

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 32339 of 2014 (N)

PETITIONER(S):

**BEEBA K.NATH,
has (ENGLISH) CMM HIGHER SECONDARY SCHOOL,
THALAKKULATHUR, KOZHIKODE DISTRICT.**

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REP. BY THE SECRETARY, GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHI, THIRUVANANTHAPURAM-695 014.**
- 3. DEPUTY DIRECTOR OF EDUCATION, KOZHIKODE,
KOZHIKODE DIST, PIN-673 001.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
KOZHIKODE, KOZHIKODE DIST-PIN-673 001.**
- 5. THE MANAGER CMM HIGHER SECONDARY SCHOOL,
THALAKKULATHUR, KOZHIKODE DIST-673 317.**
- 6. P. SMITHA,
ANASWARA, NADUVANNUR P.O., KOZHIKODE,
KOZHIKODE DIST, PIN-673 614.**

*** ADDITIONAL R7 IMPEADED**

- 7. THE HEADMASTER,
CMM HIGHER SECONDARY SCHOOL, THALAKULATHUR,
KOZHIKODE DISTRICT - 673 317.**

*** ADDL.R7 IMPEADED AS PER ORDER DATED 13.01.2015 IN IA 20/15.**

**R1 TO R4 BY GOVERNMENT PLEADER SMT.M.T.SHEEBA
R5 BY ADV. SRI.K.B.GANGESH
R6 BY ADVS. SRI.V.A.MUHAMMED
SRI.M.SAJJAD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-07-2015 THE COURT ON 27-07-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- A TRUE COPY OF THE ORDER DTD 28/1/2012 OF THE 3RD RESPONDENT.

P1(A):- TRUE ENGLISH TRANSLATION OF EXT P1.

P2:-2: A TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DTD 14/3/2013.

P2(A):- TRUE ENGLISH TRANSLATION OF EXT P2.

P3:- A TRUE COPY OF THE APPOINTMENT ORDER DTD 1/6/2011 ALONG WITH THE PROCEEDINGS FOR APPROVAL DTD 28/11/2013.

P4:- A TRUE COPY OF THE PROCEEDINGS OF THE 5TH RESPONDENT.

P5:- A TRUE COPY OF THE ORDER DTD 23/4/2013 OF THE 2ND RESPONDENT.

P5(A):- TRUE ENGLISH TRANSLATION OF EXT P5.

**P6:- A TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DTD.31/10/2013.**

P7:- A TRUE COPY OF THE ORDER DTD 11/11/2014 OF THE 1ST RESPONDENT

**P8:- A TRUE COPY OF THE COMMUNICATION FROM THE HEADMASTER
CMM HIGHER SECONDARY SCHOOL DTD.2.12.2014.**

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): PHOTO COPY OF THE ENDORSEMENT NO.B4-9810/14 DTD.26.11.2014.

**EXT.R4(b): THE PHOTO COPY OF THE COMMUNICATION ISSUED BY THE
ADDITIONAL 7TH RESPONDENT.**

**EXT.R6(a): TRUE COPY OF THE APPOINTMENT ORDER OF THE 6TH RESPONDENT
DTD.1.6.2010.**

**EXT.R6(b): TRUE COPY OF THE JUDGMENT IN WP(C) NO.3593/2008 DTD.21.12.2009
(THROUGH INTER-NET).**

//TRUE COPY//

P.A.TO JUDGE.

“C.R.”

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.32339/2014**  
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Dated this the 27th Day of July, 2015

J U D G M E N T

The short question in the writ petition is whether the principles of Rule 51 of Chapter XIVA of the Kerala Education Rules could be applied in respect of a dispute between two unapproved teachers regarding their seniority.

2. Petitioner was appointed as a HSA (English) with effect from 31/07/2010 in the promotion vacancy of Fathima Hanna Hagar as HSST. The promotion of Fathima Hanna Hagar was approved by the Higher Secondary Director with effect from 17/11/2011. Therefore, the petitioner's appointment was approved with effect from 17/11/2011 as H.S.A. (English).

3. The sixth respondent was originally appointed on 01/06/2009 in the vacancy of Sheelamma K.George, H.S.A.(Maths) on account of the promotion of the teacher as Headmistress. This was rejected as the promotion was not approved. The sixth respondent was again re-appointed as H.S.A (English) in the school with effect from 01/06/2010, on approval of the promotion vacancy of Sheelamma K.George, H.S.A.

(Maths). Later, on account of reduction of post of H.S.A. (Maths), one K.G.Rupesh who had approved service from 18/08/1988 was given protection as H.S.A. (English). Therefore, Roopesh was shifted to the post of sixth respondent.

4. The sixth respondent's request for approval of appointment with effect from 17/11/2011 was rejected by the Director of Public Instruction. Thereupon, the sixth respondent approached the Government. The Government considered the revision of sixth respondent. By Ext.P7 order, the Government allowed the prayer of the sixth respondent, following the principle of Rule 51 of Chapter XIVA of the Kerala Education Rules and ordered that the sixth respondent being the senior claimant should be appointed notionally with effect from 17/11/2011. This order is under challenge by the petitioner.

5. The main challenge of the petitioner is that the Manager had cancelled the appointment of the sixth respondent as per the order dated 21/05/2012. It is also the case of the petitioner that the vacancy to which the sixth respondent was appointed was abolished and the principles under Rule 51 of Chapter XIV A of the Kerala Education Rules cannot be applied in relation to unapproved teachers. Petitioner also relies on the judgment of this Court in **Vijayamma v. State of Kerala and others [ILR 1982 (1)**

795 (Ker)] wherein this Court held that the Manager is entitled to recall the appointment, before the appointment was approved.

6. The learned counsel for the sixth respondent would argue that the sixth respondent is the senior-most, therefore, last come first go principle would apply in this matter. The sixth respondent relies on the judgment of this Court in W.P.(C).No.35993/2008 and another judgment of a Division Bench of this Court in **Joshi v. Krishna P. Rajan [2007 (2) KLT SN 63 (C.No. 85)]**.

7. It is to be noted that petitioner and the sixth respondent were appointed during the year 2010. It appears that the initial appointment of both the petitioner and the sixth respondent were based on anticipation of admissible posts. There was delay in approval of appointment of the petitioner on account of delay in approval of appointment of Fathima Hanna Hagar as HSST. There was also a delay in approving the appointment of the sixth respondent for the reason that the sixth respondent was promoted in the promotion vacancy of Sheelamma K.George as Headmistress and the promotion of Sheelamma K.George was not approved initially. By that time, based on staff fixation one post in H.S.A.(Maths) was reduced and K.G.Rupesh, who was having a right was accommodated in the post of

H.S.A.(English). Thus, only one post remains to accommodate the petitioner and the sixth respondent.

8. The question of seniority normally has to be adverted by statutory principles. However, the petitioner and the sixth respondent being unapproved teachers, on account of subsequent reduction of the post only one post was remaining to accommodate the claim of both.

9. The petitioner would contend that on account of cancellation and subsequent reduction of vacancy to which sixth respondent was appointed, the appointment of the petitioner has to be protected. On the other hand the sixth respondent would submit that the principle of last come first go should be applied and the sixth respondent should be approved.

10. It is well settled principle of service jurisprudence that in the event of retrenchment, last come first go principle should be applied. Even in the absence of any statutory prescription regarding unapproved teachers, the above principle should be applied as being general principle. When different or competent claim exists, in the absence of statutory provisions to govern, general provision shall be resorted to as an element of an agreement by all, to make larger system coherent, lest chaos would prevail, leaving to whims and fancies of the dominant, who wields the

power. This agreement is the very foundation of the legal system in which all have agreed to be governed by the Rule of law. Thus, going by the above principle, the petitioner being the last appointee, has to be retrenched.

11. The question is whether the cancellation of appointment of the sixth respondent has any validity . The petitioner places reliance on **Vijayamma's** case (*supra*) and submits that the sixth respondent's appointment has already been cancelled. Therein, the question that arose for consideration before this Court is whether the Manager can fill up the vacancy by appointing a teacher when consent for transfer of a teacher by inter-management transfer has been agreed. The question, in fact, was when it was agreed to fill up a post by inter-management transfer and that post cannot be filled by any other manner, whether the Management is entitled to recall the appointment? This Court, in fact, considered the right of the Manager taking note of the fact that there exists no post to be filled where there was a prior understanding to fill up the post by inter-management transfer.

12. In this case, the factual aspect is totally different. The appointment has been concluded by acceptance of the offer. The moment such acceptance comes into force, the appointee has vested right to be

considered for approval in accordance with law in the post available. The Manager cannot divest such right collaterally cancelling the appointment.

13. The unilateral action of the Manager must be consistent with statutory provisions. No doubt appointment would become valid only when approval is granted by the competent Authority. But, that does not indicate that Manager has the right to cancel an appointment made to a vacancy which was available for appointment and approval. Therefore, the action of the Manager unilaterally cancelling the appointment is illegal and has no legal sanctity.

14. The next question to be decided is regarding the approval of appointment of the sixth respondent with effect from 17/11/2011, the date on which vacancy was available for appointment and approval. It is to be noted that at the time of appointment of the petitioner as well as the sixth respondent, there were vacancies to accommodate both. Consequent upon abolition of one of the posts, it has become necessary to retrench one of the teachers. Therefore, appointment of the petitioner cannot be held as invalid or illegal. However, for want of post, the petitioner being junior, has to be retrenched. The petitioner would be entitled to claim any vacancy that has arisen subsequently. It is seen that the petitioner is working in the

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school and in view of her approval, she must be given salary till the period she has actually worked. Thus, the writ petition is disposed of as follows:

i. The impugned order is upheld to the extent upholding the right of the sixth respondent.

ii. The sixth respondent shall be given approval notionally with effect from 17/11/2011 and shall be treated as a senior to the petitioner for the purpose of service benefits.

iii. The Manager shall retrench the petitioner with effect from 31/07/2015.

iv. The petitioner will be entitled to salary till 31/07/2015.

v. The sixth respondent will be entitled to salary only from 01/08/2015 onwards.

vi. The petitioner is entitled to claim for any vacancy which might have or may occur. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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