

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No.35608 of 2005 (L)

PETITIONER :

V.J.BHASURA,
W/O.JAYAPALAN,
KATTUTHUDYIL PUTHEN VEETIL,
MARUR POST, VIA ELAMANNUR,
ADOOR 691 524.

BY ADV. SRI.BABY MATHEW

RESPONDENTS :

1. THE MANAGER, P.N.K.M.UPPER PRIMARY SCHOOL,
POST KARAVOOR, VIA PIRAVAUTHOOR 689 696.
2. THE ASSISTANT EDUCATIONAL OFFICER,
PUNALOOR 691 305.
3. THE DISTRICT EDUCATIONAL OFFICER,
KOTTARAKKARA 691 506.
4. THE DEPUTY DIRECTOR OF EDUCATION,
CIVIL LANES, AYYANTHOLE, TRICHUR.
5. GOVERNMENT OF KERALA, REPRESENTED BY
ITS SECRETARY, GENERAL EDUCATION DEPARTMENT,
TRIVANDRUM 695 001.

ADDL.R6:- BABY JOSEPH,
TEACHER,
P.N.K.M.U.P.SCHOOL,
KARAVOOR.P.O.,
PUNALUR-689 696.

(ADDL.R6 IS IMPEADED AS PER ORDER DTD.2.3.06 IN I.A.No.648/06.)

R1 BY ADV. SRI.M.V.THAMBAN

R2 TO R5 BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|--------|---|---|
| EXT.P1 | : | COPY OF THE ORDER OF APPOINTMENT ISSUED BY THE
MANAGER DTD.3.7.1980 WITH THE APPROVAL LETTER
OF DEO NO.D.5930-80/K.DIS DTD.10.8.1980. |
| EXT.P2 | : | COPY OF THE REQUEST LETTER OF THE PETITIONER
DTD.22.5.2004. |
| EXT.P3 | : | COPY OF THE JUDGMENT IN W.P.(C)No.23694/2004-u
DTD.11.8.2004. |
| EXT.P4 | : | COPY COVER OF THE REGISTERED LETTER NO.A.954 OF
ERNAKULAM HIGH COURT POST OFFICE DTD.24.8.2004. |
| EXT.P5 | : | COPY OF THE COMPLAINT OF THE PETITIONER TO THE
DEPUTY DIRECTOR OF EDUCATION, KOLLAM
DTD.15.11.2004. |
| EXT.P6 | : | COPY OF THE ACKNOWLEDGMENT CARD. |
| EXT.P7 | : | COPY OF THE PRINTED NOTICE. |
| EXT.P8 | : | COPY OF THE PRINTED NOTICE. |
| EXT.P9 | : | COPY OF THE PRINTED NOTICE. |

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.35608 of 2005

Dated this the 23rd day of July, 2015

JUDGMENT

The petitioner was initially appointed in the temporary vacancy of Language Teacher as Junior Hindi Teacher in P.N.K.M Upper Primary School, Karavoor when it was under the management of the erstwhile Manager. Her appointment was for the period from 3.7.1980 to 31.3.1981, in a leave vacancy which had arisen when one V.K.Rajappan Nair, who was continuing as Junior Hindi Teacher was deputed for training. As evident from the endorsement made on Ext.P1 appointment order by the Assistant Educational Officer, Punalur, the appointment of the petitioner for the period from 3.7.1980 to 31.3.1981 was approved and she became a Rule 51A claimant.

2. The grievance of the petitioner in this Writ Petition is that, in spite of the fact that she is a Rule 51A claimant who is entitled for preferential appointment in the next arising vacancy, the subsequent manager, who purchased the school in 1988, was taking

hasty steps to appoint a fresh hand in the vacancy that had arisen on 01.06.2004, on the retirement of Sri.V.K.Rajappan Nair. The petitioner submitted Ext.P2 representation before the 1st respondent Manager requesting that she may be appointed as Hindi Teacher in the retirement vacancy with effect from 2.6.2004.

3. Since there was no response from the Manager, the petitioner had approached this Court in W.P.(C)No.23694 of 2004, which was disposed of by Ext.P3 judgment, by which the District Educational Officer, Kottarakkara, the 3rd respondent herein, was directed to look into Ext.P3, with notice to the petitioner and also to the 1st respondent Manager and take appropriate action in accordance with law, within a period of one month from the date of production of a copy of the judgment. In Ext.P3 judgment this Court has made it clear that, the petitioner would produce two copies of the judgment and the Writ Petition before the 3rd respondent and that the 3rd respondent would serve one copy to the 1st respondent Manager. Ext.P4 produced along with this Writ Petition would show that, the registered letter sent by the learned counsel for the petitioner addressed to the 1st respondent Manager was returned

with an endorsement 'refused'. The petitioner submitted Ext.P5 representation before the Deputy Director of Education, Quilon, the 4th respondent herein, and thereafter moved this Court in this Writ Petition seeking various reliefs.

4. By order dated 2.3.2006 in I.A.No.648 of 2006 the subsequent appointee was impleaded as the additional 6th respondent.

5. A counter affidavit has been filed on behalf of the 1st respondent Manager, in which he has not disputed the fact that the petitioner is a Rule 51A claimant. According to the 1st respondent, the school originally belonged to one Sri.P.G.Gopala Pillai, who died in the year 1987. Thereafter his wife Smt.Chellamma assumed the office of the Manager. Later in the year 1988 the school along with its property was purchased by the 1st respondent, vide sale deed dated 9.1.1991. Thereafter, the Department has approved the change of management. On 31.3.2004 Sri.V.K.Rajappan Nair, who was working as part time Hindi Teacher and drawing salary for full time post, retired on superannuation. Consequently a vacancy of part time Hindi Teacher arose on 1.5.2004. In the said vacancy the

1st respondent Manager appointed the 6th respondent. Approval for that appointment was rejected by the 2nd respondent. According to the 1st respondent Manager, he was unaware of the preferential claim of the petitioner under Rule 51A Chapter XIV A of KER at the time of appointing the 6th respondent. A reading of paragraph 7 of the counter affidavit filed by the 1st respondent Manager would make it explicitly clear that, he has not denied the specific averment in paragraph 9 of the Writ Petition that, immediately after the receipt of Ext.P3 judgment, the learned counsel for the petitioner sent a copy of the same to the 1st respondent Manager by registered post, which he refused to accept. According to the 1st respondent, since he was not aware of the preferential claim of the petitioner under Rule 51 A of Chapter XIVA of the KER, there is no refusal for appointment.

6. I heard the learned counsel for the petitioner, the learned counsel appearing for the 1st respondent Manager and also the learned Government Pleader for respondents 2 to 5. In spite of service of notice none appeared for the 6th respondent.

7. The sole issue that arises for consideration in this Writ Petition is as to whether the 1st respondent Manager was justified in not offering appointment to the petitioner who was entitled for preferential appointment under Rule 51A of Chapter XIVA of the KER in the vacancy in which the additional 6th respondent was appointed with effect from 1.6.2004.

8. Ext.P1 order passed by the 2nd respondent makes it clear that, the petitioner was a Rule 51A claimant with approved service for the period from 3.7.1980 to 31.3.1981 and approval for her appointment has already been granted by the 2nd respondent. It is also not in dispute that, on 31.3.2004 Sri.V.K.Rajappan Nair, who was working as part time Hindi Teacher retired from service on superannuation. Therefore, there arose a vacancy of part time Hindi Teacher in the school managed by the 1st respondent, which has to be filled in accordance with the provisions under the KER on the re-opening of the school. Ext.P2 representation produced along with the Writ Petition is one addressed to the 1st respondent Manager, which is dated 22.5.2004. In Ext.P2 the petitioner has requested the 1st respondent to appoint her in the vacancy which has arisen due to

the retirement of Sri.V.K.Rajappan Nair since she is a preferential claimant under Rule 51A of Chapter XIVA of KER. Immediately thereafter, the petitioner had approached this Court in W.P.(C) No.23694 of 2004, which resulted in Ext.P3 judgment. As evident from Ext.P5 though a copy of Ext.P3 judgment was forwarded to the 1st respondent Manager by the learned counsel appearing for the petitioner before this Court, he refused to accept the same. It is thereafter, the petitioner has filed Ext.P4 representation before the 3rd respondent seeking his interference.

9. Going by the mandate contained in Rule 51A Chapter XIV of KER the manager is statutorily bound to offer appointment to a claimant having preferential claim, once a future vacancy arises in the school. Going by the principle laid down in various judgments of this Court, the Manager is statutorily bound to offer appointment to such a preferential claimant once a future vacancy arose. It is not necessary that the claimant should approach the Manager as and when the vacancy arose. In such circumstances, there was absolutely no justification on the part of the 1st respondent Manager in offering appointment to a fresh hand like the 6th respondent when

the petitioner who is a preferential claimant under Rule 51A of Chapter XIV A of KER was available for appointment. Therefore, the action of the 1st respondent Manager in appointing the 6th respondent as the part time Hindi Teacher with effect from 1.6.2004 cannot be sustained.

In the result, this Writ Petition is allowed declaring that the petitioner is legally entitled to be appointed as part time Hindi Teacher in the school managed by the 1st respondent with effect from 2.6.2004 with all consequential monetary benefits including salary and all other benefits. The 1st respondent manager shall within a period of one month from the date of receipt of a copy of this judgment, forward a proposal for appointment of the petitioner as part time Hindi Teacher in the school with effect from 2.6.2004. On receipt of such proposal along with necessary documents, the competent authority among respondents 2 to 4 shall approve her appointment as such and sanction all consequential benefits as if she had continued in service from 2.6.2004 to 31.3.2005. All consequential benefits shall be disbursed to the petitioner within a period of three months thereafter. It would be open to the

respondents, if found necessary, to effect recovery of the monetary benefits paid to the petitioner from the 1st respondent Manager. If they propose any such action, it should be done only with proper notice to the 1st respondent Manager and after affording him a reasonable opportunity of being heard.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

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