

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 32588 of 2011 (W)

PETITIONER :

**C.V. DEEPA,
LOWER PRIMARY SCHOOL ASSISTANT,
MANANTHERI LOWER PRIMARY SCHOOL
MANANTHERI P.O., KUTHUPARAMBA - 670 643.**

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHI, THIRUVANANTHAPURAM - 695 014.**
- 3. DEPUTY DIRECTOR OF EDUCATION
KANNUR - 670 002.**
- 4. ASSISTANT EDUCATIONAL OFFICER
KUTHUPARRAMBA - 670 643.**

R1 TO R4 BY SR.GOV'T. PLEADER SRI. SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : PHOTOCOPY OF THE JUDGMENT IN OP NO. 12912/1992 DATED 23-3-1998.
- EXT.P2 PHOTOCOPY OF THE ORDER OF THE 2ND RESPONDENT DATED 1-6-1999.
- EXT.P3 PHOTOSTAT COPY OF G.O.(RT) NO. 319/2001/G/EDN. ISSUED BY THE 1ST RESPONDENT DATED 23-1-2001.
- EXT.P4 PHOTOSTAT COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 9-10-2001.
- EXT.P5 PHOTOSTAT COPY OF THE ORDER NO. D/4909/03 OF THE 4TH RESPONDENT DATED 27-12-2003.
- EXT.P6 PHOTOSTAT COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 23-9-2011.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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C.K. ABDUL REHIM, J.

W.P.(C)No.32588 of 2011

Dated this the 21st day of January, 2015

JUDGMENT

The petitioner was appointed as a Lower Primary School Assistant (LPSA) in the Mananthéri LP School, with effect from 17/08/1989, against a newly sanctioned post (additional post). The appointment was approved by the Educational Officer with effect from 01/09/1989. But the petitioner's service was terminated at the end of the Academic Year 1989-1990 (on 30/03/1990) since she was not having 8 months continuous service during the said Academic Year. The petitioner was given re-appointment during the next Academic Year with effect from 04/06/1990. The 4th respondent, who is the Assistant Educational Officer, had approved the re-appointment only with effect from 15/07/1990. The Manager preferred an appeal against the decision in not approving the appointment from 04/06/1990. The appeal was rejected

stating that, audit objection was raised against sanctioning of two additional posts during the Academic Year 1989-1990, on the basis that there was no effective strength of students noticed during the first visit made by the Educational Officer and there was no circumstances existed warranting a higher level verification. The appeal filed by the Manager was rejected by the District Educational Officer (DEO), noticing the reason stated as above. The Educational Officer was directed to take steps to recover the salary paid to the petitioner. The Manager preferred revision against decision of the DEO, before the 2nd respondent. But the Revision Petition was also rejected. Ultimately, the matter was taken up in a writ petition filed by the petitioner and another teacher before this court. In Ext.P1 judgment this court found that the additional posts sanctioned cannot be cancelled on the basis of audit objections, as held by this court in the decisions reported in **Usuvathunnisa v. Asst. Educational Officer [1990(2) KLT 530]** and **Somanatha Panicker v. State of Kerala [1997 (1)**

KLT 305]. It was held that, the educational authorities alone can cancel the additional posts sanctioned. Hence it is found that the petitioners therein had discharged duties based on valid orders issued by the educational authorities and the salary drawn by them cannot be recovered. Therefore the order passed by the District Educational Officer cancelling the approval of appointment, which was confirmed in Revision by the 2nd respondent, was quashed and the respondents were restrained from making any recovery from the salary paid to the petitioner and to the other teacher.

2. Pursuant to Ext.P1 judgment the 2nd respondent had issued Ext.P2 letter directing the AEO to approve the appointment of the petitioner from 01/09/1989 to 30/03/1990. In the meanwhile, the Government have considered the question of approval of the re-appointment from 04/06/1990 onwards, on the basis of a representation filed by the Manager, in view of the direction issued by this court in another writ petition, O.P. No.25542/2000. Taking note of Ext.P1 judgment the

Government accorded sanction for approval of the re-appointment from 04/06/1990 onwards, by virtue of Ext.P3 order.

3. The petitioner continued in service based on the approval granted under Ext.P2 proceedings of the 2nd respondent and on the basis of Ext.P3 approval granted by the Government. The Educational Officer had issued, Ext.P4 revised approval of the appointment with effect from 04/06/1990 as ordered in Ext.P3. Necessary corrections were affected in the service records. Thereafter the petitioner was granted eligible Higher Grades based on such approval. But during the year 2011, the 3rd respondent had issued Ext.P6 letter to the 4th respondent stating that the grant of Higher Grade was irregular based on audit objection, stating that in Ext.P1 judgment this court had only restrained recovery of salary paid to the petitioner from 01/09/1989 till 30/03/1990. But the appointment of the petitioner for the said period was not approved. Hence the Higher Grade granted reckoning service for the said period is irregular.

Therefore it was directed to recover the excess amount paid. On receipt of Ext.P6 letter the 4th respondent had forwarded the same along with an endorsement directing to take action for recovery of the amounts based on the directions issued by the 3rd respondent. The petitioner is challenging Ext.P6 in this writ petition.

4. Appointment of the petitioner from 01/09/1989 till 30/03/1990 and the re-appointment from 04/06/1990 onwards were initially approved by the Educational Officer. The said appointments were cancelled by the DEO on the basis of audit objection, finding that sanctioning of the additional post was not in order. This court while considering the challenge raised against cancellation of the post, held that the cancellation on the basis of audit objection cannot be sustained and that the educational authorities alone has got power to cancel the additional posts sanctioned. This court had categorically observed that the petitioner had discharged her duties on the basis of valid orders issued by the authorities and that the salary drawn by her cannot be

recovered. Further, it is evident that subsequent to Ext.P1 judgment the 2nd respondent had directed the 4th respondent to approve the appointment from 01/09/1989 to 30/03/1990. Since the approval of appointment for the period from 01/09/1989 to 30/03/1990 was granted initially and since the cancellation of such appointment was quashed by this court, there is no merit at all in the contention that approval for the said period was not formally granted. Moreover, from Ext.P2 it is evident that the 2nd respondent had specifically directed the Educational Officer to approve the appointment for the said period.

5. Under the above mentioned circumstances, there is no merit in the audit objection raised against the reckoning of service rendered by the petitioner for the said period, for the purpose of granting Higher Grade. Therefore Ext.P6 notice and further actions if any taken on the basis of the said notice are liable to be quashed.

Hence this writ petition is hereby allowed. Ext.P6 is hereby quashed. It is declared that service rendered by

the petitioner as LPSA from 01/09/1989 to 30/03/1990 stands approved, for which she is eligible for all attendant benefits.

Sd/- **C.K. ABDUL REHIM**
JUDGE

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