

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937**

WP(C).NO. 21382 OF 2015 (W)

PETITIONER(S):

**SHEEJA THOMAS,
W/O.GEORGE K.THOMAS,
VALIYAVILAKOM,
KARAMCODE P.O.,
THATTARUKONAM,
CHATHANNOOR,
KOLLAM-691579 (LOWER PRIMARY SCHOOL ASSISTANT,
MARTHOMA LOWER PRIMARY SCHOOL (MT LPS)
THUMPAMON THAZHOM)**

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENT(S):

- 1. THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695001**
- 3. DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
THIRUVALLA-689101**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
ARANMULA-689533**
- 5. THE CORPORATE MANAGER,
MARTHOMA AND EVANGELISTIC ASSOCIATION (MT & EA) SCHOOLS,
THIRUVALLA, PATHANAMTHITTA- 689101**
- 6. THE DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA-689001**
- 7. THE ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
KOZHENCHERRY-689641**

BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE APPROVED APPOINTMENT ORDER DATED 10.07.2006
ISSUED BY RESPONDENT NO.5

EXT.P2: TRUE COPY OF THE APPROVED APPOINTMENT ORDER DATED 03.01.2008
ISSUED BY RESPONDENT NO.2

EXT.P3: TRUE COPY OF THE APPROVED APPOINTMENT ORDER DATED 08.07.2008
ISSUED BY RESPONDENT NO.5

EXT.P4: TRUE COPY OF THE ORDER DATED 07.07.2009 PASSED BY RESPONDENT NO.2

EXT.P5: TRUE COPY OF GOVERNMENT ORDER DATED 12.10.2006

EXT.P6: TRUE COPY OF GOVERNMENT CIRCULAR DATED 18.05.2007

EXT.P7: TRUE COPY OF JUDGMENT DATED 18.10.2011 IN W.P.(C).NO.34604/2008

EXT.P8: TRUE COPY OF JUDGMENT DATED 4.2.2014 IN W.A.NO.30/2014

EXT.P9: TRUE COPY OF JUDGMENT DATED 24.02.2015 IN W.P.(C).NO.30984/2014

EXT.P10: TRUE COPY OF REVISION PETITION DATED 15.5.2015 SUBMITTED BEFORE
RESPONDENT NO.1 BY THE PETITIONER

EXT.P11: TRUE COPY OF APPOINTMENT ORDER DATED 12.09.2011 ISSUED BY
RESPONDENT NO.5

EXT.P12: TRUE COPY OF ORDER DATED 3.10.2011 PASSED BY RESPONDENT NO.4

EXT.P13: TRUE COPY OF GOVERNMENT ORDER BEARING GO(P)
NO.199/2011/G.EDN.DATED 1/10/2011

EXT.P14: TRUE COPY OF APPEAL DATED 9.10.11 SUBMITTED BEFORE RESPONDENT
NO.3

EXT.P15: TRUE COPY OF THE ORDER DATED 06.06.2012 PASSED BY RESPONDENT NO.3

EXT.P16: TRUE COPY OF THE ORDER DATED 15.11.2014 PASSED BY RESPONDENT NO.2

EXT.P17: TRUE COPY OF THE REVISION PETITION DATED 24.05.2015 SUBMITTED BY THE
RESPONDENT NO.1

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.21382 of 2015

.....
Dated this the 15th day of July, 2015

J U D G M E N T

The petitioner was appointed as UPSA in the St.George's Upper Primary School, Naranganam, for the period from 10.07.2006 to 30.06.2007. She accordingly became a Rule 51 A claimant for the purposes of seeking appointment in a regular promotion vacancy that arose in the School subsequently. When a vacancy arose with effect from 10.07.2008 onwards, the petitioner was appointed to the regular vacancy. The educational authorities, however, denied approval to the said appointment on the ground that the School in question was an uneconomic School, and hence, by virtue of Exts.P5 and P6 Government order and Circular, the vacancies in the uneconomic School could have been filled up only by appointing protected teachers. The facts in the writ petition would indicate that, when faced with the prospect of having to retrench the petitioner, the Manager of the School adjusted the petitioner against another vacancy and sought approval for the said appointment. The approval to the said appointment was also denied by the educational authorities for the same reason. The orders of the educational authority which are impugned in the writ petition are Exts.P4 and P16. The petitioner has preferred revision petitions against both the

said orders and the same are pending consideration before the Government. I note, however, that the issue in question is no longer res integra inasmuch as, by a decision of this Court in **Ciji.P.Jose v. State of Kerala and Others [2012 (1) KLT 867]**, it was held that when it comes to an inter se claim between a Rule 51 A claimant and a protected teacher, the claim of the Rule 51 A claimant will prevail in the matter of appointment to regular vacancies that arise even in an uneconomic School. Taking note of the said decision of this Court, therefore, I am of the view that, the petitioner in this case need not be relegated to the alternate remedy of pursuing Exts.P10 and P17 revision petitions before the Government. Exts.P4 and P16 clearly indicate that the only reason for denial of approval to the appointment of the petitioner on both those instances was the contention that to the vacancies arising in uneconomic Schools, only protected teachers could be appointed. Inasmuch as the said view has been disapproved by the decision of this Court referred to above, I find that Exts.P4 order that denies approval to the appointment of the petitioner as LPSA with effect from 10.07.2008 onwards cannot be legally sustained. Accordingly, I quash Ext.P4 order and direct the 7th respondent to approve the appointment of the petitioner as LPSA with effect from 10.07.2008 onwards. It follows as a consequence of the

above direction that Ext.P16 order will also have to be quashed, making it clear that, in view of the quashing of Ext.P4 order and the direction given above to approve the appointment of the petitioner as LPSA with effect from 10.07.2008 onwards, there will be no necessity to consider the approval of the petitioner in respect of the subsequent appointment made. Accordingly, the writ petition is allowed by directing the 7th respondent to approve the appointment of the petitioner on regular scale of pay basis from 10.07.2008 onwards and to regularise the service with effect from the said date. The respondents shall do the needful in ensuring that the petitioner is paid all consequential benefits within a period of three months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

