

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 22493 of 2013 (J)

PETITIONER :

**VEENA T.K.,
UPPER PRIMARY SCHOOL ASSISTANT
ST.STEPHEN'S HIGHER SECONDARY SCHOOL,
KEERAMPARA, KOTHAMANGALAM - 686 691.**

**BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SADEESAN**

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM - 695 014.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION, CIVIL STATION,
KAKKANAD, ERNAKULAM - 682 030.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
KOTHAMANGALAM - 686 691.**
- 5. THE MANAGER
ST.STEPHEN'S HIGHER SECONDARY SCHOOL,
KEERAMPARA, KOTHAMANGALAM - 686 691.**

R1 TO R4 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE PROMOTION ORDER DATED 4.10.2010 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.
- EXT.P-2: TRUE COPY OF THE ORDER NO.B3/6976/2010/K.DIS DATED 12.9.2011 ISSUED BY THE 4TH RESPONDENT.
- EXT.P-3: TRUE COPY OF THE APPEAL NO.35/12 DATED 7.10.2011 SUBMITTED BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P-4: TRUE COPY OF THE DECLARATION AS PER G.O(P) NO.10/10/G.EDN.
- EXT.P-5: TRUE COPY OF THE ORDER NO.V4/18168/11 DATED 23.3.2012 ISSUED BY THE 3RD RESPONDENT.
- EXT.P-6: TRUE COPY OF THE APPEAL DATED 7.4.2012 SUBMITTED BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT.
- EXT.P-7: TRUE COPY OF THE ORDER NO.EC2/31076/12/DPI/K.DIS DATED 18.8.2012 ISSUED BY THE 2ND RESPONDENT.
- EXT.P-8: TRUE COPY OF THE ORDER NO.15312/A1/2013/G.EDN DATED 26.3.2013 ISSUED BY THE 1ST RESPONDENT TO THE 5TH RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 22493 of 2013

Dated this the 18th day of February, 2015

J U D G M E N T

Exts.P2, P5, P7 and P8 orders are under challenge.

2. According to the petitioner, she, who is a claimant under Rule 43 of Chapter XIVA KER as UPSA, was promoted as HSA (NS) in an established sanctioned leave vacancy for more than one year as per Ext.P1. The petitioner points out that the approval for the said promotion, as per Ext.P1, is declined vide Exts.P2, P5, P7 and P8. The petitioner further points out that this Court in **P.K.High School** v. **State of Kerala** [2011 (4) KLT 365] declared that the right of promotion under Rule 43 would get precedence over protected teachers from schools under other educational agencies.

3. In the counter affidavit filed by the State, it was contended that the Manager of the school had executed bond/declaration as per GO dated 12.01.2010 for

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approving the appointment made by him during the period, 2006-2007 to 2009-2010; and hence, he should have appointed equal number of protected hands against the additional vacancies including long term leave vacancies from 2010-2011. According to the State, the Manager promoted the petitioner, who was working as UPSA, instead of appointing a protected hand. Therefore, the State justified their stand in issuing the impugned orders.

4. Arguments have been heard.

5. It is not in dispute that as per Rule 43 of Chapter XIVA KER, the petitioner has claim for the promotion to the post of HSA against the vacancy in the same school as evidenced by Ext.P1. This Court in **P.K High School** vs. **State of Kerala** [2011 (4) KLT 365] has observed that a promotee under Rule 43 would get precedence over protected teachers. Therefore, the reasoning showed in the impugned orders cannot be countenanced for refusing approval for Ext.P1 promotion

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to the petitioner. The statutory claim under Rule 43 Chapter XIVA KER cannot be curtailed or abridged by executive orders referred to in Exts.P2, P5, P7 and P8. Moreover, the clarifications relied on in Ext.P2 cannot have any retrospective effect so as to deny approval for promotion as per Ext.P1. Ext.P1 promotion is on 04.10.2010 to a vacancy available from 29.09.2010; and the clarification mentioned in Ext.P2 is issued by the Government only on 12.05.2011. The petitioner worked as HSA from 05.10.2010 to 31.03.2012. No other protected teachers were deployed to the school by the 4th respondent and no list of protected teachers was also furnished to the 5th respondent. Therefore, the denial of approval, as per Ext.P3, for the petitioner's promotion cannot be sustained; and the petitioner is entitled to succeed.

In the result, the writ petition is allowed.

- Exts.P2, P5, P7 and P8 are quashed.
- It is hereby declared that the promotion of the

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petitioner as HSA (NS) as per Ext.P1 is liable to be approved towards the vacancy, which arose on 29.09.2010 with all consequential benefits.

- Respondents 1 to 4 are directed to approve the promotion of the petitioner as per Ext.P1 as HSA (NS) to the vacancy, which arose on 29.09.2010, and grant her all the consequential benefits including arrears of pay.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-