

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937**

**WP(C). No.24525 of 2011 (M)**  
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**PETITIONER(S):**  
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**THE MANAGER,  
NOEL MEMORIAL CORPORATE SCHOOLS, KUMBANAD,  
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED  
SRI.M.SAJJAD**

**RESPONDENT(S):**  
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- 1. THE STATE OF KERALA, REPRESENTED BY ITS  
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,  
JAGATHY, THIRUVANANTHAPURAM - 695 014.**
- 3. JEENA ABRAHAM,  
UPPER PRIMARY SCHOOL ASSISTANT,  
NOEL MEMORIAL HIGH SCHOOL, KARIYAMPLAVUE,  
PATHANAMTHITTA - 689 615.**

**R3 BY ADVS. SRI.LEGY ABRAHAM  
SMT.V.V.RISANI  
BY ADV. SRI.M.R.ANISON  
BY GOVERNMENT PLEADER SHRI NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015,  
ALONG WITH W.P(C) NOS.5239 OF 2012 & 13186 OF 2012, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- P1:- TRUE COPY OF THE GO(RT) NO.920/10/G.EDN OF THE GOVERNMENT.
- P2:- TRUE COPY OF THE ORDER NO.244/2009-10 OF THE MANAGER.
- P3:- TRUE COPY OF THE JUDGMENT OF THIS COURT IN W.P(C) NO.17162/2010
- P4:- TRUE COPY OF THE ORDER NO.ET3/48404/10/DPI/L.DIS. OF THE 2ND RESPONDENT.
- P5:- TRUE COPY OF THE GO(MS) NO.42/2011/G.EDN OF THE GOVERNMENT.
- P6:- TRUE COPY OF THE JUDGMENT IN W.P(C) NO.8356 OF 2011-T.
- P7:- TRUE COPY OF THE GO(RT) NO.3032/11/G.EDN. OF THE GOVERNMENT.
- P8:- TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BEFORE THE GOVERNMENT.
- P9:- TRUE COPY OF THE JUDGMENT IN W.P(C) NO.24450/2009-A.
- P10:- TRUE COPY OF THE G.O(P) NO.178/2002/G.EDN. OF THE GOVERNMENT.

RESPONDENTS' EXHIBITS:-

- R3(A): - TRUE COPY OF THE APPOINTMENT ORDER NO.291/05-06 DATED 6.10.05.
- R3(B):- TRUE COPY OF THE APPOINTMENT ORDER NO.11/06-07 DATED 06-06-06.
- R3(C):- TRUE COPY OF THE RELEVANT PAGE OF ATTENDANCE REGISTER FOR THE MONTH OF JUNE, 2006.
- R3(D):- TRUE COPY OF THE ORDER NO.B3/937/09/L.DIS DATED 28.3.09 OF THE DEPUTY DIRECTOR OF EDUCATION, PATHANAMTHITTA AT THIRUVALLA.
- R3(E):- TRUE COPY OF THE GOVERNMENT ORDER G.O(P) NO.259/2006/G.EDN. DATED 12-10-2006.

KRJ

/True Copy/

P.A to Judge

**A.V.RAMAKRISHNA PILLAI, J.**

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W.P(C) Nos.24525 of 2011, 5239 & 13186 of 2012

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Dated this the 30<sup>th</sup> day of March, 2015

**JUDGMENT**

The validity of G.O(RT) No.3032/2011/G.Edn. dated 26.7.2011 issued by the Government is the subject matter of these writ petitions.

2. The petitioner in W.P(C) No.13186 of 2012 who is a Lower Primary School Assistant (LPSA) in the Noel Memorial Corporate School, Kumbanad, Pathanamthitta district is seeking implementation of the above order. The petitioner in W.P(C) No.5239 of 2012 (she is the 5<sup>th</sup> respondent in W.P(C) No.13186 of 2012) is challenging the aforesaid Government order. W.P(C) No.24525 of 2011 is filed by the manager (he is the 4<sup>th</sup> respondent in W.P(C) No.13186 of 2012) also challenging the aforesaid Government order.

3. For convenience of discussion, the parties can be referred to as they are arrayed in W.P(C) No.13186 of 2012.

4. The petitioner in W.P(C) No.13186 of 2013 was initially appointed as LPSA in the 4<sup>th</sup> respondent, in a leave vacancy from 30.6.2005 to 8.6.2010. The same was approved by the Government. The petitioner alleges that she is eligible to get appointment in the first regular vacancy in the 4<sup>th</sup> respondent school after 30.6.2005. Her grievance is that the 4<sup>th</sup> respondent overlooking her claim, appointed fresh hands in the regular vacancies which arose after 30.6.2005. The 5<sup>th</sup> respondent is such an appointee.

5. The petitioner further alleges that by Ext.P2 the 4<sup>th</sup> respondent appointed her in an uneconomic school by ignoring her seniority. When the above appointment was objected to by the petitioner, she was shifted to various other schools as per Exts.P3 and P7 where there was no sanctioned posts. However, none of those appointments were approved. In these circumstances, the petitioner approached the Government and by Ext.P10, the Government directed the manager to appoint the petitioner in the regular vacancy

with effect from 13.6.2008.

6. This Court by Ext.P11 judgment quashed Ext.P10 order and directed the Government to take a fresh decision in the matter. In compliance, the Government issued Ext.P13 directing the 4<sup>th</sup> respondent to accommodate the petitioner in the first regular vacancy itself. The 4<sup>th</sup> respondent issued Ext.P14 again accommodating the petitioner in an uneconomic school. Thereafter the Director of Public Instruction issued Ext.P16 order directing the 4<sup>th</sup> respondent to implement Ext.P13. Aggrieved by Ext.P16, the 4<sup>th</sup> respondent approached the Government and the Government by Ext.P17 directed the manager to accommodate the petitioner in the first regular vacancy.

7. The grievance of the petitioner is that the 4<sup>th</sup> respondent has not accommodated the petitioner in the first regular vacancy of LPSA/UPSA which arose after 30.5.2005 and, therefore, she is not getting salary from 1.6.2010 onwards.

8. Exts.P13, P16, P17 are challenged by the petitioners in W.P (C) Nos.5239 of 2012 and 24525 of 2012 filed by the 5<sup>th</sup> respondents and 4<sup>th</sup> respondents respectfully.

9. In the counter affidavit filed by respondents 4 and 5, they have justified the stand taken by the 4<sup>th</sup> respondent.

10. In the detailed counter affidavit filed by the State, the Government justified Ext.P17.

11. Arguments have been heard.

12. It can be seen that the petitioner was fully qualified for appointment as UPSA as her initial appointment as LPSA in the 4<sup>th</sup> respondent school was in as leave vacancy from 30.6.2005 to 8.6.2010. This was approved by the Government. Therefore, she was eligible to get appointment for the first regular vacancy which arose after 30.6.2005 in the 4<sup>th</sup> respondent school. However, overlooking the petitioner's claim, the 4<sup>th</sup> respondent appointed fresh hands, including the petitioner in W.P(C) No.5239 of 2012.

13. The argument advanced by the learned counsel for the 5<sup>th</sup> respondent is that the 5<sup>th</sup> respondent was appointed in the 4<sup>th</sup> respondent as HSA on daily wages from 6.10.2005 to 22.12.2005 and the above appointment was approved by the educational authorities. Again the 4<sup>th</sup> respondent appointed her on 5.6.2006 in a permanent vacancy of Smt. Mary Sageo who has been promoted as HSA in NMHS, Kariamplave and reported the date of appointment as 6.6.2006. She alleges that the educational authorities approved the appointment and she is continuing in the post from 5.6.2006.

14. She further alleges that on the same day, i.e., on 5.6.2006, the manager appointed Smt.Sindu.M in a temporary vacancy of LPSA in NMLP School, Kanakappalam. It is her further case that one Smt. T. P. Betty was appointed on 5.6.2006 in NMUPS, Keekozhoor in the temporary vacancy as UPSA. She further alleges that all those vacancies were filled up while she was working in the NMLP School, Ootupara as LPSA and she had never made any claim

at that time because her appointment has to be ceased only on 8.6.2010. According to her, at that time she was the only thrown out teacher absorbed by the manager in a permanent vacancy. She points out that Smt.Sindu.M and Smt. T. P. Betty are now working in the permanent vacancies under the N.M. Corporate Management.

15. The entire issue arose on account of the irregular appointments made by the 4<sup>th</sup> respondent. The petitioner, at present, is working as UPSA in the NMHS School, Kariamplavu. Her qualifications are SSLC and TTC. She was appointed as LPSA in the leave vacancy as per Ext.P1. There are 18 schools under the management. After appointing the petitioner in the leave vacancy, the manager appointed the 5<sup>th</sup> respondent, who is a fresh hand, in a regular vacancy of LPSA in NMHS, Kariamplavu from 6.6.2006 onwards. The petitioner, who was the senior teacher working in the leave vacancy in NMLPS, Oottupara, was the actual person eligible for the regular vacancy. However, she did not make any complaint at

that time against the action of the manager. As such, the DEO, Thiruvalla approved the appointment of the 5<sup>th</sup> respondent as UPSA in NMHS, Kariamplavu with effect from 6.6.2006 onwards.

16. The 4<sup>th</sup> respondent then transferred and posted the petitioner in NMLPS, Sabarimankal with effect from 13.6.2008 in the promotion vacancy of Smt. Annamma Mathew as HM by Ext.P2. This transfer was rejected by the AEO, Vennikulam for the reason that NMLPS, Sabarimankal is an uneconomic one and promotion vacancy should be filled up only with protected hands. As such, she was denied salary from 13.6.2008 onwards. Therefore, the petitioner was not in receipt of salary while her juniors were receiving salary.

17. The regular vacancy selected by the manager to appoint the petitioner was in an uneconomic school. As such, the manager reposted the petitioner in NMLP School, Ootupara with effect from 31.7.2008 in the leave without allowance vacancy of one Smt. Sheeba P. Sam. During the Adalath conducted by the Portfolio

Minister, the grievance of the petitioner was considered and the Deputy director of Education, Pathanamthitta directed the manager to appoint the petitioner as LPSA in NMLPS, Ootupara with effect from 31.7.2008.

18. The Deputy Director of Education, Pathanamthitta directed the manager to reappoint the petitioner in NMLP School, Oottupara from 31.7.2008. The approval of transfer of the petitioner to NMLP School, Oottupara was returned by AEO, Ranni for the reason that the appointment of the petitioner as LPSA in the same school was at first already approved by the AEO, Ranni from 30.6.2005 to 8.6.2010 and for the reason that the sanctioned lien adjustment order of the manager is not received in that office. The lien adjustment made by the manager was not approved by the educational authorities. The manager preferred appeal to Deputy Director of Education and Director of Public Instruction, Thiruvananthapuram.

19. The petitioner filed a revision petition before the

Government for granting her salary from 13.6.2008 onwards. The Government after examining the case in consultation with the DPI, TVM directed the DPI to give instruction to the manager to rearrange the teachers in NM Schools. As such the petitioner was ordered to be transferred to an economic school so that she may draw salary from 13.6.2008 onwards. The manager did not comply with the orders of the DPI. Therefore, the petitioner approached this Court with W.P(C) No.28676 of 2009. The 5<sup>th</sup> respondent working in NMHS, Kariamplavu also filed W.P(C) No. 24450 of 2009 before this Court challenging the orders of the DPI to retrench the junior most teacher.

20. The above two writ petitions were disposed of by a common judgment dated 7.12.2009. This Court directed the officials to disburse salary due to the petitioner from 30.6.2005 to 8.6.2010 as her appointment is already approved from 30.6.2005 to 8.6.2010. This Court also directed the Government to hear the parties and pass orders considering the claim of respective parties with regard to the

date on which their appointments have been made and the dates on which vacancies have arisen. In compliance with the above judgment, salary due to the petitioner upto 31.5.2010 has been disbursed by AEO, Ranni.

21. In compliance with the direction of this Court in W.P(C) No.28676 of 2009 and 24450 of 2009, the Government heard the concerned parties and issued G.O(Rt) No.920/10/G.Edn. dated 2.3.2010. The Government as per the above order has directed the manager to arrange the service of leave substitute and regularise the service against first arising permanent regular vacancy in respective schools in the order of seniority without disturbing the person now working in uneconomic school appointed prior to 12.10.2016.

22. The manager then issued an order transferring the petitioner from NMLPS, Oottupara to NHMS, Kariamplavu w.e.f 1.6.2010 in the transfer vacancy of the 5<sup>th</sup> respondent. This transfer is against the contents in G.O(Rt) No.920/10/G.Edn. NMHS,

Kariamplavu is now an uneconomic school and the 5<sup>th</sup> respondent was working in that school as UPSA from 6.6.2006 i.e., prior to 12.10.2006. The GO insisted on not disbursing the persons working in uneconomic school prior to 12.10.2006. The 4<sup>th</sup> respondent's transfer order dated 31.5.2010 also made certain lien adjustments which were also not approved by the department.

23. The petitioner was deemed to have been shifted to the regular vacancy in NMHS, Kariamplavu in which the 5<sup>th</sup> respondent was working w.e.f 6.6.2006 and she was allowed to continue there from 1.6.2010 and the lien of the 5<sup>th</sup> respondent was shifted against the post of LPSA in NMLPS, Ootuppara w.e.f 6.6.2006 to 31.5.2010 and she was transferred to a leave vacancy in NM UPS, Keekozhoor w.e.f 1.6.2010. The retrospective adjustments made by the manager could be approved by the department. The 5<sup>th</sup> respondent is also not getting salary in NMUPS, Keekozhoor under AEO, Kozhencherri. The transfer of the petitioner to NHMS, Kariamplavu from 1.6.2010

was rejected by DEO, Thiruvalla for the reason that NMHS, Kariamplavu is an uneconomic school and as such, the appointment cannot be approved and also that regularisation of LPSA to the vacancy of UPSA is irregular.

24. The 5<sup>th</sup> respondent challenged the transfer order of the manager by filing W.P(C) No.17102 of 2010, which was disposed of by this Court directing the DPI to consider the representation. The DPI issued order No.ET3/48404/10/DPI dated 5.2.2011 directing the manager to implement the G.O(Rt) No.920/10/G.Edn. dated 2.3.2010 in true spirits (Ext.P16). The manager then challenged the order of DPI before the Government. The Government after hearing all concerned parties clarified that the petitioner is not a 51A claimant and she has only a right for regular vacancy according to the seniority. It is also clarified that the service of leave substitute be regularised against first permanent vacancy in the respective school in the order of seniority. The Government then rejected the transfer

order of the manager and upheld the order of DPI dated 5.2.2011 to implement the G.O 920/10 in true spirits. The petitioner is eligible to get a regular vacancy according to her seniority as the service of leave substitute has to be regularised against first arising/permanent vacancy in the respective school in the order of seniority.

25. The transfer and posting of the petitioner in the vacancy of UPSA created by transferring the 5<sup>th</sup> respondent, UPSA was against the orders of G.O(Rt) No.920/10 dated 2.3.2010. Moreover, the post of LPSA and UPSA are not interchangeable. A regular vacancy of UPSA arose in NMHS, Kariamplavu on 5.6.2006. The manager filled the vacancy from 6.6.2006 with a fresh hand viz., the 5<sup>th</sup> respondent. The conduct on the part of the manager in appointing fresh hands in these regular vacancies by overlooking the seniority is against the rules. The manager should have maintained seniority list of teachers working under him duly countersigned and approved by educational authorities.

26. On a consideration of the entire materials now placed on record, this Court is of the definite view that what has been done by the 4<sup>th</sup> respondent irregular. The Government have considered the matter in the correct perspective and have arrived at the correct conclusion. The 4<sup>th</sup> respondent is bound to obey the same. Therefore, the petitioner in W.P(C) No.13186 of 2012 is entitled to succeed and the other writ petitions are bound to fail.

In the result, the W.P(C) No.13186 of 2012 is allowed. The 4<sup>th</sup> respondent is directed to appoint the petitioner as LPSA/UPSA in the first regular vacancy which arose after 30.6.2005 in the 4<sup>th</sup> respondent's school in preference to fresh hands and in compliance of Exts.P13, P16 and P17 orders. Respondents 1 to 5 shall sanction and disburse the salary and other benefits due to the petitioner by accommodating her in the first regular vacancy or LPSA/UPSA arose in the 4<sup>th</sup> respondent's school after 30.6.2005. The consequential monetary benefits due to the petitioner shall be

disbursed within three months from the date of receipt of a copy of this judgment.

W.P(C) Nos.24525 of 2011 and 5239 of 2012 fail and accordingly, they are dismissed.

Sd/-

**A.V.RAMAKRISHNA PILLAI**  
**JUDGE**

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