

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 21967 of 2015 (U)

PETITIONER(S)/PETITIONER:

**LISSA MATHEW AGED 40 YEARS
W/O.BINU JOHN, MUKKATTU HOUSE, CHUNGAM
KOTTAYAM 686001(UPPER PRIMARY SCHOOL ASSISTANT
CMS HIGH COURT, PALLAM)**

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENT(S)/RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM PIN 695001**
- 3. THE DEPUTY DIRECTOR(EDUCATION)
OFFICE OF THE DEPUTY DIRECTOR
(EDUCATION)PATHANAMTHITTA AT THIRUVALLA**
- 4. THE DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER THIRUVALLA 689101**
- 5. THE CORPORATE MANAGER. CMS SCHOOLS
DIOCESS OF MADHYA KERALA(CURTH OF
SOUTH INDIA)DIOCESAN OFFICE
BISHOP GILL MEMORIAL BUILDING, CATHEDRAL ROAD
KOTTAYAM 686001**
- 6. THE DISTRICT EDUCATIONAL OFFICER
OFFICER OF THE DISTRICT EDUCATIONAL OFFICER KOTTAYAM 686001**

R BY GOVERNMENT PLEADER, SMT. LOUSY A.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

The address of the petitioner in the cause title of the Judgment dated 21/07/2015 in W.P(C).21967/15 is corrected as "Lissa Mathew, Aged 40 years, W/o.Binu John, Mukkattu House, Chungam, Kottayam - 686 001 (Upper Primary School Assistant, C.M.S High School, Pallam) as per order dated 21/08/2015 in I.A.12007/2015 in W.P.(C).21967/2015.

Sd/-
Assistant Registrar

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:- TRUE COPY OF THE APPOINTMENT ORDER DTD 28/10/2010 ISSUED BY RESPONDENT NO 5
- EXT.P2:- TRUE COPY OF THE APPROVED APPOINTMENT ORDER DTD 12/12/2001 ISSUED BY RESPONDENT NO 5 AND APPROVED BY THE DISTRICT EDUCATIONAL OFFICER, KOTTAYAM
- EXT.P3:- TRUE COPY OF THE APPOINTMENT ORDER DTD 1/7/2002 ISSUED BY RESPONDENT ORDER DTD 1/7/2002 ISSUED BY RESPONDENT NO 5 AND APPROVED BY THE DISTRICT EUDCATIONAL OFFICER, KOTTAYAM
- EXT.P4:- TRUE COPY OF THE APPOINTMENT ORDER DTD 1/6/2005 ISSUED BY RESPONDENT NO 5 AND APPROVED DISTRICT EDUCATIONAL OFFICER, KOTTAYAM
- EXT.P5:- TRUE COPY OF THE APPROVED REGULAR APPOINTMENT ORDER DTD 20/6/2006 ISSUED BY RESPONDENT NO 5 AND APPROVED BY THE DISTRICT EDUCATIONAL OFFICER, KOTTAYAM
- EXT.P6:- TRUE COPY OF THE APPOINTMENT ORDER DTD 16/7/2012 ISSUED BY RESPONDENT NO 5
- EXT.P7:- TRUE COPY OF THE APPROVED APPOINTMENT ORDER DTD 1/6/2011 OF SMT SANI MARY JOHN
- EXT.P8:- TRUE COPY OF THE ORDER DTD 6/9/2012 PASSED BY RESPONDENT NO.4
- EXT.P9:- TRUE COPY OF THE ORDER DTD 4/2/2013 PASSED BY RESPONDENT NO 3
- EXT.P10:- TRUE COPY OF THE ORDER DTD 2/4/2014 PASSED BY RESPONDENT NO 2
- EXT.P11:- TRUE COPY OF THE JUDGMENT DTD 24/2/2012 PASSED BY THIS HON'BLE COURT IN WPC NO 3567 OF 2011
- EXT.P12:- TRUE COPY OF THE JUDGMENT DTD 11/2/2014 IN WA NO 596 OF 2013
- EXT.P13:- TRUE COPY OF THE JUDGMENT DTD 22/8/2014 PASSED BY THIS HON'BLE COURT IN WPC NO 28476 OF 2012
- EXT.P14:- TRUE COPY OF THE GOVERNMENT ORDER DTD 23/12/2014

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 21967 of 2015

Dated this the 21st day of July, 2015

JUDGMENT

The petitioner, who had approved appointments as HSA (Social Science) and UPSA in various schools under the management of the 5th respondent for the period from 01.11.2010 onwards, was appointed to a leave vacancy that arose for the period from 17.07.2012 to 31.03.2014. The appointment was, however, not approved by the educational authorities as evidenced by Exts.P8, P9 and P10 orders. A perusal of the said orders would indicate that the approval was denied to the appointment of the petitioner for various reasons. Initially, it was found that the petitioner being a Rule 51A claimant as also a Rule 43 claimant, and the vacancy in which the petitioner was appointed being a leave vacancy, the appointment could only be made of a protected hand as contemplated by the various Government Orders, that held the field. In Ext.P10 which is the last order passed by the DPI, the stand taken is that there is no specific order permitting the manager to make appointments in leave vacancies. The net effect of Exts.P8, P9 and P10 orders, therefore, is that the appointment of the petitioner to the leave vacancy for the period mentioned above has not been approved. It is also relevant to note that, although the vacancy to which the petitioner was appointed initially covered

the period from 17.07.2012 to 31.03.2014, it is not in dispute that the incumbent, who had proceeded on leave returned after the leave period and therefore, with effect from 27.02.2014, the petitioner was reverted to the post of UPSA. In the instant case, the approval now sought is for the period from 17.07.2012 to 26.02.2014, when the petitioner was continuing against the leave vacancy as an HSA (SS). Counsel for the petitioner would rely on Ext.P14 Government Order, which clearly contemplates that, even as against a leave vacancy, a Rule 43 claimant can be appointed on regular scale of pay basis.

2. I have heard Sri.Subhash Chand, the learned counsel for the petitioner as also the learned Government Pleader appearing for the official respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, and in particular, taking note of Ext.P14 Government Order, that is relied upon by the petitioner, and also the fact that even de hors Ext.P14 Government Order, the petitioner being a Rule 51A claimant, having previous approved service as HSA against various spells in schools under

the management of the 5th respondent, is entitled for preference over protected teachers in the matter of appointment against leave vacancies, I find that, both in terms of Ext.P14 Government Order as also on the basis of his claim under Rule 51A, the appointment of the petitioner in the leave vacancy for the period 17.07.2012 to 26.02.2014 has to be approved. Resultantly, I quash Exts.P8, P9 and P10 orders and direct the 4th respondent to approve the appointment of the petitioner to the leave vacancy between the period from 17.07.2012 to 26.02.2014 when she occupied the post as an HSA (SS) in the school. The 4th respondent shall pass consequential orders pursuant to the directions in this judgment, within a period of three weeks from the date of receipt of a copy of this judgment. The petitioner shall also be entitled to the salary and other allowances that flow from the said approval.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das

The following corrections are made in this judgment vide order dated 21.8.2015 in I.A. No.12007/2015 in W.P.(C) No.21967/2015:

The date “01.11.2010” occurring in the 3rd line of 1st paragraph of the judgment is corrected as “01.11.2000”.

The period “17.07.2012 to 26.02.2014” wherever it occurs in the judgment is corrected as “17.07.2012 to 27.03.2014”.

sd/-
Registrar (Judicial)