

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 31758 of 2015 (T)

PETITIONER:

**ASWATHY P.R., AGED 35 YEARS
D/O. RADHAMANI, MULLASSERIVELI, MUHAMMA P.O.
ALAPPUZHA.**

**BY ADVS.SRI.R.T.PRADEEP
SMT.M.BINDUDAS**

RESPONDENTS:

- 1. PRINCIPAL SECRETARY
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. DISTRICT EDUCATIONAL OFFICER
DEO OFFICE, CHERTHALA-688 524.**
- 3. K.K.MANGALANANDAN
MANAGER, A B VILASAM HIGHER SECONDARY SCHOOL, MUHAMMA
ALAPPUZHA-688 525.**
- 4. T.P.VJAYALAKSHMI
HIGH SCHOOL ASSISTANT
A B VILASAM HIGHER SECONDARY SCHOOL, MUHAMMA
ALAPPUZHA-688 525.**

**BY ADVS. SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.K.P.JUSTINE (KARIPAT)
BY GOVERNMENT PLEADER SMT. M.J. RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-11-2015,
ALONG WITH WPC. 32216/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

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- | | | |
|---------|---|---|
| EXTP.1 | - | COPY OF THE CERTIFICATE DATED 23/01/2014 AS TO ACQUISITION OF B.ED IN THE SUBJECT OF PHYSICAL SCIENCE IN THE EXAMINATION HELD IN NOVEMBER 2012. |
| EXTP.2 | - | COPY OF INFORMATION DATED 29/06/2014 WHICH IS FURNISHED UNDER RIGHT TO INFORMATION ACT AS TO THE FILLING UP OF VACANCY OF HEAD MISTRESS WITH EFFECT FROM 1/4/2014. |
| EXTP.3 | - | COPY OF REPRESENTATION DATED 3/6/2014 BEFORE 3RD RESPONDENT RAKING UP CLAIM FOR PROMOTION AS has (PHYSICAL SCIENCE). |
| EXTP.4 | - | COPY OF REPRESENTATION DATED 3/6/2014 BEFORE 2ND RESPONDENT RAKING UP CLAIM FOR PROMOTION AS HSA PHYSICAL SCIENCE. |
| EXTP.5 | - | COPY OF ORDER DATED 6/9/2012 BY 2ND RESPONDENT REJECTING THE APPROVAL OF APPOINTMENT OF 4TH RESPONDENT AS HSA (PHYSICAL SCIENCE) WITH EFFECT FROM 4/6/2012. |
| EXTP.6 | - | COPY OF ORDER DATED 12/11/2014 BY DIRECTOR OF PUBLIC INSTRUCTION AFFIRMING THE REJECTION OF APPOINTMENT OF 4TH RESPONDENT AS HAS (PHYSICAL SCIENCE) WITH EFFECT FROM 4/6/2012 IN THE ANTICIPATED ADDITIONAL DIVISION VACANCY. |
| EXTP.7 | - | COPY OF JUDGMENT DATED 5/6/2015 IN WPC NO.16820/2015. |
| EXTP.8 | - | COPY OF ORDER DATED 12/11/2014 BY 2ND RESPONDENT BY WHICH THE APPOINTMENT OF 4TH RESPONDENT AS HSA (PHYSICAL SCIENCE) WITH EFFECT FROM 1/4/2014 IS REJECTED. |
| EXTP.9 | - | COPY OF REPRESENTATION DATED 24/10/2014 WHICH WAS RETURNED BY HEAD MISTRESS ON BEING DECLINED BY 3RD RESPONDENT. |
| EXTP.10 | - | COPY OF REPRESENTATION DATED 27/10/2014 WHICH WAS SENT BY REGISTERED POST AND RETURNED AS UNSERVED. |
| EXT.P11 | - | COPY OF REPRESENTATION DATED 27/10/2014 BEFORE DEO, CHERTHALA. |
| EXT.P12 | - | COPY OF JUDGMENT DATED 30/3/2015 IN WPC NO 10161/2015. |

[CONTD...]

WP(C).No. 31758 of 2015 (B)

EXT.P13 - COPY OF THE ORDER NO B3/2476/2015 /K.DIS DATED 28/4/2015.

EXT.P14 - COPY OF JUDGMENT DATED 21/7/2015 IN WPC NO. 16678/2015.

**EXT.P15 - COPY OF GO(RT)NO.4652/2015/G.EDN DATED 3/10/2015 BY
IST RESPONDENT.**

**EXT.P16 - COPY OF REQUEST DATED 7/10/2015 BY PETITIONER BEFORE
3RD RESPONDENT.**

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). Nos.31758 & 32216 of 2015

Dated this the 17th day of November, 2015.

JUDGMENT

The petitioners in both the writ petitions are concerned with their appointment as HSA (Physical Science) in two different academic years. The parties are referred to by their names.

2. Vijayalakshmi T.P. claims to have been appointed as an UPSA on 01.06.2011 and later promoted as an HSA (Physical Science) on 04.06.2012. Both the said actions, of the Management, was rejected approval by the District Educational Officer. The appointment of Vijalakshmi as UPSA was rejected by Ext.P1 [WP(c) No.32216 of 2015] for reason of the promotion of UPSA, which resulted in the vacancy, having not been approved. A reading of Ext.P1 would indicate that one M.S. Raneesh, who was working as UPSA, was promoted as HSA.

3. Subsequently, on 04.06.2012, it is alleged that Vijayalakshmi was promoted as HSA (Physical Science). The approval of the same was also rejected by the District Educational Officer by Ext.P2, in the very same writ petition, for reasons stated therein. Aswathy P.R., however claims that there was no promotion made on 04.06.2012 and it was a fresh appointment of Vijayalakshmi as HSA (Physical Science). The contention is raised since admittedly there was a ban in existence which would interdict the Manager from making a fresh appointment.

4. Subsequently, when another vacancy arose on 01.04.2014 of HSA (Physical Science), Aswathy staked a claim to the said vacancy under Rule 43. Vijayalakshmi was outside the rolls of the School, since her appointment as UPSA and her promotion as HSA (Physical Science) were not granted approval. The claim of Aswathy was allowed by the District Educational Officer by Ext.P4 in WP(C) No.32216 of 2015. A revision was filed from the above order also by Vijayalakshmi. Vijayalakshmi thus

filed a revision from the rejection of her appointment as UPSA and the rejection of her appointment as HSA, by Ext.P3 produced in her writ petition. Against Ext.P4 order of the DEO, upholding the claim of Aswathy, Vijayalakshmi also filed Ext.P5 revision. By Ext.P6 judgment, both the revisions were directed to be considered by the Government. The Government, by Ext.P9, rejected the claim of Vijayalakshmi. Hence Aswathy filed WP(c) No.31758 of 2015, seeking implementation of that order produced as Ext.P13 in her writ petition. Vijayalakshmi challenged the order as Ext.P9 in WP(c) No.32216 of 2015.

5. The rival claimants have different contentions with respect to Vijayalakshmi's appointment. The Government has proceeded as if Vijayalakshmi was appointed as an UPSA on 01.06.2011, and then promoted as HSA (Physical Science) on 04.06.2012. Definitely, if appointment made on 04.06.2012 was a promotion, then necessarily the question of approval for 01.06.2011 as an UPSA, also has to be considered by the Government. Ext.P3 indicates that Vijayalakshmi had a

contention with respect to her rejection of approval as an UPSC on 01.06.2011 and her promotion as HSA (Physical Science) on 04.06.2012. The Government having not considered the question of approval of Vijayalakshmi as UPSC on 01.06.2011, Ext.P4 cannot be sustained.

6. Pausing here for a moment, one has to look at the contention of Aswathy also, which is that Vijayalakshmi's appointment as HSA (Physical Science) on 04.06.2012 was not a promotion, but a fresh appointment. If that was a fresh appointment, then the question has to be looked at the perspective of, whether there is any established vacancy on 04.06.2012 and whether there was in existence a ban for such appointment. If Vijayalakshmi claims fresh appointment on 04.06.2012 and there is a ban in existence, there could be no fresh appointment. Hence, it has to be held that if Vijayalakshmi's appointment as UPSC on 01.06.2011 is not approved, then definitely there could be no promotion on 04.06.2012.

7. But these are matters which are to be examined by the Government, after looking into the files of the Educational Authority and looking at the nature of the respective appointments. If Vijayalaksmi has no claim to be appointed as UPSC or HSA (Physical Science), then definitely on the vacancy of HSA (Physical Science) arising on 01.04.2014, Aswathy, who is a qualified UPSC, has a better claim for promotion, under Rule 43. It is in that context that Ext.P8 order in WP(C) No.31758 of 2015 has been passed.

8. However, that would depend upon the result of Exts.P3 & P5 revisions filed by Vijayalaksmi. If Vijayalakshmi's Ext.P3 revision is rejected, then necessarily Ext.P5 also will have to be rejected. However, if the approval is granted to Vijayalakshmi as an UPSC on 01.06.2011, then her claim for promotion on 04.06.2012 would have to be considered and on such a contingency, the occurrence of vacancy on 01.04.2014 would have to be reviewed by the DEO and if there is a vacancy, necessarily Aswathy would have a claim over it.

9. Hence, unequivocally holding Aswathy's claim to a vacancy arising on 01.04.2014, if such vacancy arises, the revisions at Exts.P3 and P5 would have to be considered again. As was noticed, Ext.P9 order of the Government did not at all deal with the initial appointment of Vijayalakshmi as an UPSCA on 01.06.2011.

10. Ext.P9 is set aside and the parties are directed to appear before the Government on 25.11.2015. On which date, the Government shall give a date of hearing within a period of ten days from that date and a decision shall be taken within one month therefrom. Both Vijayalakshmi and Aswathy shall be continued, however subject to the result of the revision petition. All contentions of either parties are left open.

The writ petition would stand disposed of. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE.

//True Copy//

P.A. to Judge.

sp/17/11/15