

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 22937 of 2010 (N)

PETITIONER(S):

**FR.N.C.JOY, RETIRED HEAD MASTER, ULANADU,
ST.JOHN'S UPPER PRIMARY SCHOOL, ULANADU,
PATHANAMTHITTA DISTRICT, (THANUVELIL PUTHENPURA,
THUMPAMON, THAZHOM P.O., PATHANAMTHITTA DISTRICT)**

BY ADV. SRI.P.HARIDAS

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**
- 2. DEPUTY DIRECTOR OF EDUCATION,
THIRUVALLA, PATHANAMTHITTA DISTRICT.**
- 3. ASSISTANT EDUCATIONAL OFFICER,
ARANMULA.**

BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 22937 of 2010 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: A TRUE COPY OF THE REPRESENTATION DTD.30.1.1997 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P2: A TRUE COPY OF THE ORDER DTD.118.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P3: A TRUE COPY OF THE LETTER DTD.13.5.2002 FORWARDED BY THE SECRETARY TO GOVERNMENT, KERALA STATE LEGISLATURE.

EXT.P4: A TRUE COPY OF THE G.O.(RT) NO.1739/07/G EDN DTD.20.4.2007 ISSUED BY THE 1ST RESPONDENT.

EXT.P5: A TRUE COPY OF THE REPRESENTATION DTD.2.6.2007 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE CHIEF MINISTER OF KERALA.

EXT.P6: TRUE COPY OF THE RELEVANT PAGES OF SERVICE BOOK OF THE PETITIONER.

EXT.P7: TRUE COPY OF THE OFFICIAL MEMORANDUM OF FIXATION SELECTION OF ST.JOHN'S UPS, ULLANADU DTD.6.11.1961.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K.ABDUL REHIM,J.

WP(C).NO. 22937 of 2010

Dated this the 4th day of February, 2015

JUDGMENT

The petitioner was appointed as a Lower Primary School Teacher (LPSA) at St. John's Malankara Syrian Catholic School, Ullanadu, on 9.6.1958. At the time of appointment he was holding qualification of Pre University and TTC. Subsequently he acquired Graduation in B.A. (Economics) during 1964. While continuing as LPSA the petitioner was selected for B.Ed course and acquired B.Ed qualification. Thereafter on 1.7.1967 he was transferred as Upper Primary School Assistant (UPSA) at Malankara Syrian Seminary High School (MSS High School), Thazhakkara, Mavelikkara. On 22.9.1967, considering his qualification of B.Ed degree the petitioner was promoted as High School Assistant (HSA) in the same school. Thereafter he was transferred as Headmaster to the St. John's UP School Ullanad with effect from 3.8.1970. He continued as such till his retirement on 30.4.1994.

2. While in service, the petitioner was allowed, Higher Grade, Senior Grade and Selection Grade in the post of HSA, counting his service as Primary School Assistant. But an audit objection was raised with respect to the Selection Grade granted on 1.9.1988 assuming completion of 30 years by reckoning the service as LPSA from 9.6.1958 onwards. The objection was that, service of the petitioner as HSA from the date of promotion (22.9.1967) alone can be reckoned for the purpose of granting Higher Grades. The Selection Grade granted by reckoning service of LPSA together with service of HSA was irregular, is the objection. Even though the petitioner challenged the audit objection before the Government and subsequently in a writ petition before this court filed as OP.No.17009/1996, he was unsuccessful. On 3.8.1970 when the petitioner was posted as Headmaster of the St. John's UP School Ullanad, there was no separate scale of pay fixed with respect to the post of Headmaster and only an additional allowance was payable. But a separate scale of pay for the post of Headmaster was introduced from 1.6.1973 onwards. Therefore the petitioner claimed that his pay ought to have been fixed from the said date

onwards at the scale of pay applicable to the post of Headmaster in the UP School. On that basis he claimed that different grades in the cadre of Headmaster should be granted to him by reckoning his service as LPSA. In this regard the petitioner submitted a detailed representation before the 1st respondent as per Ext.P1. But the request was declined through Ext.P2 order observing that, the posting of the petitioner as Headmaster with effect from 3.8.1970 was only a transfer appointment and it was not a promotion given to the post of Headmaster in UP School, based on seniority gained as a Primary School Assistant. It is pointed out that, as per GO(P).97/73/Edn., dt. 22.6.1973 it was clarified that those Primary School Headmasters who were appointed from the cadre of Graduate Teachers (HSA's) are entitled only for the salary of HSA in the relevant grade along with supervision allowance. Therefore it was held that the petitioner is entitled only for the scale of pay applicable to HSA along with the supervision allowances. Since the pay at the rate applicable to HSA along with eligible grade has already been granted to the petitioner, the claim made by the petitioner for salary attached to the post of Headmaster of Primary School was

declined. A further complaint raised by the petitioner in this regard before the 'Petitions Committee' of the Kerala Legislature, was also rejected through Ext. P3 order.

3. The petitioner thereupon approached this court by filing OP.No.24337/2002. The petitioner placed reliance on a decision of this court reported in **Annet D'Cunha vs. State of Kerala (2014 (1) KLT 161)**. It is held that the amendment effected to Rule (1) of Chapter XXVI of KER has got only prospective effect and those who were promoted to the post of Headmaster before the amendment would be governed by the Rule which was prevailing till the date of the amendment. Based on the said decision it is contended that the petitioner being promoted as Headmaster on 3.8.1970, before the amendment, he is entitled to the scale of pay applicable to the post of Headmaster, without insisting on 15 years teaching service. In the light of the above said decision this court disposed of OP.No.24337/2002 by quashing Ext.P2 and by directing reconsideration of the matter by the Government, in the light of the decision in Annet D'Cunha's case (supra). But the Government have again rejected the claim after reconsideration, as per Ext.P4 order. The petitioner is

challenging Ext.P4 in this writ petition.

4. In Ext.P4 the Government found that the decision in **Annet D'Cunha's** case has no application to the case of the petitioner because the petitioner was not a qualified teacher promoted to the post of Primary School Headmaster from the feeder category of LPSA or UPSA. But it was only a transfer appointment of HSA as a Primary School Headmaster. The Government found that in **Annet D'Cunha's** case this court was considering only the validity of an amendment brought into Rule (1) of Chapter XXVI, insisting upon 15 years service as teacher for making the LPSA/UPSAs eligible for the scale of pay attached to the post of Headmaster on promotion to the cadre of Primary School Headmaster. This court, eventhough upheld the validity of the amendment, holding that those teachers who were promoted before 8.9.1988 (the date of amendment) had acquired with a vested right to receive the salary and allowances of the Primary School Headmasters and they will be eligible for the scale of pay of Headmaster. But the Government found that the petitioner was not drawing pay and allowances in the scale applicable to Primary School Headmasters prior to the date of

amendment on 8.9.1988. It is found that the dictum contained in **Annet D'Cunha's** case is not applicable as the question related to completion of 15 years service has no relevance with respect to the grievance expressed by the petitioner. The Government specifically found that, as per the orders existed as on the date of appointment of the petitioner as Headmaster of the Primary school, he being an HSA, was eligible only to the pay and allowances attached to the post of HSA and not the scale of pay attached to the post of Primary School Headmasters. It was found that the petitioner was not a qualified teacher duly promoted as Primary School Headmaster and therefore he cannot claim the scale of pay attached to the Headmaster of Primary School, which was newly introduced with effect from 1.7.1973. It is found that all service benefits admissible to the post of HSA was already given to the petitioner and he is not eligible for pay fixation as Primary School Headmaster nor for granting Selection Grade by reckoning the Primary School Service in the scale of pay of Headmaster. Hence the claim was found as inadmissible and rejected.

5. Contention of the petitioner is that the factual findings

contained in Ext.P4 is not true and correct. It was argued that the appointment of the petitioner as Headmaster at St. John's Upper Primary School , Ullanadu with effect from 3.8.1970, was made only by way of promotion on considering his service as LPSA/UPSA and on considering his acquisition of B.Ed qualification. Therefore the rejection of claim with respect to the entitlement of the pay scale attached to the post of Headmaster of the Primary School and also the denial of the claim for different grades by reckoning service as Primary School Assistant, is illegal. In support of the above said contentions the petitioner had produced copy of his Service Book as Ext. P6. Referring to Ext.P6 learned counsel for the petitioner had pointed out that, he was never appointed on a permanent basis as HSA against any substantive vacancy. On the other hand, he was officiating as HSA on 22.9.1967 onwards only on a temporary basis. In this regard attention of this court was drawn to the entries contained in page 16 to 18 of Ext.P6 Service Book. Against the column as to whether the incumbent is substantive or acting and as to whether the incumbent is a permanent or temporary, it is specifically noted that he was continuing as HSA at M.S.S High

School, Thazhakkara, only on temporary basis or only as officiating. It is further pointed out that entries in the Service Book with respect to service as Headmaster of St. John's UP School, Ullanadu, it is specifically endorsed that the posting is substantive. Hence it is contended that all along the petitioner was continuing in the service only as LPSA/UPSA and his posting as Headmaster of St. John's UP School, Ullanadu is by way of promotion. On the other hand, service as HSA in M.S.S. High School, Thazhakkara was only a temporary posting given by the same management in order to fill up the dearth of qualified HSA's, is the contention.

6. In the counter affidavit filed by the 3rd respondent it is categorically mentioned that, the appointment of the petitioner as Headmaster at St. John's U.P School, Ullanadu was only a transfer appointment from the cadre of HSA and not a promotion effected from the cadre of LPSA/HSA, based on the seniority. Hence it is contended that the petitioner is entitled for the salary in the pay scale of HSA with eligible higher grade, which was already given to the petitioner.

7. Crucial question is as to whether the petitioner was

officiating as HSA holding charge of Headmaster in the UP School or as to whether there was any substantive posting of the petitioner as Headmaster of the UP School considering the service rendered by him as LPSA/UPSA. Contentions in this regard was mainly relying on the entries contained in Ext.P6 Service Book. But in order to decide the dispute it is necessary to have an evaluation of the relevant records maintained at the relevant time by the Educational Officer concerned. This court is of the considered opinion that, in view of the contentions raised on the factual aspects, the matter requires reconsideration by the 1st respondent with due evaluation of the relevant records and due consideration of the factual aspects, which prevailed at the time when the petitioner was appointed as Headmaster of the U.P School. Hence a remand of the matter to the 1st respondent for a fresh consideration of the issue will suffice to achieve the ends of justice.

8. Therefore the writ petition is allowed and Ext.P4 is hereby quashed. The 1st respondent is directed to reconsider the matter in the light of the observations contained hereinabove, and to decide the issue afresh, after affording opportunity of

personal hearing to the petitioner and the relevant authorities concerned. A fresh decision in this regard shall be taken at the earliest possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

Pmn/

C.K.ABDUL REHIM, JUDGE