

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937**

**WP(C).No. 36236 of 2008 (L)**  
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**PETITIONER(S):**  
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**P.M.USHA,  
D/O. G.MADHAVA VADHYAR, AGED 47 YEARS  
HIGH SCHOOL ASSISTANT (MATHEMATICS)  
S.N.M. HIGHER SECONDARY SCHOOL, PURAKKAD, AMBALAPUZHA  
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED  
SRI.M.SAJJAD**

**RESPONDENT(S):**  
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- 1. THE STATE OF KERALA, REPRESENTED BY THE  
SECRETARY TO GOVERNMENT  
GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.**
- 2. THE DIRECTOR  
HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDING  
TRIVANDRUM.**
- 3. THE MANAGER  
S.N.M.HIGHER SECONDARY SCHOOOL, PURAKKAD, AMBALAPUZHA  
ALAPPUZHA DISTRICT.**
- 4. SMT. JAYALAKSHMI  
HIGHER SECONDARY SCHOOOL TEACHER (JUNIOR)(MATHS)  
S.N.M.HIGHER SECONDARY SCHOOOL, PURAKKAD, AMBALAPUZHA  
ALAPPUZHA DISTRICT.**

**R,R4 BY ADV. SRI.P.N.MOHANAN  
R,R3 BY ADV. SRI.ANIL K.NARENDRAN  
R3 BY ADV. SRI.K.J.SAJI ISAAC  
R3 BY ADV. DR.ELIZABETH VARKEY  
R BY GOVERNMENT PLEADER SMT.SUNITHA VINOD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1: COPY OF THE G.O. (MS) NO.162/98/G.EDN. OF GOVERNMENT.**

**EXT.P2: COPY OF THE ORDER NO.C61421/HSE OF THE DIRECTOR.**

**EXT.P3: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.A.NO.2045/2006.**

**EXT.P4: COPY OF THE REQUEST OF THE PETITIONER.**

**EXT.P5: COPY OF THE ORDER NO.ACD.C3/19217/HSE/2001 OF THE 2ND RESPONDENT.**

**EXT.P6: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.A.NO.406/2008.**

**EXT.P7: COPY OF THE REPRESENTATION OF THE PETITIONER.**

**EXT.P8: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C). NO.20051/2008-K.**

**EXT.P9: COPY OF THE ARGUMENT NOTES.**

**EXT.P10: COPY OF THE ADDL. HEARING NOTE.**

**EXT.P10(A): COPY OF THE SENDING RECEIPT.**

**EXT.P11: COPY OF THE G.O.(RT.).NO.4681/2008/G.EDN. OF THE GOVERNMENT.**

**EXT.P12: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.NO.22507/2002-D.**

**EXT.P13: COPY OF THE INFORMATION RECEIVED UNDER RIGHT TO INFORMATION ACT REGARDING APPOINTMENT DURNG BAN PERIOD.**

**EXT.P14: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C). NO.17054/2004.**

**RESPONDENTS EXHIBITS:**

**EXT.R4(1): COPY OF THE CHART OF THE PERIODS AVAILABLE FOR THE ACADEMIC YEAR 1998-99 TO 2001-02.**

**EXT.R4(2): COPY OF THE ORDER OF THE DIRECTOR.**

**W.P.(C).NO.36236/2008**

**EXT.R4(3): COPY OF THE JUDGMENT DATED 10.9.07.**

**EXT.R4(4): COPY OF THE REVIEW PETITION DATED 19.11.2008 FILED BEFORE THE GOVERNMENT.**

**EXT.R4(5): COPY OF THE NOTICE ISSUED ON 1.1.2009.**

**EXT.R4(6) & R4(7): COPY OF THE DETAILS FURNISHED BY THE HIGHER SECONDARY DIRECTORATE.**

**EXT.R4(8): COPY OF THE CHART.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.36236 OF 2008 (L)**  
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**Dated this the 27<sup>th</sup> day of May, 2015**

**J U D G M E N T**

The petitioner has been working as High School Assistant [HSA] (Maths) in S.N.M. Higher Secondary School, Purakkad since 1986. She holds the qualification of M.Sc. (Maths) and B.Ed and qualified for the post of Higher Secondary School Teacher [HSST] (Maths) with effect from 24.11.1999. The facts in the writ petition would disclose that, prior to the introduction of Chapter XXXII in the Kerala Education Rules with effect from 12.11.2001, the appointment of HSST's in Higher Secondary Schools was governed by executive orders, and by Ext.P1 Government order, 25% of the vacancies of HSST in Higher Secondary Schools were to be filled up from among eligible HSA's and Primary School Teachers. In the 3<sup>rd</sup> respondent School, the Higher Secondary course was sanctioned in the academic year 1998-99. In the academic year 1999-00, one post of HSST (Full time) and one post of HSST (Part time), which were subsequently redesignated as HSST and HSST (Junior) respectively, were sanctioned in the subject Maths. Apparently, one B.Jayadev was

appointed as HSST (Junior). In the academic year 2000-01, two posts of HSST's were available to be filled up and in the subsequent year 2001-02, there were two posts of HSST and one post of HSST (Junior) that was available to be filled up. It is the case of the petitioner that although she was qualified to be appointed to the post of HSST (Junior), she was not appointed to the post by the Manager. The Manager instead appointed the 4<sup>th</sup> respondent to the post on 5.12.2001. Without specifically challenging the appointment of the 4<sup>th</sup> respondent, the petitioner, who had also responded to the notification inviting applications for HSST, preferred a representation, against the rejection of her candidature by the 3<sup>rd</sup> respondent Manager, to the 2<sup>nd</sup> respondent. Her request for appointment to the post of HSST was however rejected by the 2<sup>nd</sup> respondent by Ext.P5 order dated 22.5.2002. The petitioner therefore preferred O.P.No.22507/2002 challenging Ext.P5 order and arraying Sri.Jayadev as a respondent in the said Original Petition. The said Original Petition was however dismissed by Ext.P12 judgment dated 10.9.2007. Aggrieved by the said judgment, the petitioner preferred a Writ Appeal [W.A.No.406/2008], in which, the 4<sup>th</sup> respondent was arrayed as the 5<sup>th</sup> respondent in addition to Sri.Jayadev. The said Writ appeal was

however subsequently withdrawn at the instance of the petitioner with liberty to prefer a representation before the Government so as to enable the petitioner to stake a claim for the post of HSST which was filled by appointing the 4<sup>th</sup> respondent in the present writ petition. Ext.P6 is the judgment of this Court in the Writ appeal. The petitioner thereafter preferred Ext.P7 representation dated 7.3.2008 before the Government seeking appointment as an HSST (Junior) to the vacancy that was filled by the 4<sup>th</sup> respondent. By Ext.P11 order dated 23.10.2008, the 1<sup>st</sup> respondent rejected the petitioner's claim on the ground of delay after specifically finding that the petitioner had not chosen to challenge the appointment of the 4<sup>th</sup> respondent till 7.3.2008 when she preferred Ext.P7 representation pursuant to the liberty granted by this Court in Ext.P6 judgment. Ext.P11 order of the 1<sup>st</sup> respondent is impugned in the writ petition.

2. A counter affidavit has been filed by the 4<sup>th</sup> respondent, wherein, it is stated that the 4<sup>th</sup> respondent was appointed to the vacancy that arose in 2001-02 with effect from 5.12.2001. It is pointed out that by the Government Order dated 30.12.1999, the Government had introduced the SET qualification for HSST and

granted two chances to candidates to pass the SET during 1999-00 and 2000-01. It is the specific case of the 4<sup>th</sup> respondent that the petitioner does not have a SET qualification till date, and, therefore, at any rate, she was not qualified for holding the post of HSST in a vacancy that arose in the academic year 2001-02. It is pointed out that the period for obtaining SET qualification as far as the petitioner was concerned ended by 31.3.2001, and even if the petitioner had a claim for consideration without a SET qualification to the post of HSST (Junior), the same could only have been in respect of the vacancy that arose between 24.1.1999 and 31.3.2001.

3. I have heard Sri.V.A.Muhammed, the learned counsel for the petitioner, Sri.P.N.Mohanan, the learned counsel for the 4<sup>th</sup> respondent as also Smt.Sunitha Vinod, the learned Government Pleader for the official respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the claim of the petitioner was essentially for appointment as HSST (Junior) to the vacancy that arose in the post during the academic years 1999-00 and

2000-01. During the said period, the appointment to the post of HSST (Junior) was given to one Jayadev who was appointed on 12.7.1999. It was this claim, to the post held by the said Jayadev, that the petitioner had urged all along as is evident from Ext.P5 order of the 2<sup>nd</sup> respondent and Ext.P12 judgment of this Court in O.P.No.22507/2002. It was thereafter that the petitioner, on finding that she could avail the benefits of the Government order, and Ext.P3 judgment, which provided for an exemption from availing SET qualification for persons like the petitioner, that she chose to mount a challenge against the appointment of the 4<sup>th</sup> respondent. Although this Court, by Ext.P6 judgment in the Writ appeal, which was withdrawn by the petitioner, granted liberty to the petitioner to pursue her claim against the 4<sup>th</sup> respondent before the Government, the Government, by Ext.P11 order, rejected the claim of the petitioner on the ground of delay by noting that the petitioner had not chosen to challenge the appointment of the 4<sup>th</sup> respondent on 5.12.2001, till 7.3.2008. On a perusal of Ext.P11 order, and taking note of the conduct of the petitioner in not challenging the order of appointment of the 4<sup>th</sup> respondent in any of the proceedings till 2008, I am of the view that the stand taken by the 1<sup>st</sup> respondent in Ext.P11 order does not

require to be interfered with by this Court in these proceedings under Article 226 of the Constitution of India. Resultantly, I see no merit in the writ petition, and the same is accordingly dismissed.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

prp