

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 27736 of 2010 (N)

PETITIONER(S) :

LATHA E.V.
L.P.S.A., AKKIPARAMBA U.P.SCHOOL, TALIPARAMBA
KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN

RESPONDENT(S) :

1. THE ASSISTANT EDUCATIONAL OFFICE
TALIPARAMBA NORTH, TALIPARAMBA, KANNUR DISTRICT.
2. THE MANAGER,
AKKIPARAMBA U.P.SCHOOL, AKKIPARAMBA, TALIPARAMBA
KANNUR DISTRICT.
3. THE HEADMISTRESS,
AKKIPARAMBA U.P.SCHOOL, AKKIPARAMBA, TALIPARAMBA
KANNUR DISTRICT.
4. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR.
5. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.
6. E.P.SAJITHKUMAR,
U.P.S.A., AKKIPARAMBA U.P.SCHOOL, AKKIPARAMBA
TALIPARAMBA, KANNUR DISTRICT.
7. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

R,R2 BY ADV. SRI.V.A.MUHAMMED
R,R2 BY ADV. SRI.M.SAJJAD
R,R6 BY ADV. DR.GEORGE ABRAHAM
BY GOVERNMENT PLEADER SRI.S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-11-2015, ALONG WITH WPC. 35253/2010, WPC. 35873/2010, WPC.
8287/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER's EXHIBITS :

EXT.P1 : TRUE COPY OF THE APPOINTMENT ORDER OF the PETITIONER AS LPSA.

EXT.P2 : TRUE COPY OF THE REVISED STAFF FIXATION ORDER DATED 19.10.2009.

EXT.P3 : TRUE COPY OF THE ORDER DATED 20.10.2009 ISSUED BY THE MANAGER.

EXT.P4 : TRUE COPY OF THE ORDER DATED 23.10.2009 ISSUED BY THE FIRST RESPONDENT MANAGER.

EXT.P5 : TRUE COPY OF THE APPEAL DATED 3.11.2009 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT ASSISTANT EDUCATIONAL OFFICER.

EXT.P6 : TRUE COPY OF THE ORDER DATED 11.1.2005 ISSUED BY THE DPI.

EXT.P7 : TRUE COPY OF THE ORDER DATED 3.4.2010 ISSUED BY THE AEO TO THE HEADMISTRESS

EXT.P8 : TRUE COPY OF THE ENQUIRY REPORT REFERRED TO THEREIN DATED 27.2.2010.

EXT.P9 : TRUE COPY OF THE APPEAL DATED 29.4.2010 SUBMITTED BY THE PETITIONER BEFORE the D.P.A.

EXT.P10 : TRUE COPY OF the COMPLAINT DATED 12.4.2010 SUBMITTED BY THE MANAGER TO THE A.E.O.

EXT.P11 : TRUE COPY OF the DETAILS OF the FIXATION AND STAFF PATTERN 2008-09 PREPARED BY THE PETITIONER.

EXT.P12 : TRUE COPY OF THE ORDER DATED 29.4.2010 ISSUED BY the A.E.O. TO THE HEADMISTRESS

EXT.P13 : TRUE COPY OF THE COMMUNICATION DATED 4.5.2010 ISSUED BY THE HEADMISTRESS TO THE PETITIONER

EXT.P14 : TRUE COPY OF the INTERIM ORDER DATED 14.6.2010 IN WPC NO.16331/10.

EXT.P15 : TRUE COPY OF the JUDGMENT DATED 12.8.2010 IN WPC NO.16331 OF 2010.

EXT.P16 : TRUE COPY OF THE STAFF FIXATION ORDER ISSUED BY THE ASSISTANT EDUCATIONAL OFFICE DATED 12.8.2010

EXT.P17 : TRUE COPY OF THE PAY BILL RETURNED BY the A.E.O. DIRECTING TO CLAI THE SALARY OF THE PETITIONER ONLY TILL 14.7.2010

EXT.P18 : TRUE COPY OF THE REPLY GIVEN BY THE HEADMISTRESS OF the SCHOOL TO THE PETITIONER.

Contd...

WP(C) .No. 27736 of 2010 (N)

EXT.P19: TRUE COPY OF the STAFF FIXATION ORDER OF the YEAR 2007-08, 2008-09 AND 2009-10.

EXT.P19(a) : TRUE COPY OF the STAFF FIXATION ORDER OF the YEAR 2008-09.

EXT.P19(b): TRUE COPY OF the STAFF FIXATION ORDER OF the YEAR 2009-10

EXT.P20 : TRUE COPY OF the APPOINTMENT ORDER OF the 6TH RESPONDENT.

EXT.P21: TRUE COPY OF the GOVERNMENT ORDER DATED 4.10.2010

EXT.P22: TRUE COPY OF THE ORDER ISSUED TO THE HEADMISTRESS DATED 14.9.2010 KEEPING IN ABEYANCE THE ORDER ISSUED BYT EH A.E.O. AND DIRECTING TO PERMIT THE 6TH RESPONDENT TO CONTINUE TO WORK IN THE SCHOOL.

EXT.P23 : TRUE COPY OF THE ORDER OF the MANAGER DATED 21.10.2009 OF the HEADMISTRESS.

EXT.P24 : TRUE COPY OF THE PROCEEDINGS DATED 14.7.2010 ISSUED BY THE MANAGER.

EXT.P25 : TRUE COPY OF the HEARING NOTE OF the UNDER SECRETARY M.CHRISTU DAS OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.

EXT.P26 : TRUE COPY OF THE ORDER NO.G4/48321/10/DPI/K.DIS. DATED 7.2.2012 OF the DIRECTOR OF PUBLIC INSTRUCTION.

RESPONDENTS' EXHIBITS :

EXT.R6(a) : TRUE COPY OF THE STAFF FIXATION ORDER FOR the ACADEMIC YEAR 2010-11 ISSUED BY THE A.E.O. TALIPARAMBA

EXT.R6(b) : TRUE COPY OF the APPEAL FILED BY THE MANAGER DATED 14.9.2010

EXT.R6(c) : TRUE COPY OF THE APPEAL FILED BY THE 6TH RESPONDENT DATED 16.9.2010.

//TRUE COPY//

P.A.TO JUDGE

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K.VINOD CHANDRAN, J.

**W.P.(C)Nos.27736, 35253, 35873 of 2010
& 8287 of 2012**

Dated this the 9th day of November, 2015.

J U D G M E N T

These writ petitions are respectively filed by the Manager and four teachers. The teachers are referred to by their names and the documents are referred to from W.P.(C) No.27736/10.

2. E.P.Sajith Kumar, the petitioner in W.P.(C) No.8287/12 was appointed on 5.6.2002 as an Assistant Teacher by Ext.P20 order ; whether such an appointment is as UPSA or LPSA is the crux of the controversy in the above cases. Subsequently, Latha E.V., the petitioner in W.P.(C) No.27736/10, was appointed as a LPSA on 31.5.2005 by Ext.P1 order which was approved w.e.f. 1.6.2005 onwards as per the endorsement of the Assistant Educational Officer (A.E.O.) seen in Ext.P1. Rajitha K., the petitioner in W.P.(C) No.35253/10 was appointed as a LPSA on 4.6.2007. Nisha

M.Nair was appointed as a UPSA on 21.6.2002. The claim of Rajitha K. and Nisha M.Nair would depend on the resolution of the dispute arising between Sajith Kumar and Latha.

3. The brief facts, which led to the controversy, are that, in the year 2008-'09, there was a division fall and by the staff fixation order produced as Ext.P2 (revised on super check), two UPSAs and one LPSA were liable to be retrenched. Latha, being the senior-most LPSA, could continue and Rajitha, who was the junior-most LPSA, had to be retrenched. However, Rajitha was protected under 1:40 ratio. As against Latha and Rajitha, there is no controversy, since both of them have been appointed and approved as LPSAs and Latha is senior to Rajitha. As to the two UPSAs being liable to be retrenched, Sajith Kumar and Nisha M.Nair were liable for such retrenchment under Ext.P2. Nisha was retrenched but Sajith Kumar was retained, since he was entitled for protection under 1:40 ratio. The staff fixation order at Ext.P2 clearly indicates that Sajith Kumar was protected as an UPSA.

4. The controversy arose, since presumably, there was a further threat of retrenchment in the post of UPSA in the subsequent year. It is contended that apprehending such threat, Sajith Kumar was attempted to be converted as an LPSA. By Ext.P3 dated 20.10.2009, the Manager changed the categories of Sajith Kumar, Latha and also Rajitha. Thus, the Manager accommodated Sajith Kumar as a LPSA from the date of his appointment and Latha and Rajitha as UPSAs. from the date of their respective appointments. Primarily it is to be noticed that, the controversy revolves around whether the appointment of Sajith Kumar was as a LPSA or UPSA. There is no dispute regarding the fact that Latha was appointed as a LPSA, approved and confirmed as such. Hence there could be no category change granted to Latha in any event.

5. Be that as it may, while issuing Ext.P3 order, the Manager also issued Ext.P4 by which Rajitha was sought to be retrenched, since she had also been issued with a category change as UPSA by Ext.P3. Hence by Exts.P3 and

P4, both Latha and Rajitha were accommodated in UPSA vacancies and their appointments were also sought to be converted to the post of UPSA. The combined effect of Exts.P3 and P4 was that Sajith Kumar would continue as an LPSA in the year 2009-10, in lieu of Latha, who would be retrenched in the post of UPSA since Nisha M.Nair, who was senior to Latha, would have to be retained on protection, in the cadre of UPSA. Consequently, Rajitha too would have to be retrenched. Primarily it is to be noticed that the Manager has no authority to meddle with the staff fixation order and if aggrieved by the same, could only challenge it, as provided in the KER.

6. One can usefully refer to Ext.P6 also, at this stage, to understand the controversy better. The approval of Nisha M.Nair was rejected, against which, proceedings were taken, which culminated in Ext.P6 order of the DPI. The DPI found that as on 2002-03, there were 5 posts sanctioned in the L.P.Section and 9 posts in U.P.Section. Of the total posts, only 2 were TTC holders and 12 others were B.Ed.

holders. It was hence found that, as per G.O.(P) No.188/2000/G.Edn. dated 8.6.2000, no B.Ed holder without TTC could be accommodated as LPSA. It was also found that the excess B.Ed hands appointed before 8.6.2000, ought to be shifted to the next arising vacancies of UPSA. Nisha M.Nair's rejection of approval was upheld. It is significant to notice that from 8.6.2000, Rule 4(1) of Chapter XXXI of KER stood amended and none without TTC could have been appointed as LPSA. Sajith Kumar admittedly does not have a B.Ed. His appointment was after 8.6.2000. His claim is that his appointment as LPSA is saved by clarification issued on 26.6.2000 bearing no. 26327/J/3/2000/Gen.Edn.

7. Coming back to the subject years, Latha filed Ext.P5 against Exts.P3 and P4, which was not considered. But in the meanwhile, Sajith Kumar had made a complaint to the Assistant Educational Officer, in which he was directed to be confirmed as a LPSA, as per Ext.P7 order. Ext.P7 was based on Ext.P8 enquiry report of the Deputy Director of Education. Against Exts.P7 and P8, Latha filed Ext.P9 before

the D.P.I. and sought expeditious consideration, which was directed by Ext.P15 judgment of this Court. This culminated in Ext.P26 order of the DPI.

8. In the staff fixation order of the years 2008-09 and 2009-10, Sajith Kumar was shown as an UPSA. Sajith Kumar hence filed a representation before the Government against such staff fixation order, on the ground that the Manager himself had granted category change and Sajith Kumar is entitled to continue as an UPSA. Sajith Kumar is also said to have approached this Court with a prayer for expeditious consideration of that representation which was directed by this Court ; on the basis of which, Ext.P21 order was passed.

9. Ext.P21 Government Order was in favour of Sajith Kumar and Ext.P26 order passed by the D.P.I. pursuant to Ext.P15 was in favour of Latha. Hence the first controversy is as to which of those orders are to be relied on. Normally, the Government, a higher authority, when passing an order ; the lower authorities' decision has to concede to the higher

authorities' decision. But in the peculiar facts which have been placed on record by Latha, in her writ petition, this Court is constrained to take a different view.

10. The extract of the files of the Government regarding the representation made by Sajith Kumar, for correction of staff fixation order, is produced by Latha as Ext.P25. Ext.P25 is an extract of the file, which shows that the authority, who was considering the representation, had elaborately considered the contentions of either parties and had rejected the claim of E.P.Sajith Kumar on 31.3.2010. The same is also seen to have been signed by the authority. Ext.P21 came to be issued only by reason of the notation made in the files ; not by the authority itself but by an unidentified officer/employee. A reading of Ext.P25 would indicate that, there was an interpolation made in the order available in the files and two additional paragraphs were added. The order stopped with paragraph 33 and was also signed ; rejecting the claim and noticing that the direction of the High Court has been complied with. The direction of the

High Court referred to is that in W.P.(C)No.33958/09 dated 1.12.2009. Paragraphs 34 and 35 were interpolated and in paragraph 34, it was handwritten so, "Hearing officer may please re-examine the case with reference to the report of the DDE, Kannur, at page 251." (sic). The report of the D.D.E. referred to is Ext.P8.

11. Having finalised the hearing and having passed an order, the authority considering the representation becomes functus officio. No specific powers of review having been granted to the authorities under the KER, there could be no review made of the order passed. The interpolations/substitutions made ; on a reading of the same, are also not of the authority and is done by somebody else in the office of the Educational Authority. In any event the next incumbent in the office of the statutory authority seems to have gone by the said interpolations and there is a further order passed by another person who then held the post of the Joint Secretary.

12. Ext.P25 is passed by an Under Secretary to Government, Sri.M.Christudas. Ext.P21 dated 4.10.2010 is passed by the Secretary, James Varghese. An order, on the representation having been already passed, at Ext.P25, there could not have been a different order passed, produced at Ext.P21. Ext.P21 is to be declared as of having no consequence as being non est. What remained on the representation, was the mere communication of the order seen at Ext.P25. Ext.P25 order of the Government is in consonance with the view taken by the DPI in Ext.P26. In any event the passing of Ext.P21 by a higher authority, the Government, need not detain this Court since the report of the D.D.E., Ext.P8, relied on and Ext.P21 are challenged here, in W.P.(C)No.27736/10.

13. The issue boils down to whether Ext.P21 or Ext.P26, is to be sustained. Ext.P21 is challenged by Latha and Ext.P26 by Sajith Kumar. The reliance placed by Sajith Kumar is on Ext.P8 enquiry report of the DDE. The arguments advanced by the learned counsel for Sajith

Kumar is to the effect that what is required is a consideration of the factual aspects and considering the controversy, it is only proper that there should be a remand, to the appropriate authority for consideration of the facts. The said argument is raised specifically on the contention that the attendance register maintained by the Headmistress would clearly indicate that Sajith Kumar was the Class teacher of Std.III A and had been continuously engaged as a teacher in the LP Section and not in the UP Section. The attendance register so maintained by the Headmistress is also said to be counter signed by the educational authorities. The learned counsel also offered to produce the attested copies of the attendance register across the Bar, for the perusal of this Court, which this Court declined for reasons to be put on record later.

14. The claim of Sajith Kumar as was noticed, is based on Ext.P8 enquiry report. Admittedly, Sajith Kumar holds a B.Ed., while Latha holds a TTC. Though, earlier, both TTC and B.Ed. holders could be appointed as LPSAs or

UPSAs, the situation stood altered in 2000. By G.O.(P) No.188/2000/G.Edn. dated 8.6.2000, amendment was made to Rule 4(1) of Chapter XXXI of KER, and B.Ed. holders were not to be appointed as LPSAs, thenceforth. TTC was the qualification prescribed for LPSAs and also for UPSAs. Ext.P8 enquiry report noticed the aforesaid government order and relied on G.O.(P)No.26327/J/3/2000/Gen.Edn. dated 26.6.2000 to find that a Rule 51A claimant could be given appointment de hors the restriction on a B.Ed. holder being appointed as a LPSA. Government Letter No.35528/J3/04/G.Edn. dated 11.10.2004 was relied on to find that a 51A claimant could only be accommodated in the vacancy of either LPSA or UPSA, from which the Rule 51A claim arose. Sajith Kumar being a Rule 51A claimant, despite his lack of qualification, was found to be entitled to be appointed as a LPSA. Looking at his appointment order, Ext.P8 found that there is an interpolation in the approval granted, adding the letters "UPSA" after the words "Assistant teacher". It is the specific finding in Ext.P8 that

someone in the office of the educational authorities had effected such interpolation. It was also found that the Rule 51A claim of Sajith Kumar arose due to his service as an LPSA and that the Headmistress has informed the DDE in writing that the said teacher was engaged in the LP section and not in the UP section. It was on such findings that the action of the Manager was affirmed.

15. At the outset it is to be noticed that there could be no category change from LPSA to UPSA or vice versa ; as held by a Division Bench of this Court in **Manager, M.M.U.P.School, Kuppam Vs. The Deputy Director of Edu. & Ors. (2011(1) KLJ 724)**. The learned counsel who appeared for the rival parties, also raised no dispute on that ground. The assertion made by the learned counsel for Sajith Kumar is that his appointment itself was as a LPSA and the Manager also supports the said stand, contending that the vacancy arose on the retirement of a LPSA.

16. The contention of the Rule 51A claimant being entitled to be appointed as a LPSA, de hors the fact that he

lacks the qualification in TTC, is specious. The reliance in Ext.P8 report, to the two Government letters is unsound and fallacious. Essentially the Government Order of 8.6.2000 brought in amendments to the KER and altered the qualifications prescribed for UPSA and LPSA respectively in Rule 3(1) and Rule 4(1). In the context of such amendment, the prescription becomes statutory and there can be no watering down of the same by clarifications issued by the Government. Moreover, the clarification do not lend credence to the strained interpretation attempted in Ext.P8.

17. The body of the clarification issued is extracted hereunder and immediately interpreted. G.O.(P) No.26327/J/3/2000/Gen.Edn. dated 26.6.2000 reads as under:

"I am to invite your attention to the reference cited, and to inform you that Government have amended the Rules 3(1) and 4(1) of Chapter XXXI KER in such way that only TTC holders are eligible to get appointment as LPSAs and B.Ed. holders can be considered along with TTC holders for appointment to the post of UPSAs. Hence B.Ed. holders are not eligible to be appointed as L.P.School Assistants.

However the new amendment will not affect the claims under Rule 51A, Chapter XIV A KER secured before 8-6-2000 the date of notification."

18. The reference is to the amendment of 8.6.2000 and the clarification is only to the effect that the amendment with respect to the qualification shall not effect a claim under Rule 51A, which arose before 8.6.2000. Hence, merely because a B.Ed. holder was appointed as a LPSA before 8.6.2000 giving rise to the claim under Rule 51 A ; he/she shall not be denied appointment as an UPSA. This was because, prior to the amendment, both B.Ed. holders and TTC holders could be appointed as LPSAs or UPSAs. The Government Letter is not to the effect that de hors the amendment, a B.Ed. holder without TTC could be appointed as a LPSA.

19. Government Letter No.35528/J3/04/G.Edn. dated 11.10.2004 reads as under :

"As per G.O.(P)188/2000/G.Edn dated 8-6-2000 only TTC holders are eligible for the post of LPSA. In the category of UPSA both TTC holders and B.Ed. holders can be appointed. Subsequently, by clarifying that the 51A claimant will not be

affected by the condition in the above Government order. Government prescribed a cut off date in 8-6-2000 for such cases.

The post of LPSA and UPSA are different in nature and duties and hence difference categories. It is a settled law that the claim under Rule 51 A can only be to the same post. So UPSA appointed before 8-6-2000 availing the benefit under the cut off date is not eligible for re-appointment as LPSA."

This in fact renders the finding in Ext.P8 hollow, since it clarifies that a UPSA appointed on the basis of the earlier prescription of qualification of UPSA (B.Ed) cannot be appointed as LPSA, if he/she does not have TTC. As a corollary, a teacher appointed as a LPSA, on the strength of B.Ed., which appointment give rise to the claim of Rule 51A, cannot claim a right to a vacancy arising in the lower primary section, if he/she does not have a TTC. He/she could only claim when a vacancy arises in the U.P.Section. Clarification dated 26.6.2000 is only to that effect.

20. The above interpretation runs counter to the decision of a Division Bench of this Court in **Usha Ratnam Vs. State of Kerala (2001 KHC 689)**, which in the

ordinary course would commend this Court to follow the same or refer the issue to the Division Bench. But the later Full Bench decision and the fact that Rule 34(b) stood amended, w.e.f. 18.12.1984, on 7.3.2011 persuades this Court, not to resort to either of the above courses. The Division Bench in **Usha Ratnam's** case (supra), found that a Rule 51A claimant having only a B.Ed and not a TTC ; the claim arising prior to 8.6.2000, cannot be denied appointment as a LPSA since Rule 51A claimant had a vested right, which could be taken away only by a statute. As noticed by the Full Bench, the prescription under Rule 34 (b) for a combined list of teachers in the case of UPSA and LPSA, for all purposes, stood amended on 7.3.2011, w.e.f. 18.12.1984. After amendment, the only purpose of such combined list was to reckon the service for determination of eligibility to be posted as Primary School Headmasters.

21. Apposite would be reliance on the decision of the Honourable Supreme Court in **P.Susheela Vs. UGC (AIR 2015 SC 1976)**. There the qualification dealt with,

was the exemption granted by the UGC to Ph.D. holders, from acquiring NET qualification ; which exemption was subsequently taken away on the directive of the Central Government. It was argued that those Ph.D. holders who qualified prior to the withdrawal of exemption had a vested right for continued exemption. Their Lordships, relying on other precedents of the Apex Court, drew a distinction between a vested right and an existing right. Rule 51 A gives preference to qualified teachers, relieved as per Rule 49 or 52, for appointment to future vacancies “in the same or higher or lower category of teaching posts, for which he is qualified, that may arise” (sic). The extracted portion in the rule is brought in, only in 2005. But even prior to that amendment, the rule starts with the words “Qualified teachers”. The change in qualifications was also brought in by amendment of Rule 3 and Rule 4 of Chapter XIVA of the KER. The right for appointment under Rule 51A, to a teacher with B.Ed. alone, arising on account of an appointment as LPSA prior to 8.6.2000 is also preserved in

so far as he/she being entitled to be appointed to the post of an UPSEA, even after amendment.

22. Further on facts too, herein the nature of appointments are crystal clear. In the teeth of the arguments advanced, with respect to the interpolation, this Court called for the files maintained by the AEO. The AEO has also produced the service book which is to be normally maintained by the Headmaster of the respective School. The learned Government Pleader would also submit that the service book was called for, since the issue was pending before the statutory authorities and though it was returned; on the specific direction issued by this Court, the same was again called for and produced along with the files available in the office of the AEO, with respect to the appointment and approval of Sajith Kumar.

23. The approval order produced as Ext.P20, is available in original, in the service book of Sajith Kumar and is identical to the copy produced as Ext.P20. A mere perusal of the original appointment order and the approval

endorsed, indicates that there is no interpolation made and the words "UPSA" appearing after "the Assistant teacher", is in the continuous hand and in the very same ink, dispelling any suspicion of the same being an interpolation. However, the copy produced by Sajith Kumar as Ext.P1 in W.P.(C) No.8287/12 does not contain the word "UPSA" in brackets. The files of approval, available with the AEO also indicate that the copy produced as Ext.P1 in W.P.(C)No.8287 of 2012 is also a true copy in so far as the words 'UPSA' is absent in the approval files of the AEO at page 19.

24. The Government has filed a counter affidavit stating that the same is an omission and there is no interpolation in the other order available in the service book. To substantiate the contention, the learned Government Pleader also refers to the various documents in the approval file. Page 3 of the files, reveals an office note which indicates the 'Subject' as, 'Approval of appointment of Sri.E.P.Sajith Kumar as UPSA'. The designation at column 5 also shows 'Assistant Teacher' (UPSA). The certificate of

declaration of the Headmistress dated 20.1.2003 in page 9 of the approval files also indicates that Sajith Kumar is appointed as UPSA w.e.f. 5.6.2002. Further, the salary bills submitted, with reference to the School for 2003-'04, the files of which are also produced, show the salary of Sajith Kumar having been claimed, showing his designation as UPSA.

25. It has to be noticed that the Register of the AEO, for approval of appointment in UP Schools, does not however show any designation and merely show Sajith Kumar as an Assistant Teacher and as a Rule 51A claimant. However, considering the overwhelming documentary evidence available in the files of the educational authorities, indicating the appointment of Sajith Kumar as an UPSA, this Court cannot come to a different conclusion. It is also to be noticed that the service book which is maintained with the Headmistress and to which the teachers and the Manager have access, specifically shows the appointment to be as an 'Assistant Teacher, UPSA'. Neither Sajith Kumar nor the

Manager can take a different contention, especially after such a long distance of time.

26. Sajith Kumar's appointment as UPSA in 5.6.2002 was sought to be changed as LPSA by Exts.P3 and P4 in the year 2009-'10. The further contention that Sajith Kumar was appointed in a vacancy of LPSA cannot also be countenanced, since in the counter affidavit of the government, as also in Ext.P26 order of the DPI, it is stated that the vacancy arose in the post of UPSA and the incumbent, who retired, was holding charge of UPSA at the time of retirement. The contention on the basis of the attendance register cannot in any manner sway this Court or the educational authorities from the findings entered into herein above. The attendance register would only, at best, disclose the engagement of the teacher and that does not commend a deviation from the specific category to which the teacher was appointed.

27. The appointment of Sajith Kumar, as is disclosed from the files available with the educational authorities,

definitely is to the post of UPSA and not to the post of LPSA. It could also not be otherwise since Sajith Kumar was not qualified to be an LPSA. His temporary appointment as a LPSA and the consequent claim under Rule 51A, cannot entitle him to be appointed as a LPSA, as has already been found by this Court. The service book also supports this view and there is no challenge made to the approval of Sajith Kumar as UPSA. In such circumstances, Ext.P26 order of the DPI, produced in W.P.(C)No.27736 of 2010, has to be upheld.

28. Latha, as was noticed, in any event was appointed as LPSA and she cannot be converted to UPSA. The Manager also does not have a case that the appointment of Latha was in a vacancy of UPSA and the approval made as is indicated in Ext.P1 is also in the post of LPSA. W.P.(C) No.27736/10 is hence allowed, setting aside Ext.P21 and upholding Ext.P26, directing the educational authorities to treat Latha E.V. as LPSA appointed w.e.f. 1.6.2005 onwards. W.P.(C)No.8287/12 is dismissed declaring that E.P.Sajith

Kumar is appointed as a UPSA w.e.f. 5.6.2002, upholding Ext.P8 produced therein (Ext.P26 in the other writ petition).

29. As a consequence, W.P.(C)No.35873/10 filed by the Manager and Nisha M.Nair would stand dismissed and Nisha could be placed only as a junior, in the cadre of UPSA, to Sajith Kumar. Nisha's claim is for protection, in the event of Sajith Kumar being found to be appointed as an LPSA. This Court has negated that claim, Nisha necessarily has to be retrenched. Ext.P9 will have no effect since G.O.(Rt.)No.4271/10/G.Edn. (produced as Ext.P21 in W.P.(C)No.27736/10) has been set aside.

30. As far as W.P.(C)No.35253/10 is concerned, it was noticed at the outset itself that, on Latha being confirmed as a LPSA, Rajitha would be junior to her. Her contention is only with respect to the claim for protection on 1:40 ratio, in the post of LPSA in the year 2008-09. Ext.P9 order in W.P.(C)No.35253/10 is hence set aside. Ext.P4 in the same writ petition as a consequence already stands set aside. W.P.(C)No.35253/10 stands allowed.

31. As to the salary drawn, the government would pay the entire salary due to E.V.Latha within a period of 3 months from the date of receipt of the certified copy of this judgment, after looking at her entitlement on the basis of her claim as an LPSA in the respective years. However, with respect to the claim of Sajith Kumar, both Sajith Kumar and Latha were continued in the post of LPSAs, based on an interim order dated 18.10.2010 in I.A.No.14533/10 in W.P. (C)No.27736/10. E.V.Latha took the risk of continuing without salary, reserving her claim, if she succeeds in the writ petition. This Court permitted it, on the further condition that if the 6th respondent/Sajith Kumar is found to be not entitled to continue as LPSA, then he would have to repay the salary drawn by him during this period. Hence the salary drawn by the 6th respondent definitely would have to be refunded to the Government.

32. Rajitha's salary shall be disbursed, as she is entitled for protection under 1:40 ratio, during 2009-'10. Rajitha has been declined salary between 1.1.2010 to

28.2.2010 and 1.4.2010 to 14.7.2010 which she is entitled to, even going by the counter affidavit of the 3rd respondent in W.P.(C)No.35253/10 wherein Rajitha is said to have been granted protection during 2009-'10 as an LPSA under 1:40 ratio. Nisha M.Nair has to concede to the staff fixation order, being treated as an UPSA, junior to Sajith Kumar.

W.P.(C)Nos.27736 and 35253 of 2010 would stand allowed. W.P.(C)Nos.35873 of 2010 and 8287 of 2012 would stand dismissed. The judgment passed in this writ petition shall not affect the entitlement of any of the teachers/petitioners for being considered in any package offered by the government. Parties to suffer their costs.

Sd/-
K.VINOD CHANDRAN,
Judge.

ami/

//True copy//

P.A. to Judge