

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 22344 of 2012 (P)

PETITIONER(S) :

**K.P.BINDU, AGED 37 YEARS,
WIFE OF SURESHAN, NARAYANALAYAM,
ANJARAKANDI.P.O, KANNUR DISTRICT, H.S.A (MALAYALAM),
MAMBRAM HIGHER SECONDARY SCHOOL, KANNUR DISTRICT.**

**BY ADVS.SRI.M.RAMESH CHANDER
SRI.ANEESH JOSEPH**

RESPONDENT(S) :

- 1. THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY- 670 101.**
- 2. THE MANAGER,
MAMBRAM HIGHER SECONDARY SCHOOL, MAMBRAM.P.O,
KANNUR DISTRICT- 670 741.**
- 3. THE DEPUTY HEADMISTRESS,
MAMBRAM HIGHER SECONDARY SCHOOL, MAMBRAM.P.O,
KANNUR DISTRICT- 670 741.**
- 4. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR - 670 001.**

**R2 BY ADV. SRI.P.M.PAREETH
R1 & R4 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-03-2015, THE COURT ON 27-03-2015 DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.13816/2003
DATED 09/12/2009.**
- EXHIBIT-P2: TRUE COPY OF THE JUDGMENT IN W.A.NO.799/2010
DATED 02/06/2010.**
- EXHIBIT-P3: TRUE COPY OF THE ORDER NO.B1/44/2010 DATED 06/10/2010
ISSUED BY THE D.E.O**
- EXHIBIT-P4: TRUE COPY OF THE PETITION SUBMITTED BEFORE
THE HEADMASTER DATED 10/11/2010.**
- EXHIBIT-P5: TRUE COPY OF THE PETITION SUBMITTED BEFORE THE D.E.O
DATED 15/11/2010.**
- EXHIBIT-P6: TRUE COPY OF THE ORDER NO. K.DIS/B1/9984/2010
DATED 03/11/2010 OF THE D.E.O.**
- EXHIBIT-P7: TRUE COPY OF THE GOVERNMENT ORDER DATED 29/06/2011.**
- EXHIBIT-P8: TRUE COPY OF THE INTERIM ORDER IN W.P(C).NO.36397/2010
DATED 07/12/2010.**
- EXHIBIT-P9: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.36397/2010
DATED 23/11/2011.**
- EXHIBIT-P10: TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT
DATED 29/11/2011.**
- EXHIBIT-P11: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.32173/2011
DATED 06/12/2011.**
- EXHIBIT-P12: TRUE COPY OF THE ORDER NO. B1/10497/11/K.DIS (I)
DATED 31/01/2012 ISSUED BY THE 1ST RESPONDENT.**
- EXHIBIT-P13: TRUE COPY OF THE NOTES OF ARGUMENT.**
- EXHIBIT-P14: TRUE COPY OF THE ORDER DATED 07/07/2012.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22344 of 2012

Dated this the 27th day of March, 2015

J U D G M E N T

The petitioner, whose appointment as High School Assistant was not approved by the educational authorities, has come up before this Court seeking the following reliefs;

- i) issue a writ of certiorari or any other appropriate writ, order or direction calling for the originals relating to Ext.P14 and quash the same.
- ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 4th respondent to rehear the appeal filed by the petitioner.
- iii) Declare that the petitioner is entitled to be appointed forthwith under 1:40 ratio in the 3rd respondent school.
- iv) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd respondent to appoint the petitioner in the vacancy consequent to the promotion of Sri.C.N.Rajesh, H.S.A. (Malayalam) in the regular vacancy under 1:40 ratio."

2. The petitioner was appointed as HSA (Malayalam) by the Manager. As her appointment was not approved, she approached this Court filing OP

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No.13816/2003, in which this Court directed the District Educational Officer to approve the appointment from 2000 onwards. Thereafter, an appeal has been filed by the manager before the Division Bench against the judgment in OP No.13816/2003, which was dismissed. As the manager did not comply with the judgment, the petitioner again approached this Court filing CO(C) No.440/2010. The District Educational Officer then approved the appointment of the petitioner with effect from 20.08.2000 by order dated 06.10.2000.

3. The petitioner alleges that she, who was allowed to join in the school from 18.10.2010, was not allowed to sign the attendance register of the school from 09.11.2010 on the direction of the manager stating the reason that the District Educational Officer has passed an order rejecting the approval of the appointment of the petitioner. As against the rejection, the petitioner approached this Court; and as against Ext.P7 Government Order, the manager approached this Court. As per the interim order, the petitioner was allowed to continue; and

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this Court disposed of all the cases as per Ext.P9 judgment dated 23.11.2011.

4. Thereupon, the petitioner, the 3rd respondent and other affected parties were heard by the 1st respondent. The petitioner alleges that even though it was found that the petitioner is senior to a rival claimant, the 1st respondent has held that the petitioner need be appointed in the next arising vacancy only after absorption of senior hands in regular vacancy under 1:45 ratio. Challenging Ext.P12 decision of the 1st respondent, the petitioner again approached this Court with WP(C) No.6302/2012, which was disposed of by this Court directing the 4th respondent to hear necessary parties and to dispose of appeal within three months.

5. Accordingly, a hearing was conducted on 23.05.2012 by one Valsalakumari. A note of argument was also furnished, wherein emphasis was placed on GO No.191/2010/GE dated 22.09.2010 and GO(P) No.165/11/G.Edn. dated 03.09.2011, which states that for the academic year 2011-12 also, staff fixation order for

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the year 2010-2011 would be applicable and fixed the sanctioned posts in each school. The benefit of 1:40 was made applicable for academic year 2011-12 also. Thereafter, the petitioner received Ext.P14 order dated 07.07.2012 on 09.09.2012, which shows that the order has been issued by one M.Shylaja, Administrative Assistant Full Additional Charge of Deputy Director of Education, Kannur. The same conclusion as in Ext.P12 order has been made in Ext.P14 order. The petitioner alleges that none of the contentions especially with regard to the impact of GO No.191/2010/GE dated 22.09.2010 and GO(P) No.165/11/G.Edn. dated 03.09.2011 have been considered by the successor to the office of the 4th respondent while issuing Ext.P14 order.

6. In the counter affidavit filed by the 4th respondent, it was contended that the petitioner could not be accommodated to the post of HSA (Malayalam) with effect from 18.10.2010 since two senior hands have been temporarily accommodated therein under the ratio of 1:40. They contended that the petitioner sought regular

appointment against the vacancy arose due to the death of Smt.E.V.Sathi, HSA (Malayalam) on 21.03.2011, which is a regular and established vacancy. Two senior hands, who are continuing under the reduced ratio of 1:40 are awaiting absorption to the regular post of HSA (Malayalam). It was pointed out that as per the existing rules, if any regular vacancy arose due to death, resignation, retirement and promotion to any such cause, such vacancy shall be first utilized to accommodate the senior hands; and hence, under the existing rules, the petitioner could not be accommodated against the said vacancy. As far as the plea of the petitioner regarding the various aspects with respect to the academic year 2011-12 is considered, it is pointed out that as per GO(P) No.199/2011/G.Edn. dated 01.10.2011 for the academic year 2011-12, the staff fixation orders of 2010-11 would be applicable and would be fixed as the sanctioned posts in each school. Therefore, according to the 4th respondent, there is no relevance for the fixation of staff strength for the year 2011-12 and the staff strength as

fixed during 2010-11 would be followed during the subsequent years also.

7. In the counter affidavit filed by the 2nd respondent, it was contended that by Ext.P14, the Government has ordered to approve the appointment of the petitioner as HSA (Malayalam) being 51A senior claimant against the next arising vacancy after absorbing senior hands working under 1:40 ratio if she is otherwise eligible. According to the 2nd respondent, there is no vacancy to accommodate the petitioner. The two senior hands are still continuing under 1:40 ratio, which means, in order to accommodate the petitioner, three vacancies have to arise. According to the 2nd respondent, the contention of the petitioner that she must be accommodated under 1:40 ratio is unsustainable since she did not have approved service in the previous year; and the further contention that the staff fixation for 2010-11 should continue in 2011-2012 also, is untenable since the teachers' package has already been set aside by this Court in the judgment dated 15.01.2015 in WP(C)

No.30107/2013 & connected cases. Therefore, the 2nd respondent has taken the stand that there is no merit in the writ petition and prayed for a dismissal of the writ petition.

8. Arguments have been heard.

9. The learned counsel for the petitioner would argue that as per staff fixation order for the year 2010-11, there are only 12 posts of HSA (Malayalam). Thereupon, the Government had extended the benefit of 1:40 as per GO No.191/2010/GE dated 22.09.2010; and by extending the benefit, two more teachers were accommodated. The petitioner is the 15th person in the rolls. It was argued that due to the death of Smt.E.V.Sathi, HSA (Malayalam), there arose a vacancy in HSA (Malayalam). It was further argued that then there would be a vacancy consequent to the occupation of permanent post by senior most teacher enjoying the benefit under 1:40 ratio. The above referred vacancy should be utilized to accommodate the petitioner; it was argued.

10. The learned counsel for the petitioner heavily

relied on Clause B of GO No.199/11/Gen dated 01.10.2011. However, the said GO has been struck down by this Court as per judgment dated 15.01.2015 in WP(C) No.30107/2013 & connected cases. By Ext.P14, the Government has ordered to approve the appointment of the petitioner as HSA (Malayalam) being a 51A senior claimant against the next arising vacancy after absorbing senior hands working under 1:40 ratio if she is otherwise eligible.

11. The 2nd respondent points out that there was no vacancy to accommodate the petitioner and two senior hands are still continuing under 1:40 ratio. Therefore, to accommodate the petitioner, three more vacancies have to arise.

12. As rightly pointed out by the learned counsel for the 2nd respondent, the petitioner cannot be accommodated under 1:40 ratio as she did not have approved service during the previous year. In the counter affidavit filed by the 4th respondent also it is stated that two HSAs (Malayalam), namely,

Sri.C.N.Rajesh and Sri.K.P.Sasidharan, are continuing in service under the benefit of 1:40 ratio. Therefore, required vacancies arising due to death, retirement, resignation or promotion of HSA (Malayalam) on or after 15.07.2010 should be utilized first to absorb the senior hands, who are continuing in service under 1:40 ratio based upon their seniority. It was in these circumstances, the DEO has directed that the manager will appoint the petitioner as HSA (Malayalam) in the next arising vacancy only after absorption of the senior hands, namely, Sri.C.N.Rajesh and Sri.K.P.Sasidharan.

On a consideration of the materials now placed on record, this Court is of the view that the petitioner can be accommodated only if three more vacancies arise in the school.

Therefore, the writ petition fails and accordingly, dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-