

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 30408 of 2013 (A)

PETITIONER:

- 1. M.ANWAR SADATH, CLERK,
C A HIGHER SECONDARY SCHOOL,
PERUVAMBA, PALAKKAD DISTRICT.**
- 2. MRS K A BALKIS
D/O.ABDUL MAJEED, PEON, C A HIGHER SECONDARY SCHOOL
PERUVAMBA, PALAKKAD DISTRICT.**
- 3. S. DIVAKARAN
S/O.SIVARAMAN, PEON, C A HIGHER SECONDARY SCHOOL
PERUVAMBA, PALAKKAD DISTRICT.**

BY ADV. DR.GEORGE ABRAHAM

RESPONDENTS:

- 1. THE DISTRICT EUDCATIONAL OFFICER, PALAKKAD-678001.**
- 2. STATE OF KERALA
REPRESENTED BY SECRETARY,
GENERAL EDUCATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 3. K. M. UNNIKRISHNAN,
S/O.C V KESAVAN, 'AMBADI', AISHWARYA NAGAR
PUTHUNAGARAM, CHITTUR , PALAKKAD-678581.**

**R1-R2 BY SENIOR GOVERNMENT PLEADER SRI.V.VIJULAL
R3 BY ADV. SRI.P.R.VENKETESH**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-02-2015, ALONG WITH WPC.NO.22710/2014, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE JUDGMENT IN WPC NO 8547 OF 2007 DTD 9/10/2007**
- P2:- TRUE COPY OF THE JUDGMENT IN WA NO 60 OF 2009**
- P3:- TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD DTD 11/3/2010**
- P4:- TRUE COPY OF THE CAUSE TITLE OF THE SPECIAL LEAVE PETITION NO 4467 OF 2010**
- P5:- TRUE COPY OF INTERIM PASSED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO 4467 OF 2010**
- P6:- TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO 4848 OF 2012 AND CONNECTED MATTERS**
- P7:- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD 11/3/2013**
- P8:- TRUE COPY OF THE GOVERNMENT ORDER GO (RT)3937/2013 /G.EDN DTD 25/9/2013**

RESPONDENT(S)' EXHIBITS

- R3(A): COPY OF THE ORDER DATED 2/9/11 IN WPC.23960/11 OF THIS HON'BLE COURT.**
- R3(B): COPY OF THE ORDER DT.22/2/11 PASSED IN WPC.12976/10 OF THIS HON'BLE COURT.**
- R3(C): COPY OF JUDGMENT DATED 13/9/12 IN WPC.23960/11 OF THIS HON'BLE COURT**
- R3(D): COPY OF JUDGMENT DATED 14/3/11 IN WPC.12976/10 OF THIS HON'BLE COURT.**
- R3(E): COPY OF ORDER DATED 30/11/10 IN WPC.12976/10 OF THIS HON'BLE COURT.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.
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W.P(C).Nos.30408 of 2013 and 22710 of 2014
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Dated this the 11th day of February, 2015

JUDGMENT

W.P(C).No.30408 of 2013 is arising out of dispute regarding seniority among Full Time Menial appointed in C.A Higher Secondary School, Peruvamba, Palakkad. Petitioners herein were appointed prior to the appointment of 3rd respondent. Third respondent was appointed only on 26.12.2009. Petitioners were appointed in the year 2003-2005. The third respondent was appointed under the Dying in Harness Scheme. The Division Bench of this Court upheld the claim of the third respondent in writ appeal No.60 of 2009 and ordered as follows:

“The appellant shall be accommodated in the vacancy of Full-time Menial that first arose in the 1st respondent school, after the date of receipt of the application in the prescribed format in October 2002 and his appointment shall be approved by the District Educational Officer, Palakkad. In case anybody is thrown out as a result of this judgment, he/she be accommodated in the next arising vacancy, suitable for the said incumbent, arising in the school”

2. This judgment of the Division Bench would it make clear that appointment of the third respondent has to be made with effect from the date on which vacancy of first menial arose in the first respondent school. Admittedly, first vacancy arose on 11.04.2003. Therefore, in the light of the judgment as above, third respondent deemed to have been in service based on the subsequent appointment on 11.04.2003.

3. This judgment was carried in appeal before the Supreme Court by the writ petitioners herein. Judgment of the Supreme Court is produced as Ext.P6. Supreme Court upheld the claim of the third respondent. The Supreme Court also considered the point relating to the date of appointment of the third respondent. In paragraph 29, it was observed that one appointed last will have to make way for the appointment of the third respondent. Before the Supreme Court, learned counsel appearing for the third respondent gave a concession in the following lines regarding salary payment.

“So long as the appointment so made is related back to the date when the first vacancy had become available in the school, those appointed subsequently being adjusted against the subsequent vacancies, the salary due to the appellant (petitioners herein) during the period on which they worked can be paid to them.”

Recording the above submission, the Supreme Court ordered that appointment of the third respondent in that view shall be effective from the date on which he is actually appointed by the Manager of the Institution. Thereafter SLP was dismissed upholding the claim of the third respondent.

4. The present writ petition is arising out of Ext.P8 Government order based on the clarification sought by the District Educational Officer. The Government after adverting to the relevant portion as referred above in paragraph 29 held that seniority has to be reckoned from the date of first arising vacancy and not the date of appointment. However, petitioners contended that seniority has to be reckoned only from the date on which the actual appointment of the third respondent as directed by the Supreme Court.

5. The judgment of the Supreme Court has to be read as a whole. The Division Bench has categorically directed that the third respondent shall be appointed with effect from the date on which first vacancy arose in the school. That direction has not been interfered by the Supreme Court. The concession given by the learned counsel for the third respondent in the Supreme Court is only relating to salary as revealed by the judgment itself. While conceding, learned counsel made it clear before the Honourable

Supreme Court that so long as the appointment so made is related back to the date on which first vacancy had become available, he has no objection in giving salary to the persons who worked during the interval. Therefore, the direction of the Supreme Court that the appointment of the third respondent will be effective from the date of actual appointment is only to the extent of payment of salary and not related to any other issue. Since the judgment of the Division Bench has not been interfered with as far as it relates to date of accommodation of appointment, I am of the view, as far as seniority among the petitioners and third respondent are concerned, judgment of the Supreme Court is conclusive and seniority of the third respondent has to be determined with reference to the date on which the first vacancy arose. In the light of the above, clarification order passed by the Government produced as Ext.P8 is perfectly right and does not call for any interference by this Court.

6. Learned counsel for the petitioners submits that the third respondent is ineligible to consider for promotion and he has no qualification. I am of the view, petitioners are at liberty to raise their objection before the first respondent. It is to be noted that by Ext.P3 order, District Educational Officer has passed an order that the third respondent has to be promoted in the first

arising vacancy of Peon available in the school. District Educational Officer sought clarification from the Government and Government passed Ext.P8 order. In view of the clarification of the Government and in the light of determination of seniority being upheld by this Court, District Educational Officer shall finalise proceedings based on Ext.P3. However, with respect to petitioners' objection regarding qualification relating to the third respondent, they shall raise their objection before the District Educational Officer within a period of two weeks from the date of receipt of a copy of this judgment. Thereupon, after hearing the petitioners and third respondent, final order has to be passed by the District Educational Officer within a period of six weeks in the matter of promotion to the post of Peon.

7. W.P(C).No.22710 of 2014 is filed challenging Ext.P4 order passed by the Deputy Director of Education. The petitioner's claim for approval of appointment has been declined consequent upon dispute relating to seniority in respect of the post of Peon. In view of the direction of this Court in W.P(C). No.30408 of 2013, Ext.P4 is set aside. In view of the fact that the District Educational Officer has to take a decision in the matter of promotion, it is appropriate for the DEO to take a decision in this matter also. Consequently, there shall be a direction to the

District Educational Officer to take a decision consequent upon the decision to be taken by the District Educational Officer based on the judgment of this Court in W.P(C).No.30408 of 2013. A decision in this matter shall be taken by the District Educational Officer within a period of four weeks from the date of decision to be taken in the matter of seniority pursuant to the direction of this Court in W.P(C).No.30408 of 2013.

These Writ Petitions are disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

Sbna/16/02/15