

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 24953 of 2009 (L)

PETITIONER:

**SOUMYA SAMUEL
W/O.C.J.JERY, AGED 26 YEARS, HIGH SCHOOL
ASSISTANT(ENGLISH), HIGH SCHOOL, THIRUVALAYANNOOR
KALLUR, VADAKKEKAD, THRISSUR-679 562.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

- 1. THE STATE OF KERALA, REP. BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
AYYANTHOLE, THRISSUR.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
CHAVAKKAD, THRISSUR DIST.**
- 5. THE MANAGER,
HIGH SCHOOL, THIRUVALAYANNOOR, KALLUR-VADAKKEKAD
THRISSUR-679 562.**

ADDL. RESPONDENTS

**ADDL.R6 K.A. VIVEKANNADAN, B.SC, B.ED, UPSA,
THIRUVALAYANNUR HIGH SCHOOL, KALLUR POST 679 562**

**ADDL.R7 MARY JAMES, MA, B ED, UPSA
THIRUVALAYANNUR HIGH SCHOOL, KALLUR POST 679562**

**ADDL. RESPONDENT 6 AND 7 IMPLEADED VIDE ORDER DT.12.11.09 IN
I.A. NO.14030/09**

**R1 TO R4 BY GOVERNMENT PLEADER SRI. T.R. RAJESH
ADDL R7 BY ADV. SRI.BINU MATHEW**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE APPOINTMENT ORDER
- P2 : TRUE COPY OF THE STAFF FIXATION ORDER NO.D.DIS. B1/5764/06 OF DIST.EDL. OFFICER
- P3 : TRUE COPY OF THE ORDER NO.B1-8295/2006/L.DIS OF DIST. EDL. OFFICER
- P4 : TRUE COPY OF THE APPEAL OF THE MANAGER
- P5 : TRUE COPY OF THE ORDER NO.B4-6028/07/L.DIS. OF THE DEPUTY DIRECTOR
- P6 : TRUE COPY OF THE PETITION OF THE MANAGER
- P7 : TRUE COPY OF THE APPLICATION TO CONDONE THE DELAY
- P8 : TRUE COPY OF THE ORDER NO.B4-10572/08/L.DIS. OF THE DEPUTY DIRECTOR
- P9 : TRUE COPY OF THE ORDER NO.B5-759/07 OF -DO-
- P10 : TRUE COPY OF THE ORDER NO.EM(6)/31038/08/DPI K.DIS OF THE 2ND RESPONDENT
- P11 : TRUE COPY OF THE REVISION FILED BEFORE THE GOVT.
- P12 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) 30786/2008-M
- P13 : TRUE COPY OF THE HEARING NOTICE
- P14 : TRUE COPY OF THE G.O.(RT) NO.3094/2009/G.EDN. OF THE GOVERNMENT
- P15 : TRUE COPY OF THE CIRCULAR NO.7/J2/2005/G.EDN OF THE GOVERNMENT
- P16 : TRUE COPY OF THE DECISION REPORTED IN I.L.R. 2012(4) KER.420 DATED 3.11.2011

RESPONDENT'S EXHIBITS

- R7(A) : COPY OF STAFF LIST

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 24953 of 2009 (L)

Dated this the 1st day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner's approval has been rejected for the reasons stated in Ext.P3. The petitioner, admittedly, was appointed to the vacancy of H.S.A. (English), which arose on the retirement of an H.S.A. (Maths). The said appointment could have been made considering the phased implementation of Government Order 11/2002 dated 7.1.2002.

2. The issue in the present writ petition is that while the petitioner was appointed, there was a ban on regular appointments to vacancies arising in the aided schools. Subsequently, the ban was lifted as per Government Order 10/2010 dated 12.1.2010. As per the said Government Order, the appointments made by Managers to additional divisional vacancies during the ban period were permitted

to be approved, but, however, subject to the condition that the Manager executes an agreement with the Government to appoint equal number of protected hands in the subsequent vacancies. Admittedly, the Manager did not execute such an agreement. However, the learned counsel for the petitioner relies on the judgment in W.P.(C) No.16337/2009 dated 09.07.2010 as also the judgment in W.P.(C) No.15998/2015 dated 28.7.2015 in which, according to the petitioner, similarly placed teachers were granted approval on deeming the Manager to have executed such agreement.

3. W.P.(C) No.16337/2009 was filed by two teachers who were aggrieved by the non-approval of their appointments, and were appointed as U.P.S.As in the same period. Their approval were also declined only for reason of the Manager having not executed an agreement. Therein, there was an interim order passed on admission of the writ petition directing the Manager to execute an agreement as

provided in the Government Order of 2010. This Court, while disposing of the Writ Petition by judgment dated 9.7.2010, found that despite notice, the concerned Manager had not appeared and in such circumstance the interim order should be deemed to have been complied with. The Government was directed to treat the Manager as having executed an agreement and the question of approval was directed to be considered.

4. W.P.(C) No.15998/2015 was with respect to the appointment of a teacher to the leave vacancy in H.S.A. (Natural Science) in the 5th respondent School. The said appointment was on daily wage basis and not approved by the educational authority inasmuch as there was a ban against appointment. The petitioner therein was subsequently appointed against an anticipated additional divisional vacancy of UPSA with effect from 04.06.2007. The appointment of the petitioner therein was also not approved for the very same reason of the Manager not

having executed an agreement under the Government Order 10/2010. This Court noticed the deeming declaration made in the earlier judgment and since the Manager is deemed to have executed such agreement for appointment of protected teachers, the educational authorities were directed to approve the appointment as H.S.A. on daily wage basis and from 4.6.2007 in the post of U.P.S.A. on regular basis.

5. This Court, however, is unable to find any similarity in the case of the petitioner and those referred to above. The petitioners in both the above writ petitions were regularly appointed as U.P.S.As and the appointment, as H.S.A. in one of the writ petitions, was in a leave vacancy. In the present case, the petitioner was appointed in the retirement vacancy of an H.S.A. (Maths). Though the creation of a post of H.S.A. (English) in the retirement vacancy would have been proper, the compelling factor in the present case is that there was a protected teacher, of

the same school, deployed in a Government School. The Manager ought to have re-called the protected teacher and appointed her in the resultant vacancy, especially, when there was a ban in force, is the contention of the Government.

6. The facts, as stated by either side, disclose that a vacancy in H.S.A.(Malayalam) arose by retirement of the incumbent, one Smt.P. Indira. There were also two additional anticipatory vacancies; one in H.S.A. (English) and the other in H.S.A.(Maths). Subsequently, the vacancies are said to have been approved from the subject academic year itself. The petitioner herein was appointed fresh in the vacancy which arose on retirement. To the anticipated vacancies, one U.P.S.A.; Smt. P Ambikadevi was promoted as H.S.A. (English) and the protected teacher Smt. C. Geetha was brought back as H.S.A.(Maths). In such circumstance, the petitioner contends that there could not have been any infirmity in the appointment of the petitioner.

7. But, the learned Government Pleader points out that the H.S.A.(Maths), who retired, was continued as a protected hand to avoid retrenchment and retained as a H.S.A. (English). The above post ought to have been abolished on the retirement of the incumbent. However, it is submitted on behalf of the respondent that as per the Staff Fixation Order (revised) produced for the year 2006-2007, the said Smt.C.Geetha H.S.A.(Maths) has been retained in the School, towards the eighth H.S.A.(English) post.

8. In such circumstance, the Educational Authority would have to consider the matter afresh. The impugned order (Ext.P3) shall be set aside and the approval of the petitioner shall be considered afresh by the Educational Authority, deeming that the Manager has executed the agreement, since the same has already been directed in

another writ petition. The consideration shall be taken reckoning the sanctioned posts of the said year and the available hands.

The writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE