

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 26753 of 2012 (T)

PETITIONER(S):

MANAGER,
C.P.POCER HAJI MEMORIAL HIGHER SECONDARY SCHOOL
OZHUR, VALLACHAL P.O. MALAPPURAM DISTRICT,
KERALA PIN 676106.

BY ADVS.SRI.M.R.ANISON
SMT.T.B.REMANI
SRI.P.N.APPUKUTTAN
SMT.P.A.RINUSA
SMT.ANNIE JACOB
SMT.V.BHARGAVI (PANANGAD)
SMT.K.P.GEETHA MANI

RESPONDENT(S):

1. STATE OF KERALA,
REP.BY ITS SECRETARY TO GOVT. GENREAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM -695001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695001.

3. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM 676505.

4. THE DISTRICT EDUCATIONAL OFFICER,
TIRUR, MALAPPURAM 676101.

5. SHAJI JOSEPH,
AZHIKANICKAL, ANSHA BHAVAN, NEAR ARD BANK
THAZHAPALAN, TIRUR, MALAPPURAM -676151

6. C.P.ASHRAF, CHOLAKKAPULIKKAL PARAMBIL HOUSE,
AYYAYA, VALLACHAL P.O. OZHUR 673313.

R5 BY ADV. SRI.MILLU DANDAPANI

RR6 BY ADV. SRI.BABU S. NAIR

R1 BY ADV. GOVERNMENT PLEADER SMT.LOWSY.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE LETTER DATED 21/11/2007 ISSUED BY THE PETITIONER.

EXT.P2: COPY OF THE PROCEEDINGS DATED 10/03/2008 ISSUED BY THE PETITIONER.

EXT.P3: COPY OF THE ORDER DATED 30/5/2008 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: COPY OF THE LETTER DATED 18/12/2009 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: COPY OF THE LETTER DATED 05.01.2011 ISSUED BY THE 3RD RESPONDENT .

EXT.P6: COPY OF THE NOTICE DATED 18/6/2011 ISSUED BY THE 3RD RESPONDENT.

EXT.P7: COPY OF THE ORDER DATED 30/11/2011 ISSUED BY THE 2ND RESPONDENT.

EXT.P8: COPY OF THE JUDGMENT DATED 7/3/2012 IN W.P.(C) NO.3343/2011.

EXT.P9: COPY OF THE ORDER DATED G.O.GN. 4769/2012/G.EDM.D ATED 4/10/2012.

EXT.P10: COPY OF THE INTERIM ORDER DATED 1/3/2011 IN W.P.(C) NO.6408/2011.

EXT.P11: COPY OF THE G.O.(P) NO.12/1999/P & ARD DATED 24/05/1999.

EXT.P12: COPY OF THE LETTER DATED 02/11/2012 ISSUED BY THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R5(A): COPY OF INCOME CERTIFICATE DATED 27/3/2008 ISSUED BY THE VILLAGE OFFICER, TRIKKANDIYOOR TO THE 5TH RESPONDENT.

EXT.R5(B): COPY OF REPORT NO.861/08 DATED 25/3/2008 SUBMITTED BY THE VILLAGE OFFICER, MANAKKAD, TO THE VILLGE OFFICER, TRIKKADIYOOR.

EXT.R5(C): COPY OF REPORT DATED 25/3/2008 OF THE VILLAGE OFFICER, KADANAD, TO THE VILLAGE OFFICER, TRIKKADIYOOR.

/TRUE COPY/ PS TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.26753 OF 2012

Dated this the 19th day of January, 2015

JUDGMENT

The petitioner is the manager of an Aided Higher Secondary School. This writ petition is filed challenging the order passed by the authorities in relation to claim under Section 51 B of Chapter XIV A of KER.

2. The 5th respondent is widower of one Ancy Joseph. She died on 22/11/2004 while working as a High School Assistant in the petitioner's school. She left behind her husband-5th respondent and two minor daughters as his legal heirs. The 5th respondent submitted an application for appointment under compassionate ground. That application was rejected by the Manager. The reason for the rejection is that the 5th respondent is a business man running a textile shop named 'ANNUS'. It is further stated that he is re-married and his wife is working as a nurse in a Mission Hospital Tirur. In the meanwhile in the vacancy of Peon one

Aboobacker was appointed. There is also another claimant under Section 51 B who is the 6th respondent. In this writ petition, the petitioner challenges the order passed by the authorities directing the petitioner to give appointment to the 5th and 6th respondents. The 6th respondent has now relinquished his claim. Therefore, the only claimant is the 5th respondent.

3. The learned counsel for the petitioner challenged the order passed by the authorities on two grounds. One ground is that the 5th respondent re-married and, therefore, he is not widower. Secondly, it is argued that the 5th respondent is not dependent and he cannot claim any compassionate appointment as a dependent. The learned counsel argues that the word 'Widower' is defined in 'the World Book Dictionary Volume-II' as follows:

“Widower: A man whose wife is dead and who has not married again”.

Therefore, it is submitted that, the 5th respondent is no longer widower as he re-married.

4.The compassionate employment scheme is produced as

Ext.P11. The dependent will be given an employment assistance under this scheme. It also refers to the nature of employment assistance to be given. The scheme clearly indicates that widow/widower can also claim employment assistance. The claim of a person for compassionate employment is to be reckoned with reference to the date of death. Nowhere it is stipulated that on account of subsequent changes in the status of the widower, the claim of that person will be denied. The aim of the Compassionate Employment scheme is to provide succour to the family of the deceased employee. It is to be noted that there are two minor children borne in the wed lock with the deceased employee. The scheme itself indicates that this is to provide assistance to the family of the deceased. The employment of the widower is in fact to benefit the family of the deceased. The object is to provide financial security to the family of the deceased, on account of untimely death. If the penurious circumstances continue to exist for the dependent, the claim cannot be taken out of this Scheme. The dependency reflects financial dependency on the deceased. On viewing in this angle,

it can be said that remarriage of the widow or widower would not take out of the right to claim employment assistance. Thus, the objection based on re-marriage is unsustainable.

5. The second point argued by the learned counsel for the petitioner is that the 5th respondent is financially sound and he has sufficient income. Nothing has been placed before this Court to substantiate this contention. I find that the petitioner failed to substantiate this claim before the authorities. Therefore, there is no infirmity in the order passed by the authorities below.

The 6th respondent has already relinquished his claim. Therefore, there is no impediment for the petitioner-institution for making appointment. Therefore, there shall be a direction to the petitioner to issue appointment order within a period of four weeks from the date of receipt of a copy of this judgment. Thereupon the AEO shall appoint 5th respondent within a further period of four weeks.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/

PS to Judge.

