

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 27910 of 2013 (K)

PETITIONER(S)/PETITIONER:

**ANNAMMA JOHN, AGED 50 YEARS
W/O.ACHAN KUNJU, KOCHUKIZHAKEDATH, MATHOOR.P.O
OMALLLUR, PATHANAMTHITTA DISTRICT-689647.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD**

RESPONDENT(S)/RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERALEDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM-695014.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA AT THIRUVALLA-689101.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA-689001.**
- 5. THE MANAGER,
MAR PHELIXINOS VOCATIONAL HIGHER SECONDARY SCHOOL
KUMBAZHA, PATHANAMTHITTA-689001.**

**R1 -R 4 BY ADV. GOVERNMENT PLEADER, SMT. M.J. RAJASREE
R5 BY ADV. SRI.V.G.ARUN
R5 BY ADV. SRI.T.R.HARIKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-12-2015,
ALONG WITH WPC. 37078/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF PETITION DATED 09.11.2012 TO THE 2NDS RESPONDENT
- EXT.P2 TRUE COPY OF THE ORDER NO.ET3/66404/12/DPI/K.DIS.DATED 07.12.2012 OF THE 2ND RESPONDENT
- EXT.P3 TRUE COPY OF THE COMPLAINT DATED 08.02.2013 OF THE PETITIONER ADDRESSED TO THE 2ND RESPONDENT
- EXT.P4 TRUE COPY OF THE LETTER NO.B6/6370/11 DATED 12.04.2013 OF THE 4TH RESPONDENT
- EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 25.04.2013 SUBMITTED BEFORE THE GOVERNMENT.
- EXT.P6 TRUE COPY OF THE G.O.(RT.)NO.4207/13/G.EDN.DATED 10.10.2013 OF THE GOVERNMENT.
- EXT.P7 TRUE COPY OF THE ORDER No.B6/12660/13 DATED 18.08.2014 OF THE 4TH RESPONDENT.
- EXT.P8 TRUE COPY OF THE LETTER ADDRESSED TO THE DISTRICT EDUCATIONAL OFFICER DATED 01.12.2015.

RESPONDENT(S)' EXHIBITS

- ANNEXURE R4(a) COPY OF THE LETTER DATED 17.06.2013.
- ANNEXURE R4(b) COPY OF THE LETTER DATED 29.07.2013.
- EXT.R5(a) TRUE COPY OF THE APPOINTMENT ORDER ALONG WITH COVERING LETTER DATED 02.12.2013 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.
- EXT.R5(b) TRUE COPY OF THE NOTICE No.262/2013 DATED 17.12.2013 ISSUED BY THE 5TH RESPONDENT.
- EXT.R5(c) TRUE COPY OF THE LETTER DATED 19.12.2013 SUBMITTED BEFORE THE 4TH RESPONDENT.
- EXT.R5(d) TRUE COPY OF THE AFFIDAVIT DATED 29.10.2015 SUBMITTED BY THE WRIT PETITIONER BEFORE THE DISTRICT EDUCATIONAL OFFICER, PATHANAMTHITTA.

// True copy //

PA to Judge

K. VINOD CHANDRAN, J.

W.P.(C) No. 27910 of 2013 (K)

&

W.P.(C) No.37078 of 215 (H)

Dated this the 9th day of December, 2015

J U D G M E N T

Both the writ petitions project the very same issue, ie, the claim for appointment as Peon, of one Annamma John, who is the petitioner in W.P.(C) No.27910/2013. She seeks implementation of Ext.P6 order of the Government in a revision filed by the Manager. The Manager has filed W.P. (C) 37078/2015 challenging the order at Ext.P6, belatedly, since the order itself was of the year 2013 and the writ petition is filed in 2015.

2. The brief facts to be stated are that Annamma John had occasion to be appointed as a Full-Time Menial between 3.10.1996 and 4.12.1996 in a leave vacancy, which gave her a claim under Rule 51A of Kerala Education Rules, 1959 (for brevity 'KER'). She was also re-appointed on the basis of the claim on 1.11.1997, and continued for one

academic year each, till 15.7.2003, when, due to division fall, she was thrown out on retrenchment. The claim raised is to the post of Peon which arose on 24.8.2010, when the incumbent in that post died. The Manager appointed a Rule 51B claimant in the said post who is said to have resigned from service on 16.7.2013.

3. The parties and the documents are referred to from W.P.(C) No. 27910 of 2013. The petitioner filed Ext.P1 representation before the DPI, which was considered and Ext.P2 order dated 7.12.2012 was passed, directing the Manager to appoint the petitioner as a Full-Time Menial. The petitioner filed a revision against the said order, in which, by Ext.P6, the Government directed the petitioner to be appointed as Peon itself. The present controversy arose since the petitioner was appointed as a Full-Time Menial on 18.12.2013. The petitioner claims appointment to the post of Peon and also a retrospective regularisation from 24.8.2010, since she was entitled to be appointed to the

said post.

4. The writ petition of the Manager shows that the petitioner was issued with an appointment order on 8.8.2012 by Ext.P1, produced in that writ petition, which the petitioner did not respond to. The petitioner was again issued with a letter, asking to report for duty, by Ext.P2, and on no response despite acknowledgment, a notice was published in the vernacular newspaper, which is evidenced at Ext.P4. Even then the petitioner did not turn up. Ext: P-6 however indicates that there was no warrant for the said actions of the Manager since there was no vacancy of Full-Time Menial in the School.

5. The petitioner's contention is that she was entitled to an appointment as Peon and not as a Full-Time Menial. In any event, on the petitioner being offered such appointment, the petitioner ought to have taken it up and then challenged the denial of appointment to the post of Peon.

6. Further, it is to be noticed that the petitioner had delayed; the challenge against the appointment of the Rule 51B claimant. Rule 51 B claimant was appointed on 24.8.2010 as a Peon. The petitioner's first representation is seen at Ext.P1 on 9.11.2012, after more than two years. In such circumstance, the petitioner cannot claim any retrospective appointment for reason of the delay caused in challenging the Rule 51B claimant's appointment, as also for reason of the petitioner having not joined the respondent school, when she was offered an appointment as per Exts.P1, P2 and P3 produced in W.P.(C) No. 37078/2015. However, the petitioner's claim, to be appointed as a Peon, cannot be declined.

7. In such circumstance, the petitioner's appointment on 18.12.2013 shall be converted to that of Peon and the Manager shall issue necessary appointment order and send it for approval within two weeks from the date of receipt of the certified copy of this judgment. The

petitioner's appointment as Peon shall be approved from 18.12.2013 and the entire arrears of pay shall be paid within three months from the appointment order being send for approval to the Assistant Education Officer.

W.P.(C) No.27910/2013 is disposed of. The Order of the Government at Ext:P-6 is upheld with the above modifications. W.P.(C) No. 37078/2015 is found to be devoid of merit and dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj 9/12/15

The last sentence in paragraph 7 of the common judgment dated 09.12.2015 in W.P.(C) No.27910/2013 and W.P.(C) No.37078/2015 is corrected as "District Educational Officer, Pathanamthitta" instead of "Assistant Education Officer" as per order dated 14.01.2016 in I.A. 225/2016 in W.P.(C) No.27910/2013.

Sd/-
Registrar (Judicial)