

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

W.P.(C).No.20919 of 2015 (L)

PETITIONER(S):-

DAISY THOMAS, AGED 51 YEARS, W/O.CHARLES ANTONY,
UPPER PRIMARY SCHOOL ASSISTANT,
MUSLIM GIRLS' HIGHER SECONDARY SCHOOL, ERATTUPETTA,
KOTTAYAM DISTRICT.

BY ADV. DR.GEORGE ABRAHAM.

RESPONDENT(S):-

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1. THE DISTRICT EDUCATIONAL OFFICER,
KANJIRAPPALLY, KOTTAYAM DISTRICT - 686507.
 2. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM - 686002.
 3. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM - 695014.
 4. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
 5. THE MANAGER,
MUSLIM GIRLS' HIGHER SECONDARY SCHOOL, ERATTUPETTA,
KOTTAYAM DISTRICT - 686121.

R1 TO R4 BY GOVERNMENT PLEADER SMT.A.LOWSY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1: TRUE COPY FO THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER, KANJIRAPPALLY DATED 31.3.2013.
- EXHIBIT P2: TRUE COPY OF THE ORDER OF THE DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM DATED 20.04.2013.
- EXHIBIT P3: TRUE COPY OF COPY THE GOVERNMENT ORDER G.O.(MS) 174/13/G.EDN DATED 22.5.2013.
- EXHIBIT P4: TRUE COPY OF THE APPEAL FILED BY THE MANAGER BEFORE THE DIRECTOR OF PUBLIC INSTRUCTIONS.
- EXHIBIT P5: TRUE COPY OF THE ORDER OF THE ORDER OF THE DIRECTOR OF PUBLIC INSTRUCTIONS DATED 23.09.2013.
- EXHIBIT P6: TRUE COPY OF THE GOVERNMENT ORDER G.O(P) 144/13/G.EDN DATED 22.4.2013.
- EXHIBIT P7: TRUE COPY OF THE REVISION FILED BY THE MANAGER BEFORE THE GOVERNMENT UNDER RULE 92.
- EXHIBIT P8: TRUE COPY OF THE ORDER ISSUED BY THE GOVERNMENT DATED 4.4.2014.
- EXHIBIT P9: TRUE COPY OF THE GOVERNMENT ORDER G.O(P) 56/11/G/EDN DATED 26.2.2011.
- EXHIBIT P10: TRUE COPY OF THE JUDGMENT IN WRIT PETITION W.P(C) 17893/13.
- EXHIBIT P11: TRUE COPY OF THE JUDGMENT IN WPC 13703 OF 2014.
- EXHIBIT P12: TRUE COPY OF THE GO(RT)NO.2278/2015/GEN.EDN. DATED 10.06.2015.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.20919 of 2015-L

Dated this the 10th day of December, 2015

JUDGMENT

The petitioner was a Higher Secondary School Teacher [for brevity “HSST”] in the 5th respondent-school, who was appointed in a leave vacancy on 21.06.2000. The same is said to have continued till 2008 and after a six month gap, the petitioner was again appointed in a leave vacancy till 30.12.2012. After about 12 years service; when the regular incumbent in the vacancy returned after long leave, the petitioner was thrown out; but was accommodated as an Upper Primary School Assistant [for brevity “UPSA”] on 31.12.2012.

2. Initially objections were raised against approval of the appointment, by Exhibit P2. The objections were that the petitioner was over-aged and that the petitioner, who was an HSST, cannot claim appointment as an UPSA. The petitioner applied for an exemption to the Government, which was granted as per Exhibit P3 considering the fact that the petitioner had

been continued as an HSST for about 12 years in the very same school. Hence, the petitioner's appointment is not on the basis of Rule 51A claim, since the leave vacancy was in the Higher Secondary section and the petitioner's appointment as a UPSC was permitted to be made granting exemption in age as also the fact that the petitioner did not have a Rule 51A claim.

3. Again the petitioner's approval was rejected as per Exhibit P8 relying on Exhibit P9 Government Order [G.O.(P) No.56/11/G.Edn. dated 26.02.2011]. However, the said Government Order was set aside in Exhibit P10 judgment [***Nair Service Society v. State of Kerala - 2013 (4) KLT 921***]. The petitioner then approached this Court, in which the matter was directed to be considered afresh on the basis of the decision in ***State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755 (SC)]***, as per Exhibit P11. Again the issue was considered by the Government and rejected approval by Exhibit P12. In Exhibit P12 it was found that the petitioner was appointed as a UPSC on 31.12.2012 and since she has continued only for three months in the academic year, her appointment cannot be approved.

4. The petitioner is entitled to regular scale of pay as has been held in **Sneha Cheriyan** (*supra*), vide clause (iv) of paragraph 26:

“(iv) The Manager can make appointments in school even if the duration of which is less than one academic year but on daily wage basis and if the duration of vacancy exceeds one academic year that can be filled up on scale of pay basis”.

5. The learned Government Pleader contends that in fact in the decision in **Nair Service Society** (*supra*) this Court had specifically held that any vacancy in the regular establishment filled in the course of the academic year would have to be approved in the regular scales of pay; with the sole rider of the entitlement of vacation salary being confined to only those teachers who have worked for more than 8 months, as provided in Rule 49 of Chapter XIV-A of the Kerala Education Rules, 1959 [for brevity “KER”].

6. In fact, the aforesaid observation was made only following the directions in the judgment of the Hon'ble Supreme

Court in **Sneha Cheriyan** (*supra*), specifically clause (ii) of para 26, which is extracted hereunder:

“(ii) The Manager of an aided school can, however, appoint teachers in vacancies occurred due to death, retirement, promotion, resignation, long-term leave etc., provided they are established vacancies and the approval can be granted subject to the conditions under R.49 of Chapter XIVA of the K.E.R.”

It is to be noticed that the Hon'ble Supreme Court was dealing with both regular vacancies as also the leave vacancies and held that approval can be granted only subject to the conditions under Rule 49 of Chapter XIV-A KER.

7. This Court, while passing the judgment in **Nair Service Society** (*supra*), has not specifically looked at Rule 49, which indicates that only qualified teachers except Headmasters appointed in vacancies **which are not permanent**, which extend over the summer vacation and who continue in such vacancies till the closing date shall be retained in the vacancies during the vacation. Hence, the restriction to vacation salary would be there only for short-term appointments in leave vacancy and would not

be applicable to permanent/regular vacancies. In such circumstance, the petitioner would be entitled to vacation salary also.

8. In the above circumstances, the petitioner's approval has to be made from 31.12.2012 and she is also to be paid salary in the regular scale of pay from that date, including vacation salary. Exhibit P12 would stand set aside.

Writ petition is allowed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]