

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

W.P.(C).No.31559 of 2009 (L)

PETITIONER(S):-

LISSY P.C., AGED 42 YEARS, W/O.C.P.JAMES,
LPSA, ST.THERESA'S H.S., MANAPURAM, CHERTHALA,
RESIDING AT PUTHUSSERY (H),
KANIKUTTY P.O. - 683 576.

BY ADV. SRI.C.A.JOY.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM
3. THE DEPUTY DIRECTOR,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA.
4. THE DISTRICT EDUCATIONAL OFFICER, CHERTHALA.
5. SACRED HEART EDUCATIONAL AGENCY OF C.M.I. SCHOOLS,
RAJAGIRI, KALAMASSERY,
REPRESENTED BY THE CORPORATE MANAGER.
6. TESSY K.J., W/O.NOBLE MATHEW,
AGED 40 YEARS, U.P.S.A., ST.THERESA'S
H.S. MANAPURAM, CHERTHALA.

R1 TO R4 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.

R6 BY ADV. SRI.V.A.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-12-2015, ALONG WITH WP(C).13072/2008-F, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- | | |
|---------|---|
| EXT.P1 | TRUE COPY OF THE APPOINTMENT ORDER DT.02.06.2004. |
| EXT.P2 | TRUE COPY OF THE APPOINTMENT ORDER DT.13.8.2004. |
| EXT.P3 | TRUE COPY OF THE ORDER DT.25.05.2005 ISSUED BY THE 3RD RESPONDENT REJECTING THE APPEAL RELATING TO APPOINTMENT FROM 02.06.2004 TO 13.08.2004. |
| EXT.P4 | TRUE COPY OF THE ORDER DT.25.05.2005 ISSUED BY THE 3RD RESPONDENT REJECTING THE APPEAL RELATING TO APPOINTMENT FROM 13.08.2004 ONWARDS. |
| EXT.P5 | TRUE COPY OF THE REVISION PETITION DT.23.06.2005 FILED BEFORE THE 2ND RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE ORDER DT.22.12.2005 REJECTING THE APPROVAL OF THE PETITIONER FROM 13.08.2004 ISSUED BY THE 2ND RESPONDENT. |
| EXT.P7 | TRUE COPY OF THE REVISION PETITION DT.25.08.2008 FILED AGAINST THE ORDER DT.05.08.2008 OF THE 2ND RESPONDENT. |
| EXT.P8 | TRUE COPY OF THE REVISION PETITION DT.24.02.2006 FILED AGAINST THE ORDER DT.22.12.2005. |
| EXT.P9 | TRUE COPY OF THE ORDER DT.17.09.2009 ISSUED BY THE 1ST RESPONDENT. |
| EXT.P10 | TRUE COPY OF THE ORDER DATED 10.4.2007 ISSUED BY THE 2ND RESPONDENT. |
| EXT.P11 | TRUE COPY OF THE REVISION PETITION WITHOUT ANNEXURE DATED 09.10.2009 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. |
| EXT.P12 | TRUE COPY OF THE JUDGMENT DATED 07.11.2007 IN W.P.(C) NO.33016/2007. |

RESPONDENT(S)' EXHIBITS:-

- EXT.R6(a) PHOTOSTAT COPY OF THE VERIFICATION REPORT DATED
 23.06.2004 OF THE VERIFICATION OFFICER.
- EXT.R6(b) PHOTOSTAT COPY OF THE SUPER CHECK REPORT OF THE
 3RD RESPONDENT.
- EXT.R6(c) PHOTOCOPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT
 TO RESPONDENT NO.3.
- EXT.R6(d) PHOTOCOPY OF THE REPORT OF THE RESPONDENT NO.3.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.31559 of 2009-L & 13072 of 2008-F

Dated this the 16th day of December, 2015

JUDGMENT

Two petitioners in the two writ petitions stake a claim to be permanently appointed in one of the vacancies arising in the Sacred Heart Educational Agency based on their claim under Rule 51A of Chapter XIV-A of Kerala Education Rules, 1959 [for brevity “KER”]. The parties are referred to by their names.

2. Lissy P.C. [petitioner in W.P.(C) No.31559 of 2009] was appointed in a short term vacancy as an Upper Primary School Assistant [for brevity “UPSA”] between 29.09.2000 and 25.03.2004, whose services were approved and, by which, the said teacher had a valid claim under Rule 51A to be appointed in the next arising vacancy in the school. Admittedly there were two other claimants, one Vani Varghese and Sheeja V.Pynadath, who had a better claim under Rule 51A for reason of their claim having arisen prior to the claim of Lissy P.C.

3. K.J.Tessy [petitioner in W.P.(C) No.13072 of 2008] had approved service as a High School Assistant [for brevity "HSA"] under the very same Corporate Agency for various periods between 1998 to 2003. In the academic year 2004-05, K.J.Tessy was appointed as a UPSA in respondent-school in one of the vacancies; being the transfer vacancy of one Jini George. Lissy P.C. stakes a claim to the said vacancy. However, it is to be noticed that Lissy P.C., as on that date, was appointed to a leave vacancy and she never staked a claim to be appointed in the regular vacancy of Jini George. Now the writ petitions shall be considered separately, since the denial of appointment to the senior claimants would not be very relevant in consideration of the independent claims put forth by the respective petitioners.

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4. Lissy P.C. was appointed in a leave vacancy between 02.06.2004 to 12.08.2004 by Exhibit P1. The approval of such appointment was rejected and against the rejection, the Corporate Agency filed an appeal before the

Deputy Director of Education, who rejected the same by Exhibit P3. Exhibit P3 rejection was on two grounds; one that the incumbent in whose leave vacancy Lissy was appointed did not have approved service and the other that there were two other senior claimants; who were not appointed. The finding was that the senior claimants under R51A had to be appointed in preference to Lissy. A revision filed was rejected by Exhibit P5 by the Director of Public Instruction, which is challenged in a further revision filed by the Corporate Agency before the Government as per Exhibit P7. The challenge against Exhibit P7, by the Manager, was negated by Exhibit P9.

5. Similarly, the approval of the further appointment with effect from 13.08.2004 [Exhibit P2] was also rejected and the appeal filed by the Manager against the same order was also negated as per Exhibit P4. The same was challenged in revision before the Director of Public Instruction, which was also rejected, vide order at Exhibit P6. The further revision filed as Exhibit P8 before Government, by the Manager, is said to be pending.

6. Subsequently, the petitioner herself challenged the rejection of the approval of her appointment, with effect from 02.06.2004 before the Government, by way of revision, which is also said to be pending.

7. The prayers in the writ petition are: (i) for the consideration of the revisions at Exhibits P8 [by the Manager] and Exhibit P11 [by the petitioner herself] (ii) for a direction to issue revised appointment order to the petitioner in the vacancy of UPSA with effect from 02.06.2004 consequent on the transfer of Smt.Jiny George.P. The second direction is sought for on the strength of the claim under Rule 51A KER. The learned counsel for the petitioner-Lissy asserts that the petitioner though was not appointed to a regular vacancy, had been continuing during the entire academic year in two different vacancies and, hence, the conversion of the appointment to the regular vacancy, which arose on the commencement of the academic year, would render infructuous the revisions and the appointment of Lissy from the year 2004-05 could be approved in the regular vacancy so arisen.

8. However, it is to be noticed that Lissy never took up a claim at the appropriate time. She was contented with the appointment given in a leave vacancy as per Exhibit P1 and a further appointment from 13.08.2004 in a promotion vacancy by Exhibit P2. The approval of the appointments are said to be pending before the statutory authorities. If *de hors* such appointments offered and accepted by Lissy, she had a further claim; then that should have been agitated at that point of time. Since her appointment was rejected and the statutory remedy of revision is still said to be pending, she cannot be allowed to take a stand that her appointment has to be converted into that of regular appointment basing her claim under Rule 51A.

9. In any event, it is also to be noticed that Lissy has been granted regular appointment from the academic year 2005-06. The claim of Lissy for regular appointment in the academic year 2004-05 is belated and the same cannot be permitted at this stage, by this Court. In such circumstance, the prayer insofar as the claim raised for regular appointment in the academic year 2004-05 is rejected.

10. However, the claim with respect to approval of Exhibits P1 and P2 appointment orders would have to be considered in revision. All such contentions are left open and if the revisions, Exhibits P8 and P11, are still pending before the Government, have to be disposed of within three months from the date of production of a certified copy of this judgment. It is made clear that this Court has not made any observation regarding the merits of the said claim.

W.P.(C) No.13072 of 2008

11. K.J.Tessy, the petitioner herein, was appointed in the place of Lissy P.C. and the claim raised in W.P.(C). No.31559 of 2009 was that Lissy had a better claim than Tessy. The claim for appointment to the vacancy of Jini George has been found against Lissy in her writ petition. But, her claim for approval for appointments made as per Exhibits P1 and P2 in W.P.(C).No.31559 of 2009 has been directed to be considered in the revision. In such circumstance, the claim of Tessy has to be considered independently.

12. Tessy, obviously, was a HSA who had continued in the school for various periods from 1998 and 2003. The

appointment of Tessy as a UPSA was not granted approval for reason that in the academic year 2004-05, the claim under Rule 51A of Tessy could have been pressed into service for a vacancy arising in the post of HSA and not that of UPSA. The amendment to Rule 51A, entitling a claimant under the said provision to any post arising in the school, came into the statute book only on 27.04.2005. Hence, Tessy had no valid claim under Rule 51A to the appointment made as a UPSA in the educational agency for the academic year 2003-04. Tessy is also said to have been regularly appointed in the subsequent year, which is not up for consideration in the present writ petition filed by her. In such circumstance, the claim of Tessy for approval of her appointment as UPSA in the academic year 2004-05 has to be rejected.

W.P.(C).No.31559 of 2009 would stand disposed of and W.P.(C).No.13072 of 2008 would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]