

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 35750 of 2010 (P)

PETITIONER(S):

**MEERA.M.R., AGED 43,
W/O.SANTHOSH KUMAR, TC 17/671/6, NANDANAM
PATHIRAPALLY ROAD, POOJAPURA
THIRUVANANTHAPURAM-690 012, NOW WORKING AS
HSST (JUNIOR), CHEMISTRY AT AMHSS, THIRUMALA.**

BY ADV. SRI.PAULSON THOMAS

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED BY
SECRETARY, GENERAL EDUCATION, GOVT.SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, HOUSING BOARD BUILDING
THIRUVANANTHAPURAM-695 001.**
- 3. REGIONAL DIRECTOR OF HIGHER SECONDARY
EDUCATION, THIRUVANANTHAPURAM-695 001.**
- 4. MANAGER, AMHSS, THIRUMALA,
THIRUVANANTHAPURAM-695 005.**

**R,R1 TO 3 BY ADV. GOVERNMENT PLEADER SRI. S. JAMAL
R,R4 BY ADV. SRI.GOPAKUMAR R.THALIYAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: TRUE COPY OF THE STAFF FIXATION ORDER FOR 2001-2002.
- EXT. P2: TRUE COPY OF THE INTERIM ORDER OF APEX COURT.
- EXT. P3: TRUE COPY OF THE G.O. (MS) NO. 162/98/GEN.EDN. DATED 13.05.1998.
- EXT. PR: TRUE COPY OF THE G.O. (MS) NO. 298/2000/GEN. EDN. DATED 25.08.2000.
- EXT. P5: TRUE COPY OF RELEVANT PAGES OF THE SERVICE BOOK OF THE PETITIONER SHOWING HER SERVICE DETAILS AND EDUCATIONAL QUALIFICATIONS.
- EXT. P6: TRUE COPY OF THE APPROVAL ORDER OF THE PETITIONER IN RESPECT OF THE UPSA SERVICE.
- EXT. P7: TRUE COPY OF THE JUDGMENT IN W.A. NO. 2245.02.
- EXT. P7(A): TRUE COPY OF THE ORDER IN S L P 7224/2003.
- EXT. P8: TRUE COPY OF THE APPROVAL ORDER W.E.F. 5.8.2002 OF THE PETITIONER'S SERVICE BY THE DEPT.
- EXT. P9: TRUE COPY OF THE G.O. (MS) 351/2004/GEN. EDN. DATED 20.11.2004.
- EXT. P10: TRUE COPY OF THE REPRESENTATION MADE BEFORE THE GOVT. DATED 15.12.2009.
- EXT. P11: TRUE COPY OF JUDGMENT IN W.P. © 16560 OF 2010 DATED 08.07.2010.
- EXT. P12: TRUE COPY OF G.O. (RT) NO. 4308/2010/GEN.EDN. DATED 06.10.2010.
- EXT.P13 COPY OF GO(RT)NO.695/2004/GEN.EDN. DTD.13.02.04.

RESPONDENTS' EXHIBITS : NIL.

/TRUE COPY/

PA. TO JUDGE

K. VINOD CHANDRAN, J.

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Dated this the 22nd day of September, 2015

J U D G M E N T

The petitioner in the above writ petition essentially claims notional appointment to the post of Higher Secondary School Teacher (H.S.S.T) (Jr. Chemistry) in the 4th respondent school from 15.07.2001.

2. The brief facts to be noticed are that in the year 2000-01, the 4th respondent school was upgraded as a High School, when the petitioner was working as a U.P.S.A in the 4th respondent school itself. The petitioner even in the said academic year had the qualification for being posted as H.S.S.T (Chemistry). But however, the Manager, went for a selection from open market and it is alleged that the Manger's niece was appointed. The petitioner cannot raise any claim for the said post since the appointment was never challenged, nor is the

person appointed, impleaded.

3. Subsequently in the year 2001-02, there arose another vacancy of H.S.ST Junior (Chemistry), which arose on 15.07.2001. The petitioner was appointed as per Ext.P8 on 01.02.2002 and the same was approved by Ext.P8 on 05.08.2002. Ext.P8 order itself is dated 29.11.2003. The petitioner did not challenge any of the said orders and filed the earlier writ petition in the year 2010, which was disposed of by Ext.P11, directing consideration of the representation. The representation stood rejected as per Ext.P12, which is challenged herein.

4. The case of the petitioner is that when the vacancy arose on 15.07.2001, the appointment of H.S.S.T were regulated by Ext.P2. Hence the appointment of H.S.S.T had to be made by promotion from existing teachers of the upgraded schools. The Government had also by Ext.P4 codified the directions in Ext.P2. The challenge before the Hon'ble Supreme Court was against a Division Bench judgment of this Court upholding the

Government Order mandating a ratio of 25:75 being the ratio for appointment of existing teachers and from open merit. However, since Exts.P2 and P4 were in force, at that point of time, it is the contention of the petitioner that the petitioner ought to have been appointed on the date of arising of the vacancy ie., on 15.07.2001.

5. The learned Counsel appearing for the Manager however would submit that at that point of time, there was a ban of appointment as is indicated in Ext.P7 judgment which however the learned Counsel for the petitioner refutes on the contention that the Division Bench of this Court in Ext.P7 specifically noticed that the ban was only for three months.

6. What ever that be, though a vacancy arose on 15.07.2001, the petitioner was not appointed and the petitioner did not challenge the same. Subsequently, the Rules were brought out on 12.11.2001 pursuant to which, the petitioner was appointed on 01.02.2002. The approval of the petitioner was

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only from 05.08.2002 that too by 2003 order produced at Ext.P2. The petitioner having not challenged the same at that point of time, he cannot do that at this belated stage, raising a claim for notional promotion from 15.7.2001.

In such circumstance, for reason of the petitioner not being diligent enough to prosecute the issue at the appropriate time, the writ petition is found to be devoid of merit and the same would stand dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.