

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

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937**

**WP(C).No. 25825 of 2011 (C)**  
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**PETITIONER:**  
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**NIDHEESH.T., H.S.A.(MATHS), SMHSS KOTTARA  
MEEYANNOOR.P.O., KOLLAM.**

**BY ADVS.SRI.M.V.BOSE  
SRI.VINOD MADHAVAN**

**RESPONDENTS:**  
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- 1. THE STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT  
GENERAL EDUCATION DEPARTMENT  
SECRETARIAT, THIRUVANAMTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,  
THIRUVANANTHAPURAM-695 001.**
- 3. THE DEPUTY DIRECTOR (EDUCATION)  
KOLLAM-691 001.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,  
KOTTARAKKARA-691 506.**
- 5. THE HEADMISTRESS, SMHSS KOTTARA  
MEEYANNOOR.P.O., KOLLAM-691 537.**

**BY GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-11-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## **APPENDIX**

### **PETITIONER'S EXHIBITS :-**

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- EXT.P1 - COPY OF THE APPOINTMENT ORDER DATED 15.07.2005.
- EXT.P2 - COPY OF THE APPELLATE ORDER DATED 29.04.2005 OF THE DEPUTY DIRECTOR OF EDUCATION.
- EXT.P3 - COPY OF THE NOTICE DATED 20.01.2011 FROM THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER.
- EXT.P4 - COPY OF THE COPY OF THE OBJECTION DATED 05.02.2011.
- EXT.P5 - COPY OF THE COMPLAINT DATED 23.09.2011 BEFORE THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXT.P6 - COPY OF THE LETTER OF THE HEADMISTRESS DATED 26.09.2011.
- EXT.P7 - COPY OF THE ORDER OF DIRECTION.
- EXT.P8 - COPY OF THE ORDER OF DISTRICT EDUCATION OFFICER DATED 31.03.2015.

### **RESPONDENTS' EXHIBITS:- NIL**

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**//TRUE COPY//**

**P.A. TO JUDGE**

**sp**

**K. VINOD CHANDRAN, J.**

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**W.P(C). No.25825 of 2011**  
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**Dated this the 16<sup>th</sup> day of November, 2015.**

**JUDGMENT**

The petitioner is aggrieved by the fact that the petitioner's promotion, though approved by Ext.P2, has been objected to in audit and that the petitioner's salary has been interdicted by Ext.P3 order. In addition to the contention that Ext.P3 was issued without any notice to the petitioner, the petitioner also claims continuance on the basis of Ext.P2 order and the appendix to GO (MS) No.11/2002/G.Edn. dated 07.01.2002.

2. The short facts to be noticed are that the petitioner, an UPSA, so appointed and approved on 16.06.2004, was promoted as HSA (Maths) on a 11<sup>th</sup> vacancy being sanctioned in the year 2005-2006 in the High School Section of the aided School, in which the petitioner was working as an UPSA. The petitioner,

being qualified, was promoted to the said post on 15.07.2005. The approval of the petitioner's promotion having been rejected by the District Educational Officer; the Manager was before the Deputy Director of Education, Kollam, who allowed the appeal filed and directed approval of the petitioner's appointment. Looking at the fact that the petitioner was a Rule 43 claimant and also considering the fact that GO(MS) No.11/02/G.Edn. dated 07.01.2002 was to be implemented in a phased manner, the matter was directed to be reconsidered. On reconsideration, the DEO is said to have approved the petitioner's appointment.

3. The present audit objection is said to be on the ground of the new vacancy being HSA (English) and the said vacancy remaining vacant. Admittedly, a 11<sup>th</sup> division was created in the year 2005-2006 and sanctioned by the staff fixation order of the respondent School, issued by the Educational Authority. A reading of the appendix would show that on the 11<sup>th</sup> division being sanctioned, the creation of post is for the subject Mathematics; even going by the new ratio introduced by GO(MS)

No.11/02.

4. The said G.O. created a new core subject-English-to improve the standard of education in English. However, the phased implementation was only in respect of protecting the High School Assistants of other core subjects from retrenchment, by accommodating them in the HSA (English) post.

5. However, herein very evidently, there were two posts of HSA (English), even when the division was ten, in the previous year and when there was creation of one further division in the academic year 2005-2006, the post created is of HSA (Mathematics). The petitioner rightly was promoted to the said post. The vacant English post is also said to have been filled up by a Social Science Teacher, who was facing retrenchment.

In such circumstance, the audit objection raised in the case of the petitioner cannot be sustained. The petitioner is continued and is paid salary as per the interim order dated 28.09.2011. The petitioner's appointment as on 15.07.2005 as HSA (Mathematics) is entitled to be declared as regular and the approval granted to

the petitioner shall stand affirmed. The petitioner's salary and emoluments shall be disbursed in accordance with the above direction.

The writ petition is allowed. No costs.

Sd/-

**K. VINOD CHANDRAN,  
JUDGE.**

//True Copy//

P.A. to Judge.

sp/18/11/15