed. The first respondent is directed to approve the appointment of the petitioner w.e.f 27.11.2003 and to disburse the pay and

allowances due to her, within a period of one month from the date of receipt of a copy of this judgment.

sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj

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P.A to Judge