IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2020 / 22ND KARTHIKA, 1942

WP(C).No.13564 OF 2020(U)

PETITIONER:

MARY JESNI
AGED 33 YEARS
W/O.JOHN BITTO, LPST, ST.THOMAS GIRLS HIGH SCHOOL, PERUMANOOR, ERNAKULAM - 682 015, RESIDING AT ATHIPOZHI HOUSE, MUNDAMVELI P.O., KOCHI -682 507.

BY ADVS.
SRI.ELVIN PETER P.J.
SRI.K.R.GANESH
SMT.N.R.REESHA
SMT.T.S.LIKHITHA

RESPONDENTS:

1. **STATE OF KERALA**
   REPRESENTED BY ITS SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUANANTHAPURAM - 695 001.

2. **THE DIRECTOR OF GENERAL EDUCATION**
   OFFICE OF THE DIRECTOR OF GENERAL EDUCATION, THIRUVANANTHAPURAM - 695 001.

3. **THE DEPUTY DIRECTOR OF EDUCATION**
   ERNAKULAM -682011.

4. **THE DISTRICT EDUCATIONAL OFFICER**
   OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, ERNAKULAM -682011.

5. **THE MANAGER,**
   ST.THOMAS GIRLS HIGH SCHOOL
   PERUMANOOR, ERNAKULAM, KOCHI -682015.

R1-4 BY SRI.P.M. MANOJ, SR.GOVERNMENT PLEADER
R5 BY ADV. SRI.PRADEEP KRISHNA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed seeking the following prayers:

> *"(i) To issue a writ of certiorari calling for the records leading to Exts. P10, P11, P12 and P13 orders and to quash the same;*
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> *(ii) To issue a writ of certiorari calling for the records leading to Exts. P6, P8 and P9 and quash the same;*
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> *(iii) To issue a writ of mandamus, or any other appropriate writ, order or direction directing the 4th respondent to approve the appointment of the petitioner as LPST on the basis of Ext. P5 appointment order dated 1.6.2016 and grant her all consequential benefits including arrears of salary;*
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> *iv) To issue a writ of mandamus, or any other appropriate writ, order or direction directing the 4th respondent to approve the appointment of the petitioner with effect from 01.06.2018 on the basis of Ext. P7 order and grant her all consequential benefits including arrears of salary;*
>
> *v) To declare that the petitioner is entitled to have her appointments approved to the post of LPST as per Exts. P5 and P7 orders;"*

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner was appointed as LPST from 01.06.2016 by Ext.P5 order in a leave vacancy and later from 01.06.2018 by Ext.P7 order in a regular vacancy. It is submitted that the appointments were forwarded for approval. Ext.P6 order was passed in respect of the 1st appointment by the 2nd respondent. Ext.P8 order dated 07.09.2019 was passed rejecting approval to the regular appointment also on the ground that the petitioner had not studied Malayalam and that as such, she is not eligible for appointment as LPST. The petitioner had taken up Ext.P8 order of the DEO in appeal and Ext.P9 order was passed by the Deputy Director of Education upholding Ext.P8. Ext.P9 order refers to Government Orders dated 19.03.2002 and 22.05.2018. The petitioner has produced the orders referred to in Ext.P9 as Exts.P10 to P.13.

4. It is submitted by the learned counsel for the petitioner that it is evident from Ext.P14 certificate issued by the Headmistress of the school that the petitioner has been teaching in the English medium section of the school. It is further submitted that sanction had been accorded to start English medium division in the school by

Ext.P4 proceedings as early as in the year 1965 and that it was to teach in the English medium that the petitioner had been appointed.

5. The learned counsel for the petitioner submits that the Government Orders referred to in Ext.P9 are specifically in respect of Malayalam medium sections and that they have no application to the petitioner, who is a teacher in English medium section. It is further contended that without amendment being effected in Chapter XXXI, KER with regard to the qualifications for the appointment of LPST, the executive orders cannot be relied on to state that the petitioner is not qualified.

6. A counter affidavit has been placed on record by the 3rd respondent. It is not in dispute that the petitioner is otherwise qualified for appointment as LPST. However, it is contended that the minimum qualification should include knowledge of Malayalam as provided in the executive orders. It is stated that since the petitioner had not studied Malayalam at any level, either in the school or college or even in the training level, the petitioner is not qualified going by the provisions of G.O.(RT)No.534/02/G.Edn. dated 19.03.2002 and G.O.

(MS).No.67/2018/G.Edn. dated 22.05.2018. It is stated that the Government Orders direct that teachers including Junior Language Teachers have to acquire the qualification as prescribed in the rules and should also have studied Malayalam. The learned Government Pleader would further submit that the issue stands covered against the petitioner by the judgment in W.A. No.162/2020 and has produced the judgment dated 24.06.2020 for perusal.

7. I have considered the contentions advanced on either side. It is a specific case of the petitioner that the petitioner has been appointed as LPST in the English medium section of the 5th respondent's school. It is submitted that Ext.P14 certificate issued by the Headmistress is ample proof of this fact. It is further contended that Exts.P10 and P11 Government Orders are in respect of private schools and with regard to Exts.P12 and P13 orders, those orders are specifically confined to Malayalam medium sections in Government or aided schools and that they have no application in the instant case, where the petitioner has been appointed to teach in the English medium section. The learned counsel would contend that the judgment of the Division Bench in W.A.No.162/2020 has considered

the impact of Exts.P12 and P13 Government Orders and has specifically held that they are in relation to appointments of teachers in institutions where the medium of instruction is Malayalam.

8. Exts.P12 and P13 Government Orders specifically relate to appointment of teachers in Malayalam medium sections or Malayalam medium divisions. The Division Bench of this Court in paragraph 7 of the judgment in W.A.No.162/2020 has pointedly considered this issue and it has been held as follows:

> *"7. We have anxiously considered the contentions of both sides. We must notice that though the law laid down by the Division Bench of this court in Baiju V. Suguna Prakash (supra) was brought to the notice of the Division Bench while deciding W.A. No.135/2017, the ratio of that judgment was not applied to the facts of the case. We notice from the decision in Baiju V. Suguna Prakash (supra) that the power to issue orders in the nature of Ext.P11 /Annexure-A1 should be found in the fact that the law always permits executive authorities to supplement the Rules though they are legally incompetent to supplant the Rules. Here the question is whether proficiency in Malayalam can be insisted upon in schools / divisions where the medium of instruction is Malayalam. We are of the opinion that such a stipulation is not in any manner arbitrary and that it may be well within the powers of the administrative authority to insist on such requirement through orders supplementing the statutory Rules. We do not think that the W.A No. 162/2020 -6- issuance of executive orders incorporating a condition regarding proficiency in Malayalam to teach other subjects, in an institution*

> *where the medium of instruction is Malayalam, will amount to issuance of executive orders overriding the qualifications fixed by statutory provisions. Such instructions can only be read as supplementing and not supplanting the existing qualifications. However, we must hasten to add that such requirements must invariably be incorporated in the statutory Rules at least shortly after the executive orders are issued to supplement the statutory provisions. The executive orders in question in this case were issued on 19-03-2002 (Ext.P11 in the writ petition) and was modified through Annexure-A1 dated 22-05-2018. Inspite of passage of considerable time, such stipulations as in Ext.P11 modified by Annexure-A1 have not been incorporated in the statutory Rules. This practice should stop. If the executive authority feels that instructions in the nature of Ext.P11 / Annexure-A1 have to be issued to meet certain circumstances, it is well within their power to do so. However as already noticed such executive action must be followed up by amending the statutory Rules so as to avoid similar disputes in future. We hope that the authorities will bestow their attention to these observations and take appropriate follow-up action in the matter."*

9. In the facts of the instant case where the petitioner specifically contends that she has been appointed in a school where English medium sections have been sanctioned as early as in 1965 and where the Headmistress has certified that the petitioner is teaching in the English medium divisions, I am of the opinion that the Government Orders referred to had no application. The contentions raised by the learned Government Pleader that the petitioner who has

not studied Malayalam is not eligible to be appointed as LPST is therefore untenable. The writ petition is therefore liable to be allowed. Exts.P6, P8 and P9 orders are set aside. There will be a direction to the DEO to approve the appointment of the petitioner pursuant to Exts.P5 and P7, taking note of Exts.P4 and P14. Orders shall be passed within a period of one month from the date of receipt of a copy of this judgment.

This writ petition is ordered accordingly.

Sd/-

ANU SIVARAMAN

JUDGE

NP

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE ALL INDIA SENIOR SCHOOL CERTIFICATE EXAMINATION AWARDED TO THE PETITIONER BY THE CENTRAL BOARD OF SECONDARY EDUCATION DATED 23/05/2004.
EXHIBIT P2	TRUE COPY OF THE TTC CERTIFICATE AWARDED BY THE GOVERNMENT OF KERALA, DEPARTMENT OF EDUCATION TO THE PETITIONER.
EXHIBIT P3	TRUE COPY OF THE K-TET CERTIFICATE AWARDED BY THE GOVERNMENT OF KERALA, DEPARTMENT OF GENERAL EDUCATION TO THE PETITIONER DATED 03/08/2017.
EXHIBIT P4	TRUE COPY OF THE GOVERNMENT ORDER G.O.RT.NO.1501/EDN. DATED 25/05/1965.
EXHIBIT P5	TRUE COPY OF THE ORDER DATED 01/06/2016 ISSUED BY THE 5TH RESPONDENT APPOINTING THE PETITIONER AS LPSA.
EXHIBIT P6	TRUE COPY OF THE ORDER NO.DPI/4579/2019-EC3 DATED 01/11/2019 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P7	TRUE COPY OF THE ORDER DATED 01/06/2018 ISSUED BY THE 5TH RESPONDENT APPOINTING THE PETITIONER AS LPST WITH EFFECT FROM 01/06/2018 IN THE REGULAR VACANCY.
EXHIBIT P8	TRUE COPY OF THE ORDER NO.B5-3898/2018/D.DIS. DATED 07/09/2019 ISSUED BY THE 4TH RESPONDENT REJECTING THE APPROVAL OF APPOINTMENT OF THE PETITIONER.
EXHIBIT P9	TRUE COPY OF THE ORDER NO.B2/22857/19/D.D.E./D.DIS DATED 20/05/2020 ISSUED BY THE 3RD RESPONDENT REJECTING THE APPEAL FILED BY THE 5TH RESPONDENT MANAGER.
EXHIBIT P10	TRUE COPY OF THE GOVERNMENT ORDER G.O. (MS) NO.232/2009/G.EDN. DATED 30/11/2009 REFERRED TO IN EXT.P9.

EXHIBIT P11	**TRUE COPY OF THE GOVERNMENT O9RDER G.O. (MS) NO.281/12/G.EDN. DATED 14/09/2012 REFERRED TO IN EXT.P9.**
EXHIBIT P12	**TRUE COPY OF THE GOVERNMENT ORDER G.O. (RT) NO.534/02/G.EDN. DATED 19/03/2002 REFERRED TO IN EXT.P9.**
EXHIBIT P13	**TRUE COPY OF THE GOVERNMENT ORDER G.O. (RT) NO.67/2018/G.EDN. DATED 22/05/2018 REFERRED TO IN EXT.P9.**
EXHIBIT P14	**TRUE COPY OF THE CERTIFICATE DATED 26/06/2020 ISSUED BY THE HEADMISTRESS OF THE ST.THOMAS GIRL'S HIGH SCHOOL.**
EXHIBIT P15	**TRUE COPY OF THE JUDGMENT DATED 12/11/2009 IN W.P.(C) NO.19231/2009 OF THIS HON'BLE COURT.**
EXHIBIT P16	**TRUE COPY OF THE JUDGMENT DATED 25/11/2009 IN W.A.NO.2684/2009 OF THIS HON'BLE COURT.**

RESPONDENT'S/S EXHIBITS: NIL