

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 31554 of 2009 (L)

PETITIONER :

ANCY JOY,
LOWER PRIMARY SCHOOL ASSISTANT, GOVERNMENT L.P.
SCHOOL, KANICHANELLOOR, P.O.MUTTOM
HARIPAD, ALAPPUZHA DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS :

1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE ASSISTANT EDUCATIONAL OFFICER,
MAVELIKKARA.
3. THE MANAGER,
V.H.U.P.SCHOOL, VAZHUVADY, P.O.THOZHAKKARA
MAVELIKKARA.
4. THE HEADMISTRESS,
V.H.U.P.SCHOOL, VAZHUVADY, P.O.THOZHAKKARA
MAVELIKKARA.

R1-2 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 31554 of 2009 (L)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPOINTMENT ORDER

EXT.P2 : COPY OF THE ORDER NO.D.2947/02/L.DIS OF THE ASST.EDL.OFFICER

EXT.P3 : COPY OF THE ORDER NO.K.DIS.174705/02/F3/DPI OF THE 2ND RESPONDENT

EXT.P4 : COPY OF THE CIRCULAR NO.H3/68604/89/DPI OF THE 2ND RESPONDENT

EXT.P5 : COPY OF THE ORDER NO.16439/H2/09/G.EDN.OF THE GOVERNMENT

EXT.P6 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C)NO.27629/2004-L

EXT.P7 : COPY OF THE DECISION REPORTED IN 1993(2)K.L.T.S.N. 27 (CASE NO.28)

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.31554 of 2009

Dated this the 18th day of March, 2015

J U D G M E N T

The petitioner was appointed as a Lower Primary School Assistant ('LPSA' for short) from 17.08.2000 to 17.10.2000, initially and thereafter, from 18.01.2000 to 21.12.2000. Both the periods were approved by the Educational Authorities. Later on, by Ext.P1 order dated 01.06.2002, the petitioner was appointed to a vacancy that arose upon promotion of another teacher, since the petitioner was a claimant under Rule 51A of Chapter XIV A, Kerala Educational Rules, 1959 ('KER' for short). However, the appointment of the petitioner was rejected by Ext.P2 proceedings of the 2nd respondent. The reason stated for rejection is that, the promotion of the teacher, in whose vacancy the petitioner was appointed, had not been approved by the authorities. Therefore, it is stated that no vacancy had been established by the management for the appointment of the petitioner. The learned counsel for the petitioner Sri.V.A.Muhammed places reliance on Ext.P3 proceedings of the Director, Public Instructions dated 03.03.2003 directing approval of the promotion that was granted to the teacher. However, without considering Ext.P3, Ext.P5 order has been passed on 30.03.2009 declining the grant of approval to the appointment of the petitioner. This writ petition is filed challenging Ext.P5.

2. A counter affidavit has been filed on behalf of the 1st respondent. According to the counter affidavit, it was necessary for the vacancy to have been clearly established, before the petitioner could have been appointed. Since the promotion of the teacher, in whose vacancy the petitioner was appointed, had not been approved, there was no provision for the appointment of the petitioner, it is contended.

3. Heard Adv.Sri.V.A.Muhammed, who appears for the petitioner as well as the learned Government Pleader who appears for respondents 1 and 2. Admittedly, the promotion of Smt.Indulekha, in whose vacancy the petitioner was appointed, has been approved by Ext.P3. Therefore, the vacancy to which the petitioner was appointed, has been established. In view of the above, there is no justification for not granting approval of the petitioner. A perusal of Ext.P5 shows that, Ext.P3 has not been considered by the 1st respondent while issuing the said proceedings. Therefore, it is only appropriate that the 1st respondent considers the matter afresh in the light of Ext.P3. In the above view of the matter, Ext.P5 is unsustainable.

This writ petition is, therefore, allowed. Ext.P5 is set aside. The 1st respondent is directed to consider the question of granting approval to the appointment of the petitioner in the promotion vacancy of Smt.Indulekha from 05.06.2002 onwards, since her promotion has been approved by Ext.P3 proceedings of the Director of Public

Instructions. The matter shall be considered and appropriate orders shall be issued by the 1st respondent, as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment, after hearing the petitioner as well as respondents 3 and 4.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV