

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WP(C) .NO. 27364 OF 2014 (U)

PETITIONER(S):

I.G SUJITH, AGED 26 YEARS
SON OF GOPALAKRISHNA PILLAI
LOWER PRIMARY SCHOOL ASSISTANT, M.M.U.P. SCHOOL
P.O.PEROOR, KILIMANUR, THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED
SRI.V.RAJASEKHARAN NAIR

RESPONDENTS:-

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM - 695 014.
3. THE DEPUTY DIRECTOR OF EDUCATION,
THIRUVANANTHAPURAM - 695 014.
4. THE DISTRICT EDUCATIONAL OFFICER,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT-695101
5. THE ASSISTANT EDUCATIONAL OFFICER,
KILIMANUR, THIRUVANANTHAPURAM DISTRICT-695601
6. THE MANAGER,
M.M.U.P. SCHOOL, P.O.PEROOR, KILIMANUR
THIRUVANANTHAPURAM DISTRICT-695601.
7. SRI.A.M.MUHAMMED ANSAR,
UPPER PRIMARY SCHOOL ASSISTANT, M.M.U.P. SCHOOL
P.O.PEROOR, THIRUVANANTHAPURAM DISTRICT-695601.
8. SMT.N.S.SAIJA,
UPPER PRIMARY SCHOOL ASSISTANT, M.M.U.P. SCHOOL
P.O.PEROOR, THIRUVANANTHAPURAM DISTRICT-695601.

R7 BY ADV. SRI.A.AHZAR

R8 BY ADV. SRI.KALEESWARAM RAJ

R6 BY ADV. SRI.K.SIJU

R6 BY ADV. SRI.B.SUGATHAN

R1 -R 5 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 27364 OF 2014 (U)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 31.10.2011 AND APPROVAL THEREOF.

EXHIBIT P2. TRUE COPY OF THE ORDER NO.F1/53423/2014/DPI/R.DIS. DATED 19.09.2014 OF THE 2ND RESPONDENT.

EXHIBIT P2(A). TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2.

EXHIBIT P3. TRUE COPY OF THE APPOINTMENT ORDER OF SRI.MUHAMMED ANSAR DATED 01.06.2011.

EXHIBIT P4. TRUE COPY OF THE ORDER NO.K.DIS.C/751/2011 DATED 31.03.2012 OF THE 5TH RESPONDENT.

EXHIBIT P5. TRUE COPY OF THE APPOINTMENT ORDER OF SMT.SAIJA DATED 26.09.2011.

EXHIBIT P6. TRUE COPY OF THE ORDER NO.K.DIS.C/1296/2011 DATED 31.03.2012 OF THE 5TH RESPONDENT.

EXHIBIT P7. TRUE COPY OF THE G.O.(RT)NO.3847/2013/G.EDN. DATED 13.09.2013 OF THE GOVERNMENT.

EXHIBIT P7(A). TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P7.

EXHIBIT P8. TRUE COPY OF THE ORDER NO.C/11/1168/2010 DATED 13.01.2014 OF THE 5TH RESPONDENT.

EXHIBIT P9. TRUE COPY OF THE ORDER IN I.A.NO.939/2014 IN W.P.(C) NO.33539/2010 DATED 07.04.2010.

EXHIBIT P10. TRUE COPY OF THE STAFF FIXATION ORDER 2010-2011 OF THE 5TH RESPONDENT DATED 06.12.2010.

EXHIBIT P11. TRUE COPY OF THE G.O.(P)NO.199/2011/G.EDN. DATED 01.10.2011 OF THE GOVERNMENT.

EXHIBIT P12. TRUE COPY OF THE HEARING NOTICE DATED 01.09.2014 OF THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS:

EXT.R7(A): TRUE COPY OF THE APPOINTMENT ORDER DATED 13.10.2014 ISSUED TO A.M.MUHAMMED ANSAR

EXT.R7(B) : TRUE COPY OF THE ORDER DATED 30.10.2014 BY THE AEO,
KILIMANOOR

EXT.R7(C) : TRUE COPY OF THE TRANSLATION OF EXT.R7(B)

EXT.R8(A) : TRUE COPY OF AN APPROXIMATE COPY OF THE REPRESENTATION
SUBMITTED BY THE 8TH RESPONDENT

EXT.R8(B) : TRUE COPY OF THE ORDER DATED 17.10.2014 ISSUED BY THE 5TH
RESPONDENT

EXT.R8(C) : TRUE COPY OF THE JUDGMENT DATED 23.02.2012 IN W.P(C).NO.8476
OF 2011

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.27364 of 2014

.....
Dated this the 18th day of August, 2015

J U D G M E N T

The petitioner was appointed as LPSA in the School under the management of the 6th respondent with effect from 31.10.2011 against a regular vacancy. The said appointment was approved by an order dated 08.07.2014. While so, by Ext.P2 order dated 19.09.2014, the 2nd respondent, in an appeal preferred by the 7th respondent against the order rejecting approval to the appointment of the 7th respondent as UPSA, incidentally, went into the approval that was granted to the appointment of the petitioner as LPSA, and cancelled the same. In Ext.P2 order, it is the stand of the 2nd respondent that there is a settled principle that while considering approval to the appointment of teachers in aided Schools, the approval should be granted in the order in which the teachers are appointed to the category in question. Based on this principle, the 2nd respondent proceeded to hold that, inasmuch as the 7th and 8th respondents were appointed prior to the petitioner as teachers of the School, the petitioner's appointment could not have been approved before an approval was granted to the appointment of the 7th and 8th

respondents. In the writ petition, the petitioner impugns Ext.P2 order of the 2nd respondent, inter alia, on the ground that, the basic principle that is referred to in Ext.P2 order, although correctly stated by the 2nd respondent, the 2nd respondent had erroneously applied the same when it came to consideration of approval to the appointment of the petitioner and the 7th and 8th respondents. Reliance is placed on the Full Bench Decision of this Court in **Thresia v. Preethy [2014 (4) KLT 837]**, to contend that while the petitioner was appointed as an LPSA in the School, the 7th and 8th respondents were appointed as UPSAs in the School, and since the category of LPSA and UPSCA are distinct and separate, the prior appointment of the 7th and 8th respondents as UPSAs could not have had a bearing on the approval to be accorded to the petitioner in respect of his appointment as LPSA in the School. When the writ petition came up for admission, this Court by an interim order suspended the operation of Ext.P2 insofar as it related to the petitioner. The said interim order was subsequently extended from time to time, after clarifying that the interim order would not affect the prospects of the 7th respondent in any manner. Thereafter, by an order dated 06.08.2015, it was clarified that the suspension of operation of Ext.P2 order had the effect of nullifying all consequences flowing from Ext.P2 order and consequently the petitioner was entitled to salary pursuant to the

approval to his appointment as LPSA.

2. A counter affidavit has been filed on behalf of the 7th and 8th respondents and an application to modify the interim order has been filed by the official respondents. The gist of the averments in the counter affidavit filed by the 8th respondent is that, although the initial appointment of the 8th respondent was as an UPSA, consequent to the denial of approval to the said appointment of the 8th respondent, it was incumbent upon the Manager to consider the 8th respondent for appointment to the next arising vacancy even in the category of LPSA since the 8th respondent had been appointed as a teacher in the School prior to the petitioner. It is also the contention of the 8th respondent that, she is qualified in all respects for holding the post of LPSA and UPSA. It is also stated in the counter affidavit that, against the order approving the appointment of the petitioner as LPSA in the School, the 8th respondent has preferred Ext.P8(a) appeal before the 2nd respondent and the same is pending consideration before the said authority. The 8th respondent also places reliance on Ext.R8(b) order of the Assistant Educational Officer which is a consequential order passed pursuant to Ext.P2 order of the 2nd respondent. The 8th respondent would also rely on Ext.R8(c) judgment in respect of his contentions. It is the specific stand of the 8th respondent that on

account of Ext.P2 order, and Ext.R8(b) order of the Assistant Educational Officer that was passed consequent to Ext.P2 order, it is the 8th respondent who would be entitled to salary in the post of LPSA in which post the petitioner is currently appointed and approved.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader for the official respondents and the learned counsel for the 7th and 8th respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P2 order of the 2nd respondent, the 2nd respondent cancels the approval accorded to the appointment of the petitioner by an order dated 08.07.2014. The cancellation of the approval to the appointment of the petitioner as LPSA is premised on the assumption that the petitioner as well as the 7th and 8th respondents were appointees to the same category of posts in the School. It is not in dispute that the appointment of the petitioner was to the post of LPSA whereas the appointment of respondents 7 and 8 were initially as UPSA. It is consequent to the denial of approval of their appointment as UPSA that both the 7th and 8th respondents have approached the 2nd respondent through appeals challenging the approval granted to the appointment of the petitioner

as LPSA. Although Ext.P2 order of the 2nd respondent was passed in the appeal preferred by the 7th respondent, the said order of the 2nd respondent virtually decides Ext.R8(a) appeal that has been preferred by the 8th respondent also. As already noted above, the reasoning in Ext.P2 order does not appear to me as convincing since, while the 2nd respondent admits that the prior approval must be given to earlier appointees to the same category of posts, it is evident that, the appointment of the petitioner was to the post of LPSA and appointment of the 7th and 8th respondents was to the post of UPSA. In that view of the matter, I find that there is an inconsistency in Ext.P2 order of the 2nd respondent. I, therefore feel that the 2nd respondent should have a fresh look into the matter and take a decision after hearing the petitioner, the Manager of the School and the 7th and 8th respondents. To enable the 2nd respondent to do so, I quash Ext.P2 order and direct the 2nd respondent to consider the appeal preferred by the 7th respondent, and Ext.R8(a) appeal preferred by the 8th respondent, together, after hearing the petitioner, the Manager of the School and the 7th and 8th respondents within a period of two months from the date of receipt of a copy of this judgment. It will be open to all the parties to rely on any material that they have in support of their contentions at the time of hearing before the 2nd respondent. The modified interim order dated 06.08.2015 which is currently in force in

the writ petition, including the clarification that the interim suspension of Ext.P2 order will not affect the prospects of the 7th respondent, shall continue to be in force till such time as orders are passed by the 2nd respondent as directed, and communicated to the parties.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

