

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 24355 of 2012 (T)

PETITIONER :

**SAJITHA P.,
AGED 39, ARABIC TEACHER (FT), UPSA, AUP SCHOOL
PATTERKULAM, MALAPPURAM DISTRICT
RESIDING AT PATTATH HOUSE, KUTTIPPARA, PAYYANAD POST
VIA MANJERI, MALAPPURAM DISTRICT, PIN-676122
REPRESENTED HEREIN BY HER FATHER AND
POWER OF ATTORNEY HOLDER P. ABOOBACKER
AGED 62, S/O. LATE AHAMMEDKUTTY
RESIDING AT PATTATH HOUSE, KUTTIPPARA, PAYYANAD POST
VIA. MANJERI, MALAPPURAM DISTRICT, PIN-676122.**

**BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695001.**
- 3. DEPUTY DIRECTOR OF EDUCATION
MALAPPURAM-676505.**
- 4. ASSISTANT EDUCATIONAL OFFICER
MANJERI, MALAPPURAM DISTRICT-676121.**
- 5. THE MANAGER
AUP SCHOOL, PATTERKULAM,
MALAPPURAM DISTRICT-676505.**
- 6. NUSAIBA
ARABIC TEACHER (LPSA), AUP SCHOOL, PATTERKULAM
MALAPPURAM DISTRICT-676505.**

**R1 TO R4 BY SR. GOVT. PLEADER SRI. E.M.ABDUL KHADER
R6 BY ADVS. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS :

- EXHIBIT P1. PHOTOCOPY OF ORDER DATED 15.07.1999 ISSUED BY ASSISTANT EDUCATIONAL OFFICER, MANJERI.
- EXHIBIT P2. PHOTOCOPY OF PROCEEDINGS DATED 03.08.2009 OF ASSISTANT EDUCATIONAL OFFICER, MANJERI.
- EXHIBIT P3. PHOTOCOPY OF APPEAL DATED 28.08.2009 FILED BY PETITIONER BEFORE THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.
- EXHIBIT P4. PHOTOCOPY OF APPEAL DATED 21.8.2009 FILED BY 5TH RESPONDENT BEFORE THE 3RD RESPONDENT.
- EXHIBIT P5. PHOTOCOPY OF ORDER IN WPC NO.36752/2009 DATED 8.1.2010 OF THIS HONOURABLE COURT.
- EXHIBIT P6. PHOTOCOPY OF ORDER IN WPC NO. 36752 OF 2009 DATED 23.9.2011 OF THIS HONOURABLE COURT.
- EXHIBIT P7. PHOTOCOPY OF ORDER DATED 1.11.2011 PASSED BY 2ND RESPONDENT.
- EXHIBIT P8. PHOTOCOPY OF JUDGMENT IN WPC NO.36752/2009 DATED 29.1.2012 OF THIS HONOURABLE COURT.
- EXHIBIT P9. PHOTOCOPY OF ORDER DATED 4.2.2012.
- EXHIBIT P10. PHOTOCOPY OF ORDER DATED 1.6.2012 PASSED BY 1ST RESPONDENT.
- EXHIBIT P11. TRUE COPY OF JUDGMENT DATED 21.6.2012 IN WPC NO. 13247/2012 OF THIS HONOURABLE COURT.
- EXHIBIT P12. TRUE COPY OF ORDER G.O (RT) NO.4598/12/G.EDN DATED 27.9.2012.
- EXHIBIT P13. COPY OF G.O (MS) 238/74/G.EDN DATED 30.11.1974 AND LETTER DATED 5.11.1975.
- EXHIBIT P14. COPY OF NOTIFICATION ISSUED BY KERALA PUBLIC SERVICE COMMISSION INVITING APPLICATIONS FOR THE POST OF FULL TIME JUNIOR LANGUAGE TEACHER (ARABIC) UPS.
- EXHIBIT P15. COPY OF NOTIFICATION ISSUED BY KERALA PUBLIC SERVICE COMMISSION INVITING APPLICATIONS FOR THE POST OF FULL TIME JUNIOR LANGUAGE TEACHER (ARABIC) LPS.
- EXHIBIT P16. COPY OF LETTER NO.RA(3) 21324/12/DPI DATED 22.3.2012.

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EXHIBIT P17. COPY OF REPRESENTATION DATED 29.1.2013 SUBMITTED BEFORE
THE 4TH RESPONDENT.

EXHIBIT P18. COPY OF THE LETTER DATED 31.1.2013 OF THE 4TH RESPONDENT.

EXHIBIT P19 COPY OF REPRESENTATION DATED 25/3/2015 FILED BY PETITIONER
BEFORE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.M.SHAFIQUE, J

W.P.C.No.24355 of 2012

Dated this the 11th day of November 2015

J U D G M E N T

Petitioner has approached this Court seeking to challenge Ext.P2, P5 and P12 and for a direction to respondents 1 to 5 to permit the petitioner to continue in service as an Arabic Teacher (Full Time) UPSA in AUP School, Patterkulam with all service benefits including monitory benefits.

2. The short issue involved in the writ petition is with reference to the respective claims between the petitioner as well as the 6th respondent. Petitioner was appointed as an Arabic Teacher (Full Time) UPSA in AUP School, Patterkulam as per order dated 15/07/1999. The 6th respondent was appointed in the Lower Primary Section (for short 'LP Section') prior to the aforesaid date, on 01/06/1999. On account of a staff fixation order issued by the educational authorities, one post of Arabic teacher in the LP Section was reduced. Accordingly, the petitioner, being the junior most was relieved as per Ext.P2 order dated 03/08/2009. The petitioner challenged the same inter alia contending that since the staff fixation order clearly indicated that

the post of Lower Primary School Assistant (for short 'LPSA') was in excess, the 6th respondent ought to have been retrenched. The Deputy Director of Education (DDE), confirmed the action taken by the Assistant Educational Officer (AEO). The matter was carried in revision, which resulted in Ext.P7 order dated 01/12/2011. The Director of Public Instructions reversed the orders issued by the lower authorities and observed that since the post was reduced from LPSA, the petitioner has to be retained and the 6th respondent had to be retrenched. The matter was carried in revision before the Government by the 6th respondent which resulted in Ext.P10 order in favour of the 6th respondent. The matter was challenged before this Court by filing W.P.C.No.13247/2012. The impugned order was set aside by this Court and the matter was directed to be reconsidered, which ultimately resulted in Ext.P12 order dated 27/09/2012 by which the orders passed by the AEO and DDE were upheld by the Government. It is inter alia contended by the petitioner that in so far as the teachers in the LP Section and UP Section belong to two different categories, when the fall in vacancy had occurred in LP Section, seniority has to be reckoned with reference to the post

of LPSA alone and there cannot be a common seniority list of LPSA and UPSA. When such a consideration is being made, the petitioner will be entitled to continue the post and the 6th respondent may have to be retrenched.

3. Learned counsel for the petitioner also relied upon the Full Bench decision of this Court in **Thresia.M.L. v. Preethy M.P [2014(4) KHC 822(FB)]** in which after considering the issue whether retrenchment of teachers has to be based on a combined seniority list of LPSA and UPSA, it was held by this Court in paragraph 17 as under:

“17. In our considered opinion, in the light of the language of Rule 34(b) of Chapter XIVA KER, the judgments noticed above lay down the correct principle of law that the teachers in the UP Section and the teachers in the LP Section of a school belong to two different and separate categories and that, therefore, if there is occasion for retrenchment of an UPSA or a LPSA, the seniority that is to be followed is the seniority in the respective category and not the common seniority as canvassed before us.”

Learned counsel for the petitioner submits that a similar situation had arisen in this case and therefore when both the categories

are considered differently, a separate seniority list has to be taken into consideration for retrenching the teachers as well especially when there is a fall in the post on account of staff fixation.

4. On the other hand, learned counsel appearing on behalf of the 6th respondent submits that as far as language teachers are concerned, there is only one post. Reference is made to Rule 3 of Chapter XXIII of KER which indicates that the said Rule does not make any distinction between LPSA and UPSA.

5. The learned Government Pleader supports the stand taken by the Government. It is stated that the qualification prescribed for the post of Arabic Teachers in LP and UP Sections are different. Sanctioning of post are done by counting of periods available in LP and UP Sections. 6th respondent is qualified only for the LP Section. Seniority of Arabic teachers are determined based on common seniority and when there is a reduction of post, the junior most is to be retrenched. It is also stated that the qualification mentioned for appointment and scale of pay of LPSA and UPSA are interchangeable in view of the Government order dated 08/06/2000.

6. Having regard to the aforesaid factual situation, the short question to be considered is when there is a reduction of post on account of staff fixation in regard to language teachers especially Arabic, whether a common seniority is to be considered for the purpose of retrenchment. In **Thresia.M.L.** (supra), the Full Bench was considering the question relating to seniority list of LPSAs and UPSAs. It was observed that except for the purpose indicated in Rule 34(b), UP Section and LP Section have to be categorised differently and that the combined seniority list maintained in terms of Rule 34(b) is for the limited purpose of determining position of persons eligible for promotion as Primary School Headmaster and nothing else. Of course, the situation as warranted in the present case regarding language teachers was not under consideration by the Full Bench. Therefore, an analysis of the statutory provisions is also required to be considered in the present writ petition.

7. A perusal of Chapter XXXI Rule 3(2)(iv) and Rule 4(2) would show the qualification of UPSA and LPSA respectively. It is apparent that the qualification is different and there is no dispute regarding the same even according to the Government. But, the

Government has taken a view that while considering the seniority, a common seniority list is being prepared in terms of the Government order of 2000. Reference is also required to be made to Chapter XXIII Rule 2A and Rule 6. Rule 2A is with reference to the appointment to the post of LPSA Arabic teachers and Rule 6 is with reference to the appointment to the post of UP Language Teachers including Arabic. The aforesaid provisions clearly indicate that LPSA Arabic and UPSA Arabic are different categories and Rule 6(2) of Chapter XXIII states that in UP Schools with LP Sections attached posts of Arabic teachers may be sanctioned as specified therein subject to the restriction in sub Rule (1) of Rule 2A and Rule 6C. Therefore, it is clear that the sanctioning of the post of LPSA and UPSA in LP Sections and UP Sections respectively are entirely different and depending upon various parameters as specified in the aforesaid Rules as well as qualification criteria specified under Chapter XXXI. Hence, I am of the view that both these categories are to be considered separately for the purpose of considering as to who should be retrenched from a particular post. When there is a fall in students and the staff fixation order indicating that there is a fall in post as

far as LPSA is concerned, seniority among LPSA is to be taken into account for the purpose of retrenchment.

8. Learned counsel for the 6th respondent submits that the eligibility of the 6th respondent shall be considered in future vacancies as she is entitled for protection. The claim of the 6th respondent has to be considered as and when vacancy arises.

In view of the aforesaid findings, I am of the view that the writ petition is liable to be allowed. Accordingly, the same is allowed. Exts.P2, P5 and P12 are set aside and there will be a direction to respondents 1 to 5 to permit the petitioner to continue in service as Arabic Teacher (Full Time) UPSA in AUP School, Patterkulam with all service benefits including monitory benefits. The claim of the 6th respondent shall be considered in accordance with law.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

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