

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 20737 of 2015 (N)

PETITIONER :

V.Y.SREELATHA
W/O.RAJAMOHAN V.J, VAZHAPPILLETHU, PALLARIMANGALAM PO
MAVELIKKARA, ALAPPUZHA 690 107 (HIGH SCHOOL ASSISTANT (MALAYALAM)
RVSM HIGHER SECONDARY SCHOOL, PRAYAR, OCHIRA 690 547)

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION (HSE)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION
OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDINGS, SHANTI NAGAR
THIRUVANANTHAPURAM 695 001.
3. THE REGIONAL DEPUTY DIRECTOR
HIGHER SECONDARY EDUCATION
OFFICE OF THE REGIONAL DEPUTY DIRECTOR, KOTTAYAM
686 001.
4. THE DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER
MAVELIKKARA.
5. THE MANAGER
RAMAVARMA SHASHTYABDYAPOORTHY MEMORIAL HIGHER SECONDARY
SCHOOL (RVSM HIGHER SECONDARY SCHOOL) PRAYAR
OCHIRA 690 547.

R5 BY ADVS. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
R1 TO R4 BY GOVERNMENT PLEADER SMT.A.LOWSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
ALONG WITH WPC. 24924/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE APPLICATION DATED 30.7.2014 SUBMITTED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT

P2- TRUE COPY OF THE COMMUNICATION DATED 22.8.14 ISSUED BY THE PRINCIPAL, RVSM HIGHER SECONDARY SCHOOL

P3- TRUE COPY OF THE REPRESENTATION DATED 31.3.2014 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.5

P4- TRUE COPY OF THE GOVERNMENT ORDER BEARING GO(MS) NO.141/2008/G/EDN DATED 18/8/2008 THUS ISSUED BY RESPONDENT NO.1

P5- TRUE COPY OF THE REPRESENTATION DATED 24.9.2014 BEFORE RESPONDENT NOS. 2 AND 3

P6- TRUE COPY OF THE JUDGMENT DATED 14.10.2014 PASSED BY THIS HONOURABLE COURT IN WP(C) NO.26700/14

P7- TRUE COPY OF THE PERSONAL HEARING NOTICE DATED 11.11.2014

P8- TRUE COPY OF THE ORDER BEARING NO.B3/9908/14/HSE/KTM DATED 1.1.2015 PASSED BY RESPONDENT NO.3

P9- TRUE COPY OF REQUEST DATED 2.2.2015 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.3

P10-TRUE COPY OF PERSONAL HEARING NOTICE DATED 4.2.2015

P11- TRUE COPY OF PERSONAL HEARING NOTICE DATED 10.2.2015

P12- TRUE COPY OF THE GOVERNMENT ORDER BEARING GO (MS) NO.192/2005/G.EDN DATED 23.6.2005

P13- TRUE COPY OF THE CIRCULAR DATED 16/11/2005 ISSUED BY RESPONDENT NO.2

P14- TRUE COPY OF THE CIRCULAR DATED 24.11.2005

P15- TRUE COPY OF THE ORDER DATED 24.3.2015 PASSED BY THIS HON'BLE COURT IN IA NO.4126 OF 2015 IN WP(C) NO.3738 OF 2015

P16- TRUE COPY OF THE ORDER DATED 22.4.2015 PASSED BY RESPONDENT NO.2

P17- TRUE COPY OF THE ORDER DATED 10.6.2015 PASSED BY RESPONDENT NO.2

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

C.R.

K.VINOD CHANDRAN, J.

W.P.(C) Nos.20737 & 24924 of 2015

Dated this the 14th day of October, 2015

J U D G M E N T

The petitioner in W.P.(C).No.20737/2015 is aggrieved with the manner in which the appointments are made to the Higher Secondary School Teacher (HSST) posts in the respondent school, specifically the ratio employed of 1:3 between; 'by transfer appointments' and direct recruitments. The controversy has arisen by reason of the method of appointment to the post of HSST which is as provided in Rule 4 of the Chapter XXXII of Kerala Educational Rules ('KER' for short) :

Sl.No.	Category	Method of Appointment
2	Higher Secondary School Teacher	(1) By transfer from Junior Lecturer in the subject concerned under the management/Higher Secondary School Teacher (Junior) (2) In the absence of qualified hands under clause (1) above, the vacancies shall be apportioned in the ratio 1:3 between appointment by transfer and direct appointment as detailed below: (i) (a) By transfer from High School Assistants, who possess the requisite qualifications, under the Educational agency. (b) In the absence of qualified persons under (a) above, by transfer from qualified Upper Primary School Assistants/Lower Primary School Assistants who possess the requisite qualification in the subject concerned, under the Educational agency.

(ii) By direct recruitment

Note:- (i) When qualified persons are not available to fill up the vacancies set apart for appointment by transfer under item 2(i) above such vacancies shall also be allotted for direct appointment.

(ii) Appointments under item (I) above shall be made from select lists of qualified persons prepared on the basis of seniority and merit.

2. The method of appointment hence is primarily by transfer from Junior Lecturer in the concerned subject. Only in the absence of such qualified hands could a different method be employed; which has to be in the ratio 1:3; between the qualified High School Assistants and Direct Recruits. It is also to be specifically noticed that the ratio is not to be applied to the cadre as such. The ratio, in the absence of qualified HSST (Junior), is to be applied apportioning the vacancies arising; between 'by transfer' and direct recruitment.

3. A High School Assistant has filed W.P.(C).No.20737 of 2015 claiming that, the 1:3 ratio has to be maintained in the cadre and that, at any point of time for three direct recruitees, there should be one 'by transfer' appointee from HSA. The Manager (petitioner in W.P.(C).No.24924/2015) however contends that, the ratio has to be maintained in the

appointments and not in the cadre, since the appointment 'by transfer' from High School Assistants and Direct Recruitment can be resorted to only when the qualified hands in the Higher Secondary School Teacher (Junior) is not available.

4. The facts to be noticed are that, the school was upgraded in the academic year 2000-01 when there were sanctioned four posts of HSST and seven posts of HSST (Junior). Obviously, since no appointment could be made from HSST (Junior), all the four HSST posts were filled up by the alternate method of appointment. The ratio of 1:3 could have been maintained but the Manager appointed two persons from High School Assistants, being one P.B.Girijamoni and S.Unnikrishnan, and two persons from the open merit. In 2001-02, seven posts in the HSST (Junior) were upgraded as HSST and there existed then 11 posts of HSST. In 2002-03 again, two additional posts were sanctioned, making the total posts of HSST to be 13. Of the two appointments then made, one was from the High School Section and the other by direct recruitment. Hence as on 2003 when six appointments were made by the alternate method, there were three persons appointed from the High School Section more than satisfying the quota; of 1:3. The ratio

then was 1:1 (3 by transfer and 3 direct recruitment).

5. Again in 2013-14 two further senior posts were sanctioned making the total 15. Both the said posts were filled up by direct recruitees. Hence out of eight, three were then, 'by transfer' from HSA and five by Direct Recruitment. Girijamoni retired on 31.03.2013, when again a direct recruitee was appointed. Then the ratio in the alternate method of appointment become 3:9; thus satisfying the ratio correctly as 1:3, is the contention of the Manager. Again a further vacancy arose by the retirement of one Lethadevi who was Junior HSST who had been posted as HSST, on up-gradation. The said post is the bone of contention here. As to whether it should be conceded to the direct recruitees or filled up 'by transfer' from the High School Section.

6. The contention of the petitioner is that on Girijamoni's retirement and a direct recruitee being appointed, out of the 12 appointees, only two remaining in the cadre are persons appointed 'by transfer', and there are six direct recruits. This violates the 1:3 ratio, is the argument. This Court, however, is unable to countenance such a contention. The ratio prescribed cannot be said to be to the cadre, since what is provided is only

an alternate method of appointment wherein a ratio would have to be followed, with reference to the vacancies, to which appointments are made. If the contention of the petitioner is accepted, then once an HSA is appointed by transfer, for reason only of their being no qualified HSST (Junior), then that would have to be always filled up by 'by transfer' appointment from High School Section. This, is not the intention in the prescription made for a method of alternate appointment which provides for apportioning of vacancies on the basis of the ratio provided.

7. Even going by the averments of the petitioner, the 10th post could be filled up by a direct recruitee, since the 1st, 5th, 9th and 13th posts are the entitlement of the teachers in the High School Section; to be appointed 'by transfer' to the post of HSST. The present appointment being to the 10th post, the petitioner cannot have a contention that the same has to be conceded to the High School Section. Already three appointments were granted to the High School Section out of the nine made satisfying the ratio of 1:3 provided in the alternate method of appointment.

8. In fact if the petitioner had staked a claim to the 9th

post i.e. the one which fell vacant on the retirement of Girijamoni, the result would have been different. True, the Manager always made 'by transfer' appointments in excess of the ratio. But that cannot disentitle a person entitled 'by transfer' to the vacancy reserved for that mode; as per the ratio prescribed. This is especially so since the Manager could then, anticipate the occurrence of vacancies and also could, consciously keep out an HSA, with reference to the retirement dates of the teachers in the High School Section, by making 'by transfer' appointments even to vacancies apportioned to be filled up by direct recruitment.

9. An illustration on the facts herein would be appropriate to put the issue in the proper perspective. The Manager in 2000-01 made two 'by transfer' appointments and two direct recruitments, when the ratio prescribed was 1:3. Hence the first vacancy due to 'by transfer' and another due to direct recruits was filled up 'by transfer'. Again in 2002-03 also when two vacancies arose one was conceded to 'by transfer' quite rightly since the same was the 5th vacancy. The 6th vacancy went to Direct Recruits. Both the vacancies that were additionally sanctioned in 2013-14, were the 7th and 8th

vacancies which the Manager is entitled to fill up by direct recruitment. When Girijamoni retired on 31.03.2013; that was the 9th vacancy which ought to have gone to the 'by transfer' appointment. The fact that there was one other person already in the cadre, 'by transfer', would not have stood in the way of the HSA's from staking a claim to it. The ratio is to be applied to the vacancy and not to the cadre posts. That was by-passed.

10. The mere fact that the Manager had made the requisite number of appointments would not have enabled the Manager, to fill up the 9th vacancy, apportioned by the Rule to 'by transfer' appointments; to be filled up by direct recruitment. However no challenge was made to that appointment. The apportionment of the vacancies as per the ratio mandates that the specific vacancies set apart for the 'by transfer' appointments ought to be filled up in that manner. But the petitioner sought to by-pass her claim when the 9th vacancy was filled up and staked a claim to the 10th vacancy which the Manager is entitled to fill up by direct recruitment. The petitioner cannot stake claim to the 10th vacancy which arose on 31.03.2014 by retirement, since that has to be filled up by

direct recruitment. In fact even if the 10th vacancy is appointed on 'by transfer', the 13th vacancy filled up by the alternate method, for want of HSST (Junior) would have to go to the 'by transfer' appointment.

On the findings rendered above, this Court concludes as follows :

The orders in Exts.P17 in W.P.(C).No.20737/2015 has to be upheld. Hence, W.P.(C).No.20737/2015 is dismissed.

W.P.(C).No.24924/2015 is allowed. Exts.P3 is set aside. 10th post now coming up for appointment has to be conceded to the direct recruitees. No costs.

Sd/-
K.VINOD CHANDRAN, JUDGE

AV/14/10/