

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 35169 of 2010 (U)

PETITIONER:

**VRINDA P.S., AGED 36 YEARS, D/O. PRABHAKARAN,
FORMER UPSA, ANAKUDY U.P.SCHOOL
VAMANAPURAM GRAMA PANCHAYAT, RESIDING AT, "SREERANGAM"
PAUTHALACODE P.O., VATTAPARA
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.RAHUL VENUGOPAL

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE ASSISTANT EDUCATIONAL OFFICER,
PALODE, THIRUVANANTHAPURAM-PACHA P.O.-695562.**
- 3. THE SECRETARY, VAMANAPURAM GRAMA
PANCHAYAT P.O., VAMANAPURAM, THIRUVANANTHAPURAM
DISTRICT-695606.**
- 4. THE HEAD MASTER, ANAKUDY U.P.SCHOOL,
VAMANAPURAM P.O., THIRUVANANTHAPURAM DISTRICT, 695606.**

R1 AND R2 BY GOVERNMENT PLEADER SRI. T.R. RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1: TRUE COPY OF THE ORDER NO.A1-24/92 910 DATED 30.10.1996**
- P2: TRUE COPY OF THE APPROVAL OF THE APPOINTMENT OF THE PETITIONER DATED 12.2.1997**
- P3: TRUE COPY OF THE RELIEVING MEMO DATED 31.3.1997 ISSUED TO THE PETITIONER**
- P4: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE R3**
- P5: TRUE COPY OF THE COMMUNICATION DATED 1.10.1999 RECEIVED BY THE PETITIONER FROM R3**
- P6: TRUE COPY OF THE JUDGMENT DATED 2.12.1999 IN O.P. NO.26325 OF 1999**
- P7: TRUE COPY OF THE ORDER DATED 3.8.2004 IN CIVIL APPEAL NO. 6753 OF 2003 ON THE FILE OF THE SUPREME COURT**
- P8: TRUE COPY OF THE REPRESENTATION DATED ..11.2005 SUBMITTED BY THE PETITINER BEFORE THE MINISTER FOR LOCAL SELF GOVERNMENT DEPARTMENT**
- P9(A) TRUE COPY OF THE ORDER DATED 3.1.2009 OF THE KANIRAMKULAM GRAMA PANCHAYAT**
- P9(B) TRUE COPY OF THE ORDER DATED 22.1.2009 OF THE PANAVOOR GRAMA PANCHAYAT**
- P9(C) TRUE COPY OF THE ORDER DATED 29.1.2009 OF THE SANTHANPARA GRAMA PANCHAYAT**
- P9(D) TRUE COPY OF THE ORDER DATED 27.1.2009 OF THE KUMILY GRAMA PANCHAYAT**
- P9(E) TRUE COPY OF THE ORDER DATED 24.9.2008 OF THE KUMARAMANGALAM GRAMA PANCHAYAT**
- P9(F) TRUE COPY OF THE ORDER DATED 30.12.2008 OF THE BADIADKA GRAMA PANCHAYAT**
- P9(G) TRUE COPY OF THE ORDER DATED 21.8.2008 OF THE KONNATHADY GRAMA PANCHAYAT**
- P9(H) TRUE COPY OF THE ORDER DATED 19.8.2008 OF THE VANDIPERIYAR GRAMA PANCHAYAT**

- P10: TRUE COPY OF THE COMMUNICATION DATED 1.12.2008 RECEIVED BY THE PETITIONER FROM THE GENERAL EDUCATION DEPARTMENT
- P11: TRUE COPY OF THE COMMUNICATION DATED 3.12.2008 RECEIVED BY THE PETITIONER FROM THE LOCAL ADMINISTRATION DEPARTMENT
- P12: TRUE COPY OF THE JUDGMENT DATED 5.2.2008 IN O.P. NO.16403/2004
- P13: TRUE COPY OF ORDER NO.G.O.(MS) NO.225/09 DT.21.11.2009
- P14: TRUE COPY OF PETITION DT.15.1.2010 SUBMITTED BY THE PETITIONER
- P15: TRUE COPY OF JUDGMENT DT.10541/2010 DT.3.3.2010
- P16: TRUE COPY OF EVIDENCE ADDUCED BY THE PETITIONER BEFORE THE UNDER SECRETARY TO GOVERNMENT, GENERAL EDUCATION (H) DEPARTMENT, THIRUVANANTHAPURAM
- P17: TRUE COPY OF ORDER NO.G.O.(RT) NO.3567/2010/GEDN DATED 10.8.2010

RESPONDENT'S ANNEXURES

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 35169 of 2010 (U)

Dated this the 13th day of November, 2015

J U D G M E N T

The petitioner has filed the above writ petition challenging Ext.P17 order of the Government passed in compliance of the judgment at Ext.P15. The petitioner essentially contends that even persons appointed later to the petitioner had been granted permanent appointment as per Ext.P13 list which was declined to the petitioner who had been diligently pursuing her claims before the various authorities including this Court.

2. The brief facts to be noticed is that the petitioner was appointed as a UPSA in the 4th respondent school on 6.11.1996 and continued so till 31.3.1997. The appointment of the petitioner was after 1995 when the Government had, in principle, decided to hand over all appointments to schools managed by the Local Self Government Institutions to the Public Service Commission. The Government had

only granted permission to the Panchayats to make provisional appointments. The petitioner was so appointed and relieved after four months.

3. The petitioner raised a claim under Rule 51A of the Kerala Education Rules, 1959 (for brevity 'K.E.R.') and filed a writ petition which was disposed of by Ext.P6. The Panchayath and the Government contended that the petitioner was appointed for a short duration provisionally and also relied on Rule 49 of K.E.R. to contend that persons who are appointed for less than 8 months could not even have an entitlement for vacation salary and hence, any person who does not have a minimum of eight months service as on the closing of the school, for summer vacation, the services would be terminated. This Court found that such an interpretation of Rule 51A of K.E.R. would be narrow and defeat the very purpose of the protection granted and directed consideration of the petitioner's claim under Rule 51A of Chapter XIV A of K.E.R.

4. The Panchayath is said to have filed an appeal numbered as W.A. No. 32/2000. In the meanwhile the issues were referred to a Full Bench of this Court which categorically held that the persons who had been appointed by the Panchayath, i.e., the teachers of the Panchayat schools are not entitled to the benefits of Rule 51A of K.E.R. The said decision was affirmed by the Hon'ble Supreme Court in Ext.P7. However, there was a rider insofar as the affected parties being entitled to move the Government with a representation which was directed to be considered with sympathy. However, no opinion was expressed by the Hon'ble Supreme Court. The petitioner is said to have filed a representation immediately thereafter.

5. The representation, produced at Ext.P8, itself is of the year 2005, more than one year after the Supreme Court judgment. In any event, the representation of the petitioner was declined. On a reminder made, with respect to the consideration of the representation, the petitioner was

intimated by Ext.P10 that files were not available and hence after tracing out the files the Deputy Director would get back to the petitioner. This was in the year 2008. It is to be specifically noticed that in the intervening period, from the date of disposal of the Civil Appeals by the Supreme Court and the communication at Ext.P10, the petitioner made no effort to either approach the Government or approach this Court for consideration of the representation. It is still later in the year 2009 that the petitioner approached this Court with a prayer for consideration of the representation, which was allowed as per Ext.P15, prior to which Ext.P13 was passed.

6. In such circumstance, the petitioner cannot claim any similarity with the persons who have been given permanent appointment in Ext.P13. Further, it is to be noticed, as pointed out by the learned Government Pleader, that permanent appointments were granted to the persons in Ext.P13, only since they had been continuing in the

various schools from the date of their appointment or on the strength of interim orders issued by this Court. A reading of Ext.P13 order would disclose that, only persons who were appointed after 1995 and continuing as on the date of the order, were permitted permanent appointments in the respective schools. This was also on consideration of the fact that it was only on 3.4.2000 that the Government entrusted the appointment of teachers in Panchayath schools to the Public Service Commission. Though the learned counsel for the petitioner would indicate various instances where the petitioners were re-appointed long later to their initial termination, it is to be noticed that a reading of Ext.P13 would indicate that all of such persons had approached this Court and obtained orders to be continued. The petitioner obviously was sent out of employment after a short spell and was never employed thereafter. The entitlement under Rule 51A of Chapter XIV A of K.E.R. has also been negated. It is pertinent that only

those persons who were continued as on the date of Ext.P13 order were granted permanency. Further, a reading of the list appended to Ext.P13 would indicate that most of them had long years of service, while the petitioner had service of merely about 5 months in the school. Though the petitioner's counsel contended that the petitioner had been diligent in pursuing the remedies, the fact remains that the petitioner was lax in moving the representation before the Government after disposing of the batch of petitions by the Hon'ble Supreme Court and in pursuing the same before the Government or before this Court. Only after Ext.P13 order was passed, the petitioner moved this Court and obtained a direction for consideration. This Court, on the facts noticed above, is not inclined to interfere with Ext.P17 order.

Writ petition would stand dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE