

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 34247 of 2008 (B)

PETITIONER :

SRSH KUMARI, AGED 38 YEARS
W/O.SREEKUMAR, WORKING AS UPSA
H.S.S. VALAYANCHIRANGARA, ERNAKULAM DISTRICT.

BY ADVS.SRI.K.SATHEESH KUMAR
SRI.P.P.BIJU

RESPONDENTS :

1. THE DISTRICT EDUCATIONAL OFFICER
KOTHAMANGALAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM.
3. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.
4. THE GOVERNMENT OF KERALA,
REP.BY SECRETARY, GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM.
5. THE MANAGER, HIGHER SECONDARY SCHOOL,
VALAYANCHIRANGARA, PERUMBAVOOR.

R BY SR. GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 34247 of 2008 (B)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER DATED 25.8.2000 TO THE PETITIONER

EXT.P1(a) : COPY OF THE ORDER DATED 6.6.2001 TO THE PETITIONER

EXT.P2 : COPY OF THE APPEAL PETITION DATED 14.8.2002 TO THE 2ND RESPONDENT

EXT.P3 : COPY OF THE ORDER DATED 7.2.2003 ISSUED BY 2ND RESPONDENT

EXT.P4 : COPY OF THE LETTER DATED 9.3.2005 TO THE 3RD RESPONDENT

EXT.P5 : COPY OF THE LETTER DATED 30.3.2006 OF THE 3RD RESPONDENT

EXT.P6 : COPY OF THE LETTER DATED 22.7.2006 OF THE 1ST RESPONDENT

EXT.P7 : COPY OF THE JUDGMENT DATED 3.1.2008 IN WP(C).NO.38260/07 OF THIS HON'BLE COURT

EXT.P8 : COPY OF THE ORDER DATED 6.8.2008 ISSUED BY UNDER SECRETARY TO GOVERNMENT TO THE PETITIONER.

EXT.P9 : COPY OF THE APPOINTMENT ORDER DATED 28/8/2000

EXT.P10 : COPY OF THE APPOINTMENT ORDER DATED 6/6/2001

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.34247 of 2008

Dated this the 25th day of March, 2015

J U D G M E N T

The petitioner was appointed as an Upper Primary School Assistant ('UPSA' for short) in an aided school by the 5th respondent on 25.08.2000. Ext.P1 is the appointment order. The petitioner was appointed to a vacancy that was created by the transfer of one Smt.Bindhu R.S to a Higher Secondary School. Though the petitioner was appointed as per Ext.P1, without specifying any period, for as long as "the post exists," her appointment was approved by Ext.P1 as a temporary UPSA from 25.08.2000 to 30.03.2001. The petitioner was thereafter, re-appointed on the reopening of the school by Ext.P1(a) on 06.06.2001. The said appointment has been approved "till the vacancy exists". The petitioner has been working continuously ever since. However, since the petitioner's initial appointment was approved only till 30.03.2001, she has been denied the benefit of her service from 25.08.2000 to 06.06.2001, the petitioner complains.

2. According to the petitioner, there were 16 divisions and 16 posts of UPSAs in the school during the year that the petitioner was appointed. All the posts were permanent. Therefore, the petitioner ought to have been appointed to a permanent post. Instead, she was appointed to a temporary post, which was wrong. The petitioner's post was treated as temporary by wrongly assuming that there were only

15 permanent posts and one temporary post. Though the Manager had challenged the staff fixation order, the same was rejected as out of date. Consequently, according to the petitioner, prejudice has been caused to her service. The petitioner had taken up the matter with the Educational Authorities. However, by Exts.P4, P5, P6 and P8, the authorities have rejected her claim. It is in the above circumstances that, this writ petition was filed.

3. Adv.T.A.Unnikrishnan appears for the petitioner. The learned Government Pleader appears for respondents 1 to 4. Heard.

4. A counter affidavit has been filed by the 3rd respondent. Paragraph 8 of the counter affidavit reads as follows :

"8. It is submitted that as per the staff fixation order for 2000-01, 16 divisions and 16 posts of UPSA were sanctioned to HSS Valayanchirangara, out of which 15 posts are permanent and one post is temporary. It is a fact that, the said temporary post was created during 1996-97 and as such that would have been converted as permanent during 2000-01 on completion of 3 years. But the 1st respondent, the District Educational Officer, Kothamangalam had sanctioned the above post of UPSA as temporary by oversight during the staff fixation order 2000-01. The Manager, HSS Valayanchirangara, the 5th respondent, had not preferred any appeal before the higher authorities against the staff fixation order of 2000-01."

5. It is clear from the above stand of the 3rd respondent that, the petitioner has been treated as a temporary appointee consequent to a mistake that was committed by the District Educational Officer,

Kothamangalam. The said officer has in Ext.P4 offered to correct the said mistake also, by issuing a revised staff fixation order. In view of the above, the matter requires to be reconsidered by the 1st respondent. If the matter is reconsidered and the mistake rectified, the situation could be set right. For the said purpose, it is necessary that, appropriate directions are issued to the 1st respondent. Since the above aspects have not been considered by the impugned orders, the said orders are also necessary to be set aside.

In view of the above, this writ petition is ordered as follows:

1. Exts.P3, P5, P6 and P8 are set aside.
2. The 1st respondent is directed to consider the claim of the petitioner for being treated as having been appointed to the permanent post of UPSA which has been erroneously shown as temporary in the staff fixation order for the academic year 2000-01. The 1st respondent shall consider the matter after affording an opportunity of being heard to the petitioner as well as the Manager of the school also. Appropriate orders shall be passed in the matter, if necessary by issuing a revised staff fixation order, as expeditiously as possible and at any rate within a period of three months of the date of receipt of a copy of this judgment. Needless to observe that, the petitioner shall be entitled to all

consequential benefits, if her claim is accepted by the
1st respondent.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV