

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

W.P.(C).No.35776 of 2005 (H)

PETITIONER(S):-

USHA M.,
HIGHER SECONDARY SCHOOL TEACHER,
VALLAPPUZHA HIGHER SECONDARY SCHOOL,
VALLAPPUZHA P.O., PALAKKAD DISTRICT.

BY ADVS.SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
SRI.S.SUJIN

RESPONDENT(S):-

1. MANAGER,
VALLAPPUZHA HIGHER SECONDARY SCHOOL,
VALLAPPUZHA P.O., PALAKKAD DISTRICT.
2. SUJATHA R.,
PRINCIPAL IN-CHARGE, VALLAPPUZHA HIGHER SECONDARY SCHOOL,
VALLAPPUZHA P.O., PALAKKAD DISTRICT.
3. DISTRICT EDUCATIONAL OFFICER, OTTAPPALAM.
4. DIRECTOR OF HIGHER SECONDARY EDUCATION,
GOVT. OF KERALA, HOUSING BOARD BUILDING,
THIRUVANANTHAPURAM.
5. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVT.,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

R1 & R2 BY ADVS. SRI.M.R.RAJENDRAN NAIR (SENIOR ADVOCATE)
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.P.A.KUMARAN
SMT.VINEETHA B.

R3 TO R5 BY GOVERNMENT PLEADER SRI.VIJU THOMAS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT
DT.1.9.04 APPOINTING THE 2ND RESPONDENT AS PRINCIPAL.
- EXT.P2 TRUE COPY OF THE REPRESENTATION DT.27.10.2005
SUBMITTED BY THE PETITIONER BEFORE THE 4TH
RESPONDENT DIRECTOR OF HIGHER SECONDARY EDUCATION.
- EXT.P3 TRUE COPY OF THE GOVT. ORDER GO(MS) NO.161/2004/G.EDN.
DATED 16.6.04.
- EXT.P4 TRUE COPY OF THE CIRCULAR DT.13.4.2005 ISSUED BY THE
4TH RESPONDENT, DIRECTOR OF HIGHER SECONDARY
EDUCATION.

RESPONDENT'S EXHIBITS:-

- EXT.R2(A) TRUE COPY OF ORDER NO.ACD.A2-17586/HSE/01 DATED
20.12.2005 ISSUED BY THE 4TH RESPONDENT.
- EXT.R2(B) TRUE COPY OF ORDER NO.ACD.A2/17586/HSE/01
DATED 25.4.2006 ISSUED BY THE 4TH RESPONDENT.
- EXT.R2(C) TRUE COPY OF THE ORDER NO.ACD A2/17386/HSS/2001
DATED 27.7.2002 OF THE DIRECTOR OF HIGHER SECONDARY
EDUCATION.
- EXT.R2(D) TRUE COPY OF THE ORDER NO.A2/418/RDDE/06
DATED 18.4.2009.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.35776 of 2005-H

Dated this the 07th day of December, 2015.

JUDGMENT

The petitioner and the 2nd respondent are rival claimants to the post of Teacher-in-Charge in the Higher Secondary School under the 1st respondent. It is specifically noticed that the claim is only to the post of Teacher-in-Charge, since the 2nd respondent was appointed as Principal after Chapter XXXII, in its entirety, was introduced along with the qualifications prescribed for Principal in the year 2009. There is no dispute that, after Chapter XXXII was introduced the petitioner has no claim since the 2nd respondent is the admitted senior of the petitioner in the High Secondary School section.

2. The brief facts to be noticed are that, the petitioner was appointed as a High School Assistant [for brevity "HSA"] (Malayalam) initially on 25.07.1993 and the 2nd respondent as HSA (Chemistry) on 22.06.1994. The petitioner was promoted as Higher Secondary School Teacher [for brevity "HSST"] (Junior) on 05.08.2000, while the 2nd respondent was promoted as HSST on

02.08.2000. The issue revolves around the question of entitlement to the post of Teacher-in-Charge (Principal) when such a post was sanctioned on 01.09.2004.

3. The 2nd respondent was admittedly placed as the Teacher-in-Charge considering her seniority as HSST. This was also permissible by the extant stipulation as per G.O.(Ms) No.161/2004/G.Edn. dated 14.06.2004. In the said Government Order, the Government prescribed a ratio of 2:1 for promotion to the post of Principal of Higher Secondary School to be appointed from the Higher Secondary School Teachers and the Headmasters of High Schools. In 2003, it was stipulated that only a Higher Secondary School Teacher having 12 years experience could be posted as Principal. The Government by G.O No: 161/2004, noticed the situation of some schools having no HSST of 12 years teaching experience and hence ordered that in such cases the senior-most HSST would be put in charge of the Higher Secondary Section. Hence, on 02.08.2000, the 2nd respondent was put in charge as Teacher-in-Charge, which was in compliance with the aforesaid Government Order.

4. The contention of the petitioner is that the scenario has been completely changed by the issuance of G.O.(MS). No.43/2005/G.Edn. Dated 11.02.2005. Therein, a clarification was issued as clause-II in paragraph 2; by indicating that the words “senior most” has to be understood as senior most, reckoning total approved teaching experience both in the Higher Secondary and High School levels. The contention of the petitioner is further that, at that point of time, when the writ petition was filed, there was also an interim direction that the appointment and approval of appointment of the 2nd respondent would be subject to the result of the writ petition. Hence despite the fact that approval was granted the same would be subject to the result of this W.P., argues Counsel.

5. It is pertinent that the 2nd respondent filed a petition [I.A.No.1016 of 2009] seeking acceptance of documents, wherein Exhibit R2(A) dated 20.12.2005 was produced, which was an approval granted to the 2nd respondent as Principal with effect from 29.07.2003. Despite the fact that the same was placed on record on 20.01.2009, the petitioner did not choose to challenge the same. Hence, the petitioner cannot contend that merely for reason of the approval being subject to the result of the writ petition the petitioner

would be entitled to be posted as Principal if she is found eligible. The petitioner also did not, at the time of introduction of the G.O of 2005 did not challenge the continuance of the 2nd respondent.

6. Further, it is also to be noticed that subsequent to the Special Rules the petitioner does not have a claim. After the Special Rules, the appointment to the post of Principal is to be made by a Selection Committee in which the Manager and the Government's nominee are included. The 2nd respondent has been so appointed regularly as Principal under Chapter XXXII in the year 2009 by a Selection Committee as provided therein. The petitioner has also not chosen to challenge the same; obviously for the reason that the petitioner, on the basis of the Special Rules, would not be entitled to the post for reason of her being junior to the 2nd respondent.

On a total consideration of the above circumstances, this Court is of the opinion that the writ petition is devoid of merit and the same is, accordingly, dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

Vku/-

[true copy]