

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 19922 of 2014 (M)

PETITIONER(S)/PETITIONER:

**P.M SEEJA
W/O.SHIJU, RESIDING AT RAMA NILAYAM
KADAMBOOR(NOW RESDIING AT KUDILIL, P.O.VELIYAMBUM
WAYANAD DISTRICT-673579).**

**BY ADVS.SRI.M.SAJJAD
SRI.V.RAJASEKHARAN NAIR**

RESPONDENT(S)/RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERALEDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIIONS,
JAGATHY, THIRUVANANTHAPURAM-695014.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR DISTRICT-670001.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
KANNUR SOUTH, CHAKKARAKKAL, KANNUR DISTRICT-670612.**
- 5. THE MANAGER,
KADAMBOOR NORTH AIDED UPPER PRIMARY SCHOOL, EDAKKAD
KANNUR DISTRICT-670663.**
- 6. THE HEADMASTER,
KADAMBOOR NORTH AIDED UPPER PRIMARY SCHOOL, EDAKKAD
KANNUR DISTRICT-670663.**
- 7. THE LOK AYUKTA,KESAVADASAPURAM, THIRUVANANTHAPURAM-695016
REPRESENTED BY SECRETARY.**

**R7 BY ADV. SMT.RENU. D.P., SC, LOK AYUKTA
R-R5 & 6 BY ADV. SRI.SHYAM PADMAN
R-R5 & 6 BY ADV. SRI.A.RANJITH NARAYANAN
R-R5 & 6 BY ADV. SRI.S.K.SAJU
R-R5 & 6 BY ADV. SRI.JOHN THITHEEMOS
R1-R4 BY ADV. GOVERNMENT PLEADER, SMT. M.J. RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-07-2015, ALONG WITH WPC. 14926/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 COPY OF THE LETTER OF THE PETITIONER DATED 14.1.1999
- EXT.P2 COPY OF THE ENDORSEMENT MADE BY THE ASSISTANT
EDUCATIONAL OFFICER DATED 1.2.1999
- EXT.P3 COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER
DATED 23.09.2010
- EXT.P4 COPY OF THE G.O(RT)NO.1511/2013/G.EDN.DATED 2.4.2013 OF THE
GOVERNMENT
- EXT.P5 COPY OF THE G.O.(RT)(NO.2754/2014/G.EDN.DASTED 11.7.2013 OF THE
GOVERNMENT
- EXT.P6 COPY OF THE ACTION TAKEN REPORT DATED 11.7.2014
- EXT.P7 COPY OF THE CERTIFICATE DATED 25/10/2003 (B.SC)
- EXT.P8 COPY OF THE CERTIFICATE DATED 9.8.2006(B.ED.)
- EXT.P9 COPY OF THE CERTIFICATE DATED 22.1.2003(B.ED)
- EXT.P10 COPY OF THE CERTIFICATE DATED 10-06-2013(M.ED).

RESPONDENT(S)' EXHIBITS

- EXT. R4(a) COPY OF THE LETTER DATED 10.05.2013.

// True copy //

PA to Judge

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A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). Nos. 19922 of 2014 & 14926 of 2015
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Dated this the 10th day of July, 2015

JUDGMENT

As both these writ petitions involve an inter se dispute between two teachers, who claim appointment to the post of UPSA in a school, they are taken up for consideration together and dispose by this common judgment. For the sake of convenience the reference to facts and exhibits is from WP(C) No.19922 of 2014.

2. The mother of the petitioner in WP(C) No.19922 of 2014 was a teacher in the school under the management of the 5th respondent. She died while in service on 20.1.1997. Subsequent to her death, the petitioner claimed appointment in the school in terms of Rule 51(B) of Kerala Education Rules. The claim of the petitioner was allowed by the DEO by Ext.P3 order dated 23.09.2010. Aggrieved by the appointment of the petitioner, and stating that the said appointment was done by ignoring her claim for the post in question, Smt.M.V.Latha, (the petitioner in WP(C) No.14926 of 2015) filed a revision petition challenging Ext.P3 order before the Government. By Ext.P4 order dated 02.04.2013, the Government found that Smt.M.V.Latha could be given an appointment only after the appointment of the petitioner in terms of Rule 51(B) of Kerala Education Rules. It is relevant to note that

Smt.Latha had sought for an approval of her appointment from 01.06.2009 as she had been appointed on an earlier occasion to an earlier vacancy, which was also pending approval before the educational authority. In Ext.P4, the Government also takes note of the fact that the school in question was an uneconomic school. While matters stood thus, by Ext.P5 order dated 11.07.2013, the petitioner was informed that Ext.P4 order, that was earlier passed by the Government recognizing the right of the petitioner to be appointed in terms of Rule 51(B) of Kerala Education Rules, stood cancelled. A perusal of Ext.P5 order of the Government would indicate that, pursuant to proceedings that were concluded before the Lok Ayuktha on a complaint filed by the manager of the school, it was found that the B.Ed certificate, that was produced by the petitioner, was fake. The Government took note of the fact that even in the proceedings before the Lok Ayuktha, where the petitioner was a party, the petitioner had not produced any material, despite an opportunity having been granted for the same, to rebut the stand of the educational authority, based on the letter that was received from the Controller of Examinations of Magadh University, that the B.Ed certificate produced by the petitioner had not been issued from the said University. It was under these circumstances, that Ext.P5 order was passed by the Government

cancelling its earlier order (Ext.P4). In writ petition 19922 of 2014 the petitioner impugns Ext.P5 order, inter alia, on the ground that, before passing Ext.P5 order, she was not afforded an opportunity of being heard. The petitioner would also rely on certificates showing the acquisition of other degrees by the petitioner, which according to her, would justify the appointment granted to her under Rule 51(B) of Kerala Education Rules.

3. In a counter affidavit filed by the 4th respondent, a copy of the letter received from the Controller of Examinations, Magadh University, has been produced as Ext.R4(a). It is seen from the said letter that the Magadh University has certified that the certificate produced by the petitioner was not issued from the University. It is the stand of the 4th respondent that when confronted with the said certificate at a hearing before the 4th respondent, the petitioner did not deny the contents of Ext.R4(a) letter that was issued by the Controller of Examinations, Magadh University. It is stated therefore, that on account of the acceptance by the petitioner of the contents of Ext.R4(a) letter, the petitioner cannot challenge Ext.P5 order of the Government in proceedings before this Court.

4. Counsel for the 7th respondent would support the stand taken by the 4th respondent and states that in the proceedings before the Lok Ayuktha, where the petitioner was also a party, sufficient opportunity was afforded to the petitioner to controvert the averments in the complaint and, in particular, the fact of receipt of Ext.R4(a) letter from the Controller of Examinations, Magadh University. It is submitted that, despite the opportunity extended to the petitioner, the petitioner did not come forward with any material to dislodge the suggestions in Ext.R4(a) letter that the certificate relied upon by her, was not issued by the Magadh University.

5. In Writ Petition 14926 of 2015, that is filed by Smt.M.V.Latha, the prayer is essentially for implementation of Ext.P5 order of the State Government, which is produced as Ext.P9 in the writ petition No.14926 of 2015. The stand of the petitioner in this writ petition is essentially that, inasmuch as Ext.P9 order was passed by the Government consequent to Ext.P8 order of the Lok Ayuktha, the factual aspects noticed therein had necessarily be taken into account by the Government, while considering the issue of grant of approval to an appointment made to the post of UPSA in the school.

6. I have heard Sri. M.Sajjad, the learned counsel for the petitioner in WP(C) No.19922 of 2014, Sri.C.Ajith Kumar, the learned counsel appearing for the petitioner in WP(C) No.14926 of 2015, Smt. Renu D.P., the learned Standing Counsel for Lok Ayuktha and the learned Government Pleader appearing for the official respondents in both the writ petitions.

7. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the order dated 02.04.2013 of the Government (Ext.P4 in WP(C) No.19922 of 2014) was passed approving the appointment of the petitioner therein under Rule 51(B) of the Kerala Education Rules, by placing reliance on the certificate produced by the petitioner to evidencing that she had obtained the B.Ed qualification from the Magadh University. The order dated 11.07.2014 (produced as Ext.P5 in WP(C) No.19922 of 2014 by which the earlier order dated 02.04.2013 was cancelled) was passed after finding that the B.Ed certificate produced by the petitioner was not one that was issued by the Magadh University. This order was passed after taking note of Ext.R4(a) letter, that had been issued by the Controller of Examinations, Magadh University. The findings in

the said order dated 11.07.2014, cannot therefore, be said to be illegal, inasmuch as the appointment of the petitioner in Writ Petition No.19922 of 2014 based on a fake certificate, could not have been approved by the educational authority in the State. Thus, on the merits of the order dated 11.07.2014, the said order cannot be said to be illegal in any manner. No doubt, counsel for the petitioner in Writ Petition No.19922 of 2014 would vehemently contend that the said order was passed without hearing the petitioner. While as a technical objection, the plea of violation of natural justice, may be one that the petitioner can avail, it has to be noted in this case that even at the hearing before the Lok Ayuktha or at the time of hearing before the 4th respondent, the petitioner had not chosen to produce any material to rebut the averments in Ext.R4(a) letter of the Controller of Examinations, Magadh University. In that view of the matter, there is no material produced by the petitioner to dislodge the finding that she had obtained an appointment by producing a fake certificate. Viewed in that context, therefore, the denial of an opportunity to the petitioner, prior to the passing of the order dated 11.07.2014, cannot be said to be illegal, since the said denial of opportunity did not prejudice the petitioner in any manner. I am therefore, of the view that the petitioner cannot obtain the benefit of a fake

certificate, that was produced by her before the educational authority. Resultantly, Writ Petition No.19922 of 2014 in its challenge against Ext.P5 order dated 11.07.2014 is dismissed and Writ Petition No.14926 of 2015 to the extent it seeks an implementation of the order of the State Government dated 11.07.2014, which is produced as Ext.P9 in the said writ petition, is allowed, by directing the respondents 1 to 4 in the said writ petition to implement Ext.P9 order dated 11.07.2014, within a period of two months from the date of receipt of a copy of this judgment, and grant all consequential benefits arising from an implementation of the said order. While passing consequential orders based on this judgment, the respondents shall also consider the claim of the petitioner in Writ Petition 14926/2015 for an approval of her appointment as UPSA from 01.06.2009.

The writ petitions are disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE