

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).NO. 24070 OF 2013 (G)

PETITIONER:

**USHA RANI, CHITHIRA,
THATHTHAMPALLY. P.O, PIN-688 013,
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.P.SANTHOSH KUMAR,
SRI.T.P.SAJAN.**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. DEPUTY DIRECTOR OF EDUCATION,
O/O.THE DEPUTY DIRECTOR OF EDUCATION,
ALAPPUZHA, ALAPPUZHA. P.O, PIN-688 011.**
- 3. ASSISTANT EDUCATIONAL OFFICER,
O/O THE A.E.O, ALAPPUZHA,
ALAPPUZHA. P.O., PIN-688 011.**
- 4. THE MANAGER, S.N.V.L.P.S.THUMPOLI,
ALAPPUZHA, THUMPOLI. P.O., PIN-688 008.**
- 5. SMT.YAMUNA, HEAD MISTRESS S.N.V.L.P.S,
ALAPPUZHA, THUMPOLI, PIN-688 008.**
- 6. SMT.USHAKUMARI, L.P.S.A. S.N.V.L.P.S,
THUMPOLI, ALAPPUZHA, THUMPOLI.P.O, PIN-688 008.**
- 7. SMT.LAKSHMI, L.P.S.A.S.N.V.L.P.S THUMPOLI,
ALAPPUZHA, THUMPOLI. P.O., PIN-688 008.**
- 8. MRS.SALINI CHANDRAN,
L.P.S.A.S.N.V.L.PS, THUMPOLI,
ALAPPUZHA, THUMPOLI. P.O, PIN-688 008.**

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**9. SMT.FAZILA,
L.P.S.A S.N.V.L.P.S.THUMPOLI, ALAPPUZHA,
THUMPOLI.P.O, PIN-688 008.**

**R1 TO R3 BY GOVT. PLEADER SMT.SUNITHA VINOD.
R4 TO R6 & R9 BY ADV. SRI.V.A.MUHAMMED.
R7 & R8 BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA,
SRI.K.A.BALAN,
SRI.PETER JOSE CHRISTO,
SRI.S.A.ANAND,
SMT.L.AMMU PILLAI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/02/2015, THE COURT ON 17/03/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE FOURTH RESPONDENT DATED 08.10.1996.
- EXT.P1A TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE SECOND RESPONDENT DATED 08.10.1996
- EXT.P1B TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE THIRD RESPONDENT DATED 08.10.1996
- EXT.P2 TRUE COPY OF THE RELINQUISHMENT LETTER DATED 08.10.1996 SUBMITTED BY THE BROTHER OF THE PETITIONER BEFORE FOURTH RESPONDENT.
- EXT.P3 TRUE COPY OF THE APPLICATION DATED 11.08.1998 SUBMITTED BEFORE THE 4TH RESPONDENT.
- EXT.P4 TRUE COPY OF THE COMMUNICATION DATED 14.10.1998 ISSUED BY THE 2ND RESPONDENT TO 4TH RESPONDENT INFORMING THAT THE PETITIONER IS ELIGIBLE TO GET EMPLOYMENT UNDER DYING IN HARNESS SCHEME.
- EXT.P5 TRUE COPY OF THE APPLICATION DATED 09.03.1999 SUBMITTED BEFORE THE 4TH RESPONDENT.
- EXT.P5(A) TRUE COPY OF THE APPLICATION DATED 09.03.1999 SUBMITTED BEFORE THE 2ND RESPONDENT.
- EXT.P5(B) TRUE COPY OF THE APPLICATION 05.05.2000 SUBMITTED BEFORE THE 2ND RESPONDENT.
- EXT.P6 TRUE COPY OF THE REPRESENTATION DATED 10.01.2012 SUBMITTED BEFORE THE SECOND RESPONDENT.
- EXT.P7 TRUE COPY OF THE APPLICATION DATED 11.05.2013 UNDER THE RIGHT TO INFORMATION ACT FILED BEFORE THE 2ND RESPONDENT.
- EXT.P8 TRUE COPY OF THE REPLY LETTER NO.D/1367/2013 DATED 13.06.2013.
- EXT.P9 TRUE COPY OF THE REPRESENTATION DATED 18.06.2013 SUBMITTED BEFORE THE 2ND RESPONDENT.
- EXT.P10 TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 4TH RESPONDENT DATED 20.07.2013.

- EXT.P10A** TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT DATED 20/07/2013.
- EXT.P11** TRUE COPY OF THE RELINQUISHING LETTER ADDRESSED TO NO BODY DATED 31/07/2013.
- EXT.P12** TRUE COPY OF THE CIRCULAR NO.41247/J3/2000 GEN EDUCATION DATED 20.09.2000 CLARIFYING THAT THE AMENDMENT OF QUALIFICATION AS PER G.O.(P)188/2000 GEN. EDN. DATED 08.06.2000 1ST APPLICABLE TO THOSE RULE 51 B CLAIMANTS WHO HAS OBTAINED CLAIM UNDER RULE 51 B BY SUBMITTING APPLICATION BEFORE 08.06.2000.
- EXT.P13** TRUE COPY OF THE CIRCULAR NO.H3/67408/99/DPI DATED 15.11.2000 ISSUED BY THE DPI REITERATING THE SAID POSITION.
- EXT.P14** TRUE COPY OF THE GO(P)NO.244/12/G/G.EDN DATED 25.07.2012 EXEMPTING THE RULE 51B CLAIMANTS AS ON THE DATE OF G.O. FROM ACQUIRING K.TET.
- EXT.P15** TRUE COPY OF THE REPRESENTATION DATED 07.09.2013 BEFORE THE 4TH RESPONDENT REQUESTING TO REVIEW ALL ILLEGAL APPOINTMENTS SINCE 2004 AND APPOINT HER TO THE SAID VACANCY AND REGULARISE HER APPOINTMENT.
- EXT.P16** TRUE COPY OF THE REPRESENTATION DATED 07.09.2013 BEFORE THE 2ND RESPONDENT REQUESTING TO ISSUE DIRECTION TO THE 4TH RESPONDENT TO GIVE EMPLOYMENT AND REGULARISE HER APPOINTMENT RETROSPECTIVELY FROM 2004 ONWARDS.
- EXT.P17** TRUE COPY OF THE LETTER DATED 21.09.2013 SUBMITTED BEFORE THE 2ND RESPONDENT WITHDRAWING EXT.P11 LETTER.
- EXT.P18** TRUE COPY OF THE GOVERNMENT ORDER G.O.(P) NO.03/2013 P & ARD DATED 05/02/2013.
- EXT.P19** TRUE COPY OF THE 3RD PAGE OF SSLC BOOK OF THE PETITIONER.
- EXT.P20** TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER DATED 29/11/2013 CERTIFYING THE INCOME OF THE PETITIONER'S FAMILY DURING THE RELEVANT PERIODS.
- EXT.P21** TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR AMBALAPUZHA DATED 19/07/2014 SHOWING THE INCOME OF THE PETITIONER'S FAMILY DURING THE YEAR 1998-99.

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- EXT.P22 TRUE COPY OF THE GO(P) NO.12/9 P & ARD DATED 24/05/1999.**
- EXT.P23 TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR
AMBALAPUZHA DATED 19/07/2014 SHOWING THE INCOME.**
- EXT.P24 COPY OF THE GO(P) NO.37/2002 P& ARD DATED 15/07/2002.**
- EXT.P25 TRUE COPY OF THE REPLY GIVEN TO THE 4TH RESPONDENT
DATED 17/02/2014.**
- EXT.P26 TRUE COPY OF THE INCOME CERTIFICATE OF THE PETITIONER'S
FAMILY ISSUED BY THE VILLAGE OFFICER MULLAKAL VILLAGE
DATED 17/07/2014.**

RESPONDENT'S EXHIBITS:-

- EXT.R4A COPY OF THE APPLICATION FOR CHANGE OF MANAGEMENT
DATED 04/07/2012.**
- EXT.R4B COPY OF THE LETTER OF THE PETITIONER ALONG WITH
THE CERTIFICATE DATED 29/11/2013.**
- EXT.R4C COPY OF THE LETTER OF THE MANAGER DATED 03/02/2014.**
- EXT.R7A COPY OF THE APPOINTMENT ORDER DATED 01/09/2004 OF THE
7TH RESPONDENT ISSUED BY THE 4TH RESPONDENT.**
- EXT.R7B COPY OF THE APPOINTMENT ORDER DATED 01/06/2005 OF THE
8TH RESPONDENT ISSUED BY THE 4TH RESPONDENT.**

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.24070 of 2013

Dated this the 17th day of March, 2015

JUDGMENT

The petitioner is a 51B claimant under Chapter XIV-A of the Kerala Education Rules. He approached this Court on account of denial of her claim for employment under dying in harness scheme.

2. The petitioner is the daughter of Smt.M.J.Bhageerathi Amma died in harness while working as LPSA in an aided school. The death was on 2.10.1987. At the time of death, the petitioner was only 11 years. The petitioner applied for job by Ext.P1 on 8.10.1996. Thereafter, again sent a request on 11.8.1998. By Ext.P4, the Assistant Educational Officer directed the Manager to consider the petitioner's request. The petitioner again made an application by Ext.P5 on 9.3.1999 stating that she had

acquired B.Ed with first class. Thereafter, the petitioner sought information under the Right to Information Act as per Ext.P6 from the Assistant Educational Officer. The Assistant Educational Officer gave a reply by Ext.P8 showing the vacancies arose after 1998. He has pointed out three vacancies of LPSA and one Arabic part-time arose in the school. It is also stated that the Manager has informed the authorities, there was no 51B claimant.

3. The Manager, thereafter, obtained a relinquishment letter from the petitioner as per Ext.P11 on 31.7.2013. The petitioner submits that this was based on a misrepresentation by the Manager. The Manager represented the petitioner that she needs qualification of the Kerala Teacher Education Test and also she being the holder of B. Ed, she is ineligible to get the post. However, later on knowing B.Ed holder is also entitled for appointment by virtue of the Circular

No.41247/J3/2000/Gen. Education dated 20.9.2000, the insistence of the qualification of TTC does not apply to Rule 51B claimant before 2000, the petitioner again made a request to the Manager and the authorities. The petitioner has approached this Court on account of non-consideration of his claim.

4. Respondents 6 to 9 are the appointees in the post of LPSA after 2000. Except appointment of the 9th respondent, all other appointments have been approved.

5. In this matter, the 4th respondent (Manager) has filed a counter affidavit. The main contention of the 4th respondent is that the petitioner did not apply in a prescribed form. The petitioner made an application in the prescribed form only on 20.7.2013. Therefore, the petitioner's application can only be considered for next vacancy. It is further submitted that the petitioner did not submit her income certificate. It is further

submitted by the the Manager that during the course of argument, the exemption by circular for appointment of 51B claimant with B.Ed degree is unsustainable.

6. The petitioner applied for the post immediately after becoming major in the year 1996. Thereafter, there were several reminders sent by the petitioner. The Manager has not disputed about the receipt of such applications or reminders. The Manager also obtained a relinquishment letter on 31.7.2013. All these would go to show that the Manager was very well aware of the claim of the petitioner. If the claim was not in a prescribed format, the Manager is bound to inform the same to the claimant. Therefore, the stand of the Manager is that the petitioner had submitted an application in a prescribed form only on 20.7.2013 and the application can be considered for next vacancy is unsustainable.

7. The next point is regarding income certificate. The

petitioner had all the relevant income certificate at the time of death of Smt.M.J.Bhageerathi Amma and also during the period on which the petitioner attained majority. The income certificate clearly shows that the annual income was very low. The learned counsel for the Manager argued that the petitioner married and her husband has sufficient income. It is to be noted that the present income has no relevance in this matter. The relevant period is at the time of the death or at the time, the petitioner could have first made a claim.

8. The next argument of the learned counsel for the Manager is regarding exemption given to the B.Ed holder, who has claim under 51B before the year 2000. It is argued that the Government cannot grant such exemption to the B. Ed holder, whose claim is referable before 2000. I am of the view, this argument is misconceived. The Government granted exemption by an executive order. There is no statutory

provisions inhibiting a candidate with B.Ed from applying for the post of U.P.S.A. and L.P.S.A. before the year 2000. The qualification of a candidate has to be adverted with reference to the date on which the right to claim for appointment has to be reckoned. Admittedly, the claim of the petitioner had arisen before the year 2000. Further, in the absence of any other statutory provisions, executive order granting exemption will hold the field.

In the light of the discussions as above, the writ petition is allowed with costs. The petitioner's claim has to be sustained. The petitioner shall be appointed in the post occupied by now by 9th respondent. The 9th respondent is not entitled for approval in view of the claim of the petitioner. The Manager shall issue order of appointment to the petitioner within a period four weeks. Thereafter, the third respondent shall approve the appointment within a period of one month.

The seniority of the petitioner in the category of L.P.S.A. will have to be reckoned from the date on which first vacancy of L.P.S.A. arose after 8.10.1996. However, the petitioner will not be entitled for any other monetary benefits other than reckoning the service for earlier period for the purpose of seniority. The cost calculated at Rs.10,000/- shall be paid by the Manager within four weeks.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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