

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 28386 of 2013 (W)

PETITIONER(S) :

SWAPNA.R
H.S.A, LUTHERAN HIGH SCHOOL, SOUTH ARYAD,
ALAPPUZHA.

BY ADV. SRI.P.K.MANOJKUMAR

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.695001

2. THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM.695001

3. THE DEPUTY DIRECTOR OF EDUCATION,
ALAPPUZHA 688 001

4. THE DISTRICT EDUCATION OFFICER,
ALAPPUZHA 688 001

5. THE MANAGER,
CORPORATE MANAGEMENT OF LUTHERAN SCHOOLS I.E.L.CHURCH
CONCORDIA H.S.COMPOUND, THIRUVANANTHAPURAM SYNOD
PERURKADA P.O., THIRUVANANTHAPURAM - 695 005.

R1-R4 BY ADV. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P-1: THE PHOTOSTAT COPY OF THE APPOINTMENT ORDER
NO.67/2011-2012
DATED 1.6.2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS,
THIRUVANANTHAPURAM
SYNOD TO THE PETITIONER.
- EXT.P-2: THE PHOTOSTAT COPY OF THE ORDER NO.B3/3529/11/K.DIS
DATED 17.4.2012
ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, ALAPPUZHA TO THE
PETITIONER
- EXT.P-3: THE PHOTOSTAT COPY OF THE APPEAL FILED BY THE
CORPORATE MANAGER LUTHERAN SCHOOLS, BEFORE THE D.D.E. ALAPPUZHA ON
FILE NO.B3/3529/2011 DATED 17.4.2012
- EXT.P-4: THE PHOTOSTAT COPY OF THE ORDER
NO.B.2/7107/2012/TVM/DATED 31.7.2012 ISSUED BY THE DEPUTY DIRECTOR OF
EDUCATION, ALAPPUZHA, TO THE PETITIONER.
- EXT.P-5: THE PHOTOSTAT COPY OF THE LETTER DATED 2.6.2012
SUBMITTED BY THE GIRIJA N. LPSA, LMLPS, MELPORUTHAMON, KILIMANOR,
TRIVANDRUM DISTRICT TO THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA.
- EXT.P-6: THE PHOTOSTAT COPY OF THE REVISION PETITION DATED
8.8.2012 SUBMITTED BY THE PETITIONER TO THE MINISTER OF EDUCATION
DEPARTMENT, THIRUVANANTHAPURAM.
- EXT.P-7: THE PHOTOSTAT COPY OF THE JUDGEMENT DATED 20.9.2012 IN
WPC NO.21817 OF 2012 (B) PASSED BY THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM.
- EXT.P-8: THE PHOTOSTAT COPY OF THE ARGUMENT NOTE DATED NIL
SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT OF KERALA, GENERAL
EDUCATION (L) DEPARTMENT,
TRIVANDRUM.
- EXT.P-9: THE PHOTOSTAT COPY OF THE FILE NOTE OBTAINED UNDER THE
RIGHT TO INFORMATION ACT NO.29861/E2/13/P.I.O DATED 3.7.2013 TO THE
S.SABU, THENGUVILA HOUSE, KOLLAM.
- EXT.P-10: THE PHOTOSTAT COPY OF THE ORDER G.O(RT)
NO.1423/2013/G.EDN DATED 26.3.2013 ISSUED BY THE GOVERNMENT
- EXT.P-11: THE PHOTOSTAT COPY OF THE LETTER
NO.60647/A3/2012/G.EDN. DATED 5.4.2013 ISSUED BY THE GOVERNMENT TO
THE PETITIONER
- EXT.P-12: THE PHOTOSTAT COPY OF THE LETTER
NO.57998/E3/2012/G.EDN DATED
23.7.2013 ISSUED BY THE GOVERNMENT TO THE DISTRICT EDUCATIONAL
OFFICER, ALAPPUZHA
- EXT.P-13: THE PHOTOSTAT COPY OF THE REPORT NO.B3/5678/13 DATED
5.8.2013 ISSUED BY THE 4TH RESPONDENT TO THE 1ST RESPONDENT
- EXT.P-14: THE PHOTOSTAT COPY OF THE ORDER
NO.57998/E3/2012/G.EDN. DATED 20.9.2013 ISSUED BY THE GOVERNMENT TO
THE PETITIONER.
- EXT.P15: COPY OF THE APPOINTMENT ORDER NO.9(A)2010-2011 DATED 1-4-
2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO SMT. SAFEELA BEEVI
LPSA.
- EXT.P15(A): COPY OF THE APPOINTMENT ORDER NO. 9(D) 2010 - 2011 DATED
25/5/2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO SMT.MINIMOL
C.J., LPSA.

EXT.P15(B): COPY OF THE APPOINTMENT ORDER NO. 9(E)2010-2011 DATED
3/5/2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO SMT. SOBHA I.C.
LPSA.

EXT.P15(C): COPY OF THE APPOINTMENT ORDER NO. 9(F) 2010 - 2011 DATED
13/5/2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO THE SMT.SHYLA
I,C, LPSA.

EXT.P15(D): COPY OF THE APPOINTMENT ORDER NO. 9(G) 2010 - 2011 DATED
17/5/2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO THE SMT.SHYLAJA
S., LPSA.

EXT.P15 (E): COPY OF THE APPOINTMENT ORDER NO. 9(H) 2010 - 2011 DATED
26/5/2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO THE
SMT.LATHAKUMARI.B. LPSA.

EXT.P16: COPY OF THE APPOINTMENT ORDER NO. 9(C) 2010 - 2011 DATED
20/4/2011 ISSUED BY THE MANAGER, LUTHERAN SCHOOLS, TO SMT.M.GIRIJA
HSA.

RESPONDENT(S) ' EXHIBITS
-----: NIL

/TRUE COPY/ P.S. TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 28386 OF 2013

Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner was appointed by the Manager of an aided school in a open vacancy of HSA(Malayalam). The petitioner is a open market candidate. Approval for the petitioner's appointment has been turned down stating that there are claimants under Rule 43 of Chapter XIVA KER. There were two sets of objections before the authorities. One is based on the claim of senior most teacher of UPSA one Girija and the other is based on the objection raised by Joshitha. The Authorities declined the approval stating that Girija only temporarily relinquished her claim for promotion and Joshitha's claim is untenable as her appointment as UPSA has not been approved by the authorities.

2. Learned counsel for the petitioner, by relying on the

judgment of this Court in Usha Thayyil v. State of Kerala (2009 (4) KLT 1 (FB)), submits that when a teacher relinquished her claim for promotion, as far as that relinquishment in relation to the vacancy concerned is a permanent, the teacher concerned can stake his claim when another vacancy in that post arises subsequently. Counsel submitted that there is no impediment in appointing the petitioner to the post.

3. I have gone through the impugned orders. Objection raised, i.e. Rule 43 claimant one Girija only temporarily relinquished her claim and, therefore, the petitioner's appointment cannot be approved, is untenable. As far as the vacancy is concerned, there is no impediment for the manager in making appointment in an open market. Temporary relinquishment would operate as a relinquishment of claim for a particular vacancy at the relevant point of time. In the light of the Full Bench decision, I am of the view that the impugned orders are unsustainable. Therefore, there shall be a direction to approve the appointment of the petitioner and release the salary to the petitioner. Salary shall be released within a period of three months from the date of

receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/True copy/ PS to Judge.