

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 36162 of 2008 (E)

PETITIONER:

**SILVIA K.KOSHY
UPPER PRIMARY SCHOOL ASSISTANT
SOORANAD ST.THOMAS UP SCHOOL, SOORANAD
KOLLAM DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.V.K.SATHYANATHAN**

RESPONDENTS:

- 1. THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM.**
- 2. ASSISTANT EDUCATIONAL OFFICER, ADOOR.**
- 3. DISTRICT EDUCATIONAL OFFICER
KOTTARAKKARA.**
- 4. THE MANAGER
M.M.C CORPORATE SCHOOLS, KOTTARAKKARA.**
- 5. ANNIE.G.VERGHESE
ANNIE BHAVAN, KUREEPPALLY, NEDUMPANA P.O.
KOLLAM.**
- 6. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 7. THE ASSISTANT EDUCATIONAL OFFICER
SASTHAMKOTTA, KOLLAM.**

**BY GOVERNMENT PLEADER SRI. S. JAMAL
BY ADVS. SRI. S. SUDHEESHKAR
SRI.A.MUHAMMED RAFFI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT. P1 - COPY OF THE APPOINTMENT ORDER DATED 21.07.2003 OF THE PETITIONER.
- EXT. P2 - COPY OF THE APPOINTMENT ORDER OF THE 5TH RESPONDENT DATED 18.08.2003.
- EXT. P3 - COPY OF THE ORDER NO.B6/9012/04/D.DIS DATED 01.10.2005 OF THE 3RD RESPONDENT.
- EXT. P4 - COPY OF THE PETITION FILED BY THE PETITIONER DATED 30.09.2006 BEFORE THE 1ST RESPONDENT.
- EXT. P5 - COPY OF THE ORDER NO.C/5469/2006/K.DIS DATED 13.10.2006 ISSUED BY THE 2ND RESPONDENT.
- EXT. P6 - COPY OF THE ORDER NO.C/3684/2005/K.DIS. DATED 28.02.2006 ISSUED BY THE 2ND RESPONDENT.
- EXT. P7 - COPY OF THE STATEMENT DATED 09.10.2006 FILED BY THE PETITIONER BEFORE THE AEO ADOOR.
- EXT. P8 - COPY OF THE REVISION PETITION FILED BY THE PETITIONER DATED 20.10.2006 BEFORE THE GOVERNMENT.
- EXT. P9 - COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT.
- EXT. P10 - COPY OF THE JUDGMENT DATED 31.05.2007 IN WP(C) NO.27738/2006-B.
- EXT. P11 - COPY OF THE GO(RT) NO.5888/07/G.EDN. DATED 21.12.2007.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE.

K. VINOD CHANDRAN, J.

W.P(C). No.36162 of 2008

Dated this the 3rd day of September, 2015.

JUDGMENT

The petitioner is concerned with her Rule 51A claim, which according to her has precedence over the claim of the 5th respondent. The facts to be noticed are that the petitioner was appointed in a maternity leave vacancy, as a UPSA in the 4th respondent School on 21.07.2003 for a period of three months till 25.11.2003. The 5th respondent was subsequently appointed in a leave vacancy for two months between 18.08.2003 and 21.10.2003, again as a UPSA. The 5th respondent's appointment is seen approved by Ext.P3 order of the DEO.

2. The petitioner challenged the approval granted to the 5th respondent by Ext.P4 before the D.P.I. by way of Ext.P4. However, in the meanwhile, the 5th respondent filed WP(C) No.27738 of 2006, asserting her claim under Rule 51A of Chapter

XIV A of the KER. This Court directed consideration of the same and after hearing the petitioner, the 5th respondent and the Manager of the School, the claim of the 5th respondent stood affirmed by Ext.P5.

3. In the meanwhile, there was a dispute with respect to the appointment of the incumbent; on whose maternity leave vacancy, the petitioner was appointed. The petitioner was appointed in the maternity leave vacancy of one Smt.Susan Thomas. However, there was a rival claim by one Smt.Jibi Kurian and the dispute between those persons would resolved by Ext.P6. In Ext.P6, the appointment of Smt.Susan Thomas was approved. However, there was nothing stated in Ext.P6 about the petitioner's appointment in the maternity leave vacancy of the incumbent Susan Thomas, in whose favour Ext.P6 order was passed.

4. The petitioner filed Ext.P8 revision, challenging the approval granted to the 5th respondent, Ext.P5 as also Ext.P6 in favour of Smt.Susan Thomas to the extent Ext.P6 did not direct the petitioner's seniority to be affirmed. The petitioner's revision

stood rejected by Ext.P11, which is challenged herein.

5. It is an admitted fact that the petitioner had a better claim, since her appointment was on 21.07.2003, prior to the appointment of the 4th respondent. However, the fact remains that the application for approval of the petitioner's appointment, in the maternity leave vacancy, stood rejected by the AEO. The Manager is said to have taken up statutory remedies against the said order, which, admittedly stands rejected. In such circumstances, what stands against the petitioner is the rejection of approval of the appointment of the petitioner, in the maternity leave vacancy, which has attained finality. The petitioner has definitely a better claim, but has chosen not to challenge the rejection of her approval; which disentitled her from being granted any relief.

6. The issue now pending before this Court is the approval of the 5th respondent by Ext.P3 and the assertion of her better claim under Rule 51A by Ext.P5 and the order at Ext.P6, which went in favour of Smt.Susan Thomas. The petitioner cannot have any say in the approval granted, to the appointment of the 5th

respondent, since, that does not in any manner interfere with the petitioner's appointment, in the maternity leave vacancy. As to Ext.P5 order asserting the Rule 51A claim of the 5th respondent, it is to be noticed that when the same was passed, the appointment of the petitioner, to the maternity leave vacancy, stood rejected for whatever reason, and as on that date, the 5th respondent's appointment was approved.

7. The further challenge in Ext.P8 is against Ext.P6, in which the petitioner is not at all a party. The dispute resolved as per Ext.P6, was between one Smt.Jiby Kurian and Smt.Susan Thomas. There was no warrant for the authority, who passed Ext.P6, order to direct the approval of appointment of the petitioner in the maternity leave vacancy of Smt.Susan Thomas, since that would not have been an issue under consideration in Ext.P6. However, on the basis of Ext.P6, the petitioner could definitely have challenged the order of rejection of approval of her appointment in the maternity leave vacancy of Smt.Susan Thomas. The same having not been done, this Court is unable to consider the claim of the petitioner in a challenge against Ext.P11

order, which is a revision filed against Exts.P3,P5 and P6 orders. The rejection of appointment of the petitioner has attained finality and neither the petitioner nor the Manager has chosen to challenge the same.

In such circumstances, the writ petition is devoid of any merit and the same is dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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