IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 03RD DAY OF DECEMBER 2020 / 12TH AGRAHAYANA, 1942

WP(C).No.1918 OF 2010(L)

PETITIONER:

M.P.DEEPA
L.P.S.A, A.L.P.SCHOOL,
KARINKALLAI, FAROOK COLLEGE P.O.,KOZHIKODE DISTRICT,
RESIDING AT BASITHA NIVAS, PONNAMPADAM,
KARADUPARAMA P.O., KOZHIKODE DISTRICT.

BY ADVS.
SRI.G.SANTHOSH KUMAR (P).
SRI.K.N.PADMAKUMAR
SRI.V.R.SASSIDHARAN

RESPONDENTS:

1 **STATE OF KERALA**
SECRETARY TO GOVERNMENT, DEPARTMENT OF, GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.

2 **DIRECTOR OF PUBLIC INSTRUCTIONS**
THIRUVANANTHAPURAM.

3 **THE DEPUTY DIRECTOR OF EDUCATION**
KOZHIKODE.

4 **THE ASSISTANT EDUCATIONAL OFFICER**
FEROKE, KOZHIKODE.

5 **THE MANAGER**
A.L.P.SCHOOL, KARINKALLAI,, FAROOK COLLEGE P.O.,
KOZHIKODE DISTRICT.

6 **SABNA R.KRISHNAN,**
L.P.S.A.A.L.P.SCHOOL,
KARINKALLAI, FAROOK COLLEGE P.O.,
KOZHIKODE DISTRICT.

R1-4 BY GOVERNMENT PLEADER
R6 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
R6 BY ADV. SRI.C.P.SIVADASAN NAIR

OTHER PRESENT:

SR. GP. P.M. MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed seeking the following prayers:-

"i. call for the records leading to Exhibits P9 and P10 and issue a writ of certiorari or any other appropriate writ, order or direction quashing Exhibits P9 and P10 orders.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction declaring that the date of appointment of the petitioner is on 02.06.2003 as mentioned in Exhibit P2.

iii. Issue a writ of mandamus or any other appropriate writ, order or direction declaring that the petitioner is senior to the sixth respondent as mentioned in Exhibit P5 and subsequent seniority lists published every year."

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 had been appointed as L.P.S.A in leave vacancies at various spells. The 1st appointment of the petitioner was from 24.10.2001 to 13.12.2001 and the later appointment from 02.01.2002 to 04.03.2002. These appointments were approved. Thereafter, the petitioner had been appointed against a regular vacancy, which arose on

02.06.2003. It is submitted that the 6th respondent was also a 51A claimant in the same school having approved service in leave vacancies from 02.06.1999 to 02.08.1999 and for later spells. It is submitted that the learned counsel for the petitioner that the 6th respondent had submitted a relinquishment before the 4th and 5th respondents stating that she had temporarily relinquished the claim for the appointment as L.P.S.A in the school upto 31.05.2005 and that she had no objection in appointing any other person. It is submitted that it was on considering the relinquishment of the 6th respondent that the petitioner had been appointed in the regular vacancy, which arose on 02.06.2003 and the petitioner's appointment was approved. It is submitted that while so a regular vacancy arose in the school on 28.08.2003 to which vacancy, the 6th respondent was shifted. The 6th respondent's appointment in the leave vacancy from 03.06.2003 to 27.08.2003 was approved by the endorsement in Ext.P3. The regular appointment from 28.08.2003 was also approved. It is submitted by the petitioner that the petitioner is senior to the 6th respondent in regular service. Ext.P5 seniority list dated

12.01.2004 is also produced to contend that there were earlier appointments in the post of L.P.S.A, which were not objected by the 6th respondent. Though the petitioner was included in the seniority list w.e.f 02.06.2003, the 6th respondent was not included in the list.

4. While so, the 6th respondent filed a representation before the Government and obtained a direction to consider the same. It is submitted that notice was issued to the parties pursuant to Ext.P7 judgment, the petitioner appeared and submitted Ext.P8 argument notes. The 1st respondent, without considering the contentions raised by the petitioner and without considering the belated nature of Ext.P6, allowed Ext.P7 and declared the 6th respondent is the senior Rule 51A claimant and directed the 4th respondent to approve the appointment of the 6th respondent in the vacancy to which the petitioner is appointed. By Ext.P10 order, the 4th respondent regularized the appointment of the 6th respondent against the retirement vacancy, which arose on 02.06.2003 and regularized the appointment of the petitioner in the additional post, which

arose on 28.08.2003 as per Ext.P10. Exts.P9 and P10 are challenged by the petitioner in this writ petition.

5. The petitioner contends that the 6th respondent is the daughter-in-law of the 5th respondent Manager and that the 5th respondent has acted against the statute to help the 6th respondent. It is submitted that the petitioner's appointment in the regular vacancy w.e.f 02.06.2003 is to be approved and that the petitioner is entitled to sit-back and consider that her seniority in the post was settled. It is further submitted that the claim of the 6th respondent for appointment against the vacancy, which arose on 02.06.2003 was belated and that the Government was not justified in having passed an order in the nature of Ext.P9. At the time of arguments, the learned counsel for the petitioner submits that the 6th respondent was a B.Ed holder and she is therefore, not qualified for appointment as L.P.S.A.

6. The 3rd respondent has filed a detailed counter affidavit. It is contended that the 1st spell of approved service of the 6th respondent being from 02.06.1999 to 02.08.1999, she is

a senior Rule 51A claimant and has a preferential claim for appointment in vacancies, which arise in the school. It is submitted that the petitioner's first spell of approved service was only from 24.10.2001 to 13.12.2001. It is further submitted that the Government has considered the question of relinquishment of appointment by the 6th respondent by Ext.P1 and it was found that the specific provisions in Rule 51A, Chapter XIV A KER would require the Manager to send appointment orders in respect of arising vacancies to eligible Rule 51A claimants and a relinquishment in the nature of Ext.P1 would not serve the purpose of relinquishment of the claim under Rule 51A.

7. The learned Government Pleader would also submit that there is no challenge in any of these proceedings against the earlier appointments granted to Smt.Prajitha as is referred to in the writ petition. If such a claim existed, the petitioner, who is a Rule 51A claimant, would also be a claimant against the post, which Smt. Prajitha is appointed.

8. The 6th respondent has also filed a counter affidavit. It

is stated in the counter affidavit that, immediately after Ext.P4 order, the 6th respondent had repeatedly submitted representations before the Educational Authorities and it is only when those representations did not invoke any response that she was constrained to move the Government with Ext.P6 representation. It is further stated that Note 2 under Rule 51A of Chapter XIV A KER specifically provides for issuance of appointment orders to the Rule 51A claimant by registered post acknowledgment due and it is only if the teacher does not join pursuant to such appointment order that the claim under Rule 51A can be said to be relinquished. It is contended that the very validity of Ext.P2 order of appointment of the petitioner had been under challenge at the instance of the 6th respondent and therefore, the contention that the petitioner is entitled to sit-back is not a tenable contention at all. It is further submitted that the contention with regard to qualification has not been raised anywhere including in this writ petition.

9. A reply affidavit has also been placed on record by the petitioner. It is pertinent to note that even in the reply

affidavit filed as against the counter affidavit filed by the 6th respondent in this writ petition, which is filed in 2010, the petitioner has not raised the contention as to any inadequacy of qualification of the 6th respondent.

10. Having considered the contention advanced, I find that the finding in Ext.P9 order that the 6th respondent was the earlier Rule 51A claimant and was entitled to preferential appointment in terms of Note 2 to Rule 51A cannot be said to be erroneous. The contention of the petitioner is that there was another appointment made by the Manager which had not been challenged by the 6th respondent. The petitioner also contends, that in view of Ext.P1 relinquishment letter, the 6th respondent would have no claim against the post, which arose on 02.06.2003. The further contention is that Ext.P6 representation was belated and therefore, no orders should have been passed thereon against the petitioner.

11. I find that the contentions raised by the petitioner have been considered in Ext.P9 order. The argument notes submitted have also apparently been taken into account and a

speaking order has been passed. It is specifically found by the Government that Ext.P1 letter of relinquishment, which is general in nature, cannot serve the purpose for a relinquishment as required by law in terms of Note 2 of Rule 51A of KER. This Court has considered the issue on several occasions and it has been held that where there is a specific procedure prescribed by Note 2 to Rule 51A, any relinquishment of a preferential claim can only be in terms of such procedure and not by letters in the nature of Ext.P1. I also find that the contention that one Smt.Prajitha P.P had been appointed and that no claim had been raised against the said appointment has also been considered in Ext.P9 by the Government. It was found that the said teacher is not in service and that she had left the school to take up Government service. The contention of the 6th respondent that she had approached the AEO on 10.09.2003 and on 31.03.2004 as well as the DDE on 05.10.2004 as against the approval granted to the petitioner from 02.06.2003 has also been taken specific note of by the Government. It was in the above circumstances that the directions to approve the appointment of the 6th respondent

from 02.06.2003 onwards and to shift the lien of the petitioner to the vacancy which arose on 28.08.2003 had been issued by the Government. On a consideration of the facts and circumstances of the case, I find that the contention of the petitioner that Ext.P6 was a belated challenge and that the petitioner was entitled to sit-back and consider that her approval to have become final cannot be accepted. I also find that the contention based on Ext.P1 can also not succeed in view of the specific provisions contained in Note 2 to Rule 51A of Chapter XIV A KER.

In the above view of the matter, I find that the contention that Ext.P9 order is perverse and vitiated cannot be accepted. The writ petition is, therefore, not liable to be succeed. The writ petition fails and the same is accordingly dismissed.

Sd/-

ANU SIVARAMAN

JUDGE

Bng/07.12.2020

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE STATEMENT OF RELINQUISHMENT DATED 31/07/2001 SUBMITTED BY THE SIXTH RESPONDENT.**
EXHIBIT P2	**TRUE COPY OF THE APPOINTMENT -CUM-APPROVAL ORDER DATED 02/06/2003.**
EXHIBIT P3	**TRUE COPY OF THE APPOINTMENT ORDER OF THE SIXTH RESPONDENT DATED 03/06/2003.**
EXHIBIT P4	**TRUE COPY OF THE APPOINTMENT ORDER DATED 28/08/2003 OF THE SIXTH RESPONDENT.**
EXHIBIT P5	**A TRUE COPY OF THE FINAL SENIORITY LIST DATED 12/01/2004 APPROVED BY THE FOURTH RESPONDENT.**
EXHIBIT P6	**TRUE COPY OF THE REPRESENTATION DATED 05/04/2009 FILED BY THE SIXTH RESPONDENT.**
EXHIBIT P7	**TRUE COPY OF THE JUDGMENT DATED 24/07/2009 IN WP(C) NO.20752/2009 OF THIS HONOURABLE COURT.**
EXHIBIT P8	**TRUE COPY OF THE ARGUMENT NOTES DATED NIL SUBMITTED BY THE PETITIONER.**
EXHIBIT P9	**TRUE COPY OF THE GO(RT) NO.4934/09/G.EDN. DATED 25/11/2009 ISSUED BY THE FIRST RESPONDENT.**
EXHIBIT P10	**TRUE COPY OF THE ORDER NO. F/2480/09 DATED 31/12/2009 OF THE FOURTH RESPONDENT.**
EXHIBIT P11	**A TRUE COPY OF THE LETTER DATED 18/01/2012 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RESPONDENT.**

RESPONDENTS EXHIBITS:

EXHIBIT R6(a)	**TRUE COPY OF THE REPRESENTATION DATED 10.9.2003 FILED BY THE 6TH RESPONDENT BEFORE THE 4TH RESPONDENT.**

EXHIBIT R6(b)	**TRUE COPY OF THE REPRESENTATION DATED 31.3.2004 FILED BY THE 6TH RESPONDENT BEFORE THE 4TH RESPONDENT.**
EXHIBIT R6(c)	**TRUE COPY OF THE REPRESENTATION DATED 5.10.2004 SUBMITTED BY THE 6TH RESPONDENT BEFORE THE 3RD RESPONDENT.**
EXHIBIT R6(d)	**TRUE COPY OF THE REPRESENTATION DATED 5.4.2009 SUBMITTED BY THE 6TH RESPONDENT BEFORE THE HON'BLE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION.**