

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 26153 of 2015 (T)

PETITIONER:

**RAJASREE S., AGED 44 YEARS
PUTHENMADAM, PATTANAKKAD P.O., CHERTHALA- 688 531.**

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

- 1. THE MANAGER
THIRUMALA DEVASWOM HIGHER SECONDARY SCHOOL
ALAPPUZHA - 688 001.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
CHERTHALA - 688 531.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
ALAPPUZHA - 688 001.**
- 4. THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAUPRAM - 695 001.**
- 5. RENJITH
FULL TIME MENIAL
THIRUMALA DEVASWOM HIGHER SECONDARY SCHOOL
ALAPPUZHA- 688 001.**
- 6. SANTHOSH,
TIME MENIAL
THIRUMALA DEVASWOM HIGHER SECONDARY SCHOOL
ALAPPUZHA - 688 001.**

**BY ADVS. SRI.V.A.MUHAMMED
SRI.V.RAJASEKHARAN NAIR
BY GOVERNMENT PLEADER SMT. A LOWSY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 - COPY OF THE APPOINTMENT ORDER WITH APPROVAL ORDER
DATED 30/03/2005.
- EXT.P2 - COPY OF THE APPLICATION FILED BY THE PETITIONER
BEFORE THE MANAGER.
- EXT.P3 - COPY OF THE PETITION DATED 18/05/2015 OF THE
PETITIONER.

RESPONDENTS' EXHIBITS:-

- EXT.R1(A) - COPY OF THE APPLICATION OF THE PETITIONER DATED
29.03.2010.
- EXT.R1(B) - COPOY OF LETTER OF THE DISTRICT EDUCATIONAL OFFICER
DATED 03.06.2015.
- EXT.R1(C) - COPY OF THE APPOINTMENT ORDER OF SRI. RENJITH. N.
DATED 02.05.2015.
- EXT.R1(D) - COPY OF THE APPOINTMENT ORDER OF SRI. SANTHOSH.N.
DATED 02.05.2015.
- EXT.R1(E) - COPY OF THE LETTER OF THE MANAGER DATED 03.09.2015.

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.26153 of 2015

Dated this the 13th day of November, 2015.

JUDGMENT

The controversy is as to whether the petitioner, the wife of a deceased UPSEA, is entitled to compassionate appointment in the 1st respondent School. The brief facts are that the petitioner's husband died on 04.02.2010 and the petitioner preferred Ext.P2 application for compassionate appointment on 29.03.2010. The Manager's specific contention is that the petitioner had sought for appointment as a 'Lower Grade Hindi Teacher' (LGHT). The Manager also produces an application as Ext.R1(a), which shows Column No.13 having been filled up with letters 'L.G.H.T.' Ext.P2 copy of the application produced by the petitioner does not show the petitioner having indicated any particular post as preference for appointment.

2. In the teeth of the controversy, the Government was directed to file a Counter Affidavit. The Government, after verification of the records available with the Assistant Educational Officer, has stated that the Register of Rule 51 B claimants, maintained in the Office of the District Educational Officer, shows the petitioner's name as Sl. No.2 under the Corporate Management of T.D. Schools. The first name in the Register is of one Smt. Ramadevi P.K., registered on behalf of Sri. Vivek P., S/o. Late K.S. Pradeep Kumar, who expired on 27.12.2008. It is also averred that the Register maintained by the District Educational Officer, does not indicate any specific post having been sought for by the petitioner. In such circumstance, it cannot be ruled out that LGHT appearing in Column 13 in Ext.R1(a) could very well have been an interpolation, which the petitioner never intended or made.

3. In any event, Rule 51B adopts the Compassionate Appointment Scheme of the Government as seen from G.O.(P) NO.12/99/P&ARD dated 24.05.1999. By paragraph 5 the procedure for appointment indicates applications to be made with

supporting documents, which is complied with by the petitioner. What is relevant is the provision in paragraph 20 itself, where the applicant is permitted to indicate the order of priority of the posts applied for and if the same is not possible of compliance, then the applicant will have to be appointed to any available vacancy in any of the subordinate services.

4. Hence, even if the petitioner is found to have indicated her priority or preference to be appointed as LGHT, the petitioner cannot be asked to wait till such a vacancy arises. The Manager has a duty to inform the petitioner of any vacancy arising, so as to enable the petitioner to take up such appointment, which has been held to be a Scheme intended only at helping the bereaved family to get over the immediate situation of penury caused by the death of the sole bread winner. The Scheme, hence can be interpreted only to mean that even if a preference is given and the vacancy as preferred by the applicant does not arise; on any other vacancy arising, necessarily the applicant would have to be communicated the same and offered appointment.

5. In such circumstance, there can be no dispute on the

question of the petitioner's entitlement, to be appointed in the first vacancy arising in the School. The Counter Affidavit of the Government shows that respondents 5 and 6 were appointed in two vacancies of Full Time Menial and Part Time Menial, after the petitioner's application was on file. The Part Time Menial post is said to have arisen on 24.10.2014 and the Full Time Menial's post on 02.05.2015 as per the Counter Affidavit of the State.

6. Despite notice having been issued, none appears for respondents 5 and 6 and hence this Court has to declare them *exparte* and proceed with the matter, since notice has been signed by the parties. On the interpretation given to the Scheme, the petitioner would have to be adjusted to the first vacancy available. Both the appointments made of respondents 5 and 6 is said to have been not approved by the Educational Authority, for reason of a protected hand having not been appointed. That cannot hold good in the case of the applicant, since her claim is under Rule 51B of Chapter XIVA of KER.

In such circumstance, there shall be a direction to the second respondent to ensure that the petitioner is appointed by

the first respondent Manager in the vacancy, which arose at the first point of time and the appointee to that post could definitely stake a claim to the second vacancy . That however has to be considered in a proper proceeding initiated.

In any event, the petitioner would have to be adjusted to the first available vacancy, which shall be done at any rate within a period of one month from the date of receipt of a certified copy of this judgment.

The writ petition is allowed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp16/11/15