IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

WP(C) NO. 41580 OF 2023

PETITIONER:

MARIA SANE K. J
AGED 47 YEARS
W/O THOMAS ANTON K, UPST, ST. SEBASTIAN’S HSS, GOTHURUTH, ERNAKULAM, KOCHI – 682508. RESIDING AT KALATHIVEETIL HOUSE, OCHANTHURUTHU P O, ERNAKULAM DISTRICT., PIN - 682 508

BY ADVS.
PREEJA V.P.
V.P.PRASANTH
VARSHA S.
DAISY A.PHILIPOSE(K/595/1995)

RESPONDENTS:

1. **STATE OF KERALA**
   REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT GOVERNMENT SECRETARIAT ANNEX II, THIRUVANANTHAPURAM, PIN - 695 001

2. **THE DIRECTOR OF GENERAL EDUCATION**
   JAGATHY, THIRUVANANTHAPURAM, PIN - 695 014

3. **THE DEPUTY DIRECTOR OF EDUCATION**
   KAKKANAD, ERNAKULAM, PIN - 682 030

4. **THE DISTRICT EDUCATIONAL OFFICER**
   ALUVA, ERNAKULAM, PIN - 683 101

5. **THE CORPORATE MANAGER**
   DIOCESE OF KOTTAPPURAM, KODUNGALLUR, THRISSUR, PIN - 680 667

6 MARY K G
AGED 47 YEARS
W/O SHIBU, HIGH SCHOOL TEACHER (NATURAL SCIENCE)
ST. SEBASTIAN’S HIGHER SECONDARY SCHOOL,
GOTHURUTH, ERNAKULAM, PIN - 683516

BY ADV
K.G.SAROJIN, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ZIYAD RAHMAN.A.A, J.

.....

W.P (C) No.41580 of 2023

.....

Dated this the 23rd day of July, 2024

JUDGMENT

The petitioner was appointed as the UPST on 01.06.2017 in the school managed by the 5th respondent. The writ petition is submitted by the petitioner, being aggrieved by the appointment of 6th respondent, as HST (Natural Science), by way of by- transfer appointment under Rule 43 of Chapter XIV A KER.

2. According to the petitioner, the vacancy in which the 6th respondent was appointed arose on 13.07.2022, and according to the petitioner, the 6th respondent was not qualified to be appointed as HST, in view of the fact that she lacked the qualification of KTET-III as on the date of occurrence of the vacancy. It was pointed out that, on various occasions the approval of appointment of the 6th respondent was declined by the authorities concerned. Ultimately, the 1st respondent, as per Ext.P14, directed the approval of the appointment of the 6th respondent with effect from 04.08.2023 if it is otherwise in order, taking note of the fact that she obtained the qualification of KTET-

III on 04.08.2023. This writ petition was submitted in such circumstances.

3. A counter affidavit has been placed on record by the Government, wherein, the issuance of Ext.P14 is sought to be justified. Even though the notices were served on the 5th and 6th respondents , there is no appearance for the said respondents.

4. I have heard Smt. Preeja.V.P, the learned counsel appearing for the petitioner and Smt. Sarojini, the learned Government Pleader, for the respondents 1 to 4.

5. The specific contention put forward by the learned counsel for the petitioner is that, as on the date of occurrence of the vacancy and the appointment of the 6th respondent, she was not qualified, as she lacked KTET-III qualification. On going through Ext.P14 order, it is evident that the 6th respondent acquired the said qualification only on 04.08.2023.

6. It is also discernible from the records that, the appointment of the 6th respondent was made to the vacancy, which arose on 13.07.2022 on the basis of her claim under Rule 43 Chapter XIV A of KER. As per the said provision, the right to get a promotion will be accrued only if the candidate has the necessary qualifications on the date of occurrence of the vacancy. It is

specifically provided in Rule 43 that, *".....the vacancies in any higher grade of pay shall be filled up by promotion of qualified hands in the lower grade according to seniority....."* . Therefore, the person being considered for appointment should have the qualification on the date of occurrence of the vacancy.

7. In this case, it is evident from averments in the counter affidavit submitted by the Government that on the date of occurrence of vacancy, i.e., 13.07.2022, the petitioner also had a claim under Rule 43 Chapter XIV A of KER, and she was fully qualified for the said post. Despite the same, the 5th respondent appointed the 6th respondent against the said vacancy, even though she was not having KTET-III qualification, which is one of the essential requirements. In such circumstances, the appointment of the 6th respondent and the approval granted as per Ext.P14 cannot be treated as proper as evidently the necessary qualifications were acquired by the 6th respondent only on 04.08.2023, which is much after the date of occurrence of vacancy. Of course, it is true that the government had granted relaxation for acquiring KTET qualification, but the same was pertaining to the appointments made till the academic year 2019-2020. No other orders by which an exemption has been granted to persons after

the said period, in acquiring KTET qualification has been placed on record.

8. In such circumstances, I do not find any legal validity in the appointment of the 6th respondent and the order of approval granted to the 6th respondent vide Ext.P14.

Therefore, this Writ Petition is disposed of, quashing Ext.P14 with a direction to the 5th respondent to fill up the post, which arose on 13.07.2022 by a candidate having qualifications as of the date of the occurrence of the vacancy, by reverting the 6th respondent. The orders in this regard shall be passed within a period of one month from the date of receipt of a copy of the judgment.

Sd/-

ZIYAD RAHMAN.A.A

JUDGE

SSG

APPENDIX OF WP(C) 41580/2023

PETITIONER'S EXHIBITS

Exhibit P1	**A TRUE COPY OF THE APPOINTMENT ORDER DATED 01-06-2017, ISSUED BY THE OFFICE OF THE CORPORATE EDUCATIONAL AGENCY DIOCESE OF KOTTAPPURAM AS PROBATIONARY UPST**
Exhibit P2	**A TRUE COPY OF CERTIFICATE OF DEGREE OF BACHELOR OF SCIENCE IN BOTANY, ISSUED BY THE FACULTY OF SCIENCE, SYNDICATE OF MAHATMA GANDHI UNIVERSITY, DATED 22-01- 1998**
Exhibit P2(a)	**A TRUE COPY OF CERTIFICATE OF DEGREE OF MASTER OF SCIENCE IN BOTANY, ISSUED BY THE FACULTY OF SCIENCE, SYNDICATE OF MAHATMA GANDHI UNIVERSITY, DATED 28-09-1999**
Exhibit p2(b)	**A TRUE COPY OF CERTIFICATE OF DEGREE OF BACHELOR OF EDUCATION IN NATURAL SCIENCE, ISSUED BY THE FACULTY OF EDUCATION, SYNDICATE OF MAHATMA GANDHI UNIVERSITY, DATED 09-05-2000**
Exhibit P3	**A TRUE COPY OF THE APPOINTMENT ORDER DATED 13.07.2022 ISSUED BY THE MANAGER POSTING THE 6TH RESPONDENT AS HST (NATURAL SCIENCE)**
Exhibit P4	**A TRUE COPY OF THE CERTIFICATE OF SET EXAMINATION CLEARED BY THE PETITIONER IN THE YEAR 2000, ISSUED BY THE OFFICE OF THE COMMISSIONER FOR ENTRANCE EXAMINATION DATED 19-08-2000**
Exhibit P5	**A TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE DEO, ALUVA, DATED 26-07-2022**
Exhibit P6	**A TRUE COPY OF THE JUDGMENT IN WP(C) 28342 OF 2022 DATED 01.09.2022**

Exhibit P7	**A TRUE COPY OF THE GO (RT) NO: 503 /2023/ GEDN DATED 21.01.2023**
Exhibit P8	**A TRUE COPY OF THE JUDGMENT IN WP(C) NO: 11340 OF 2023 DATED 30.03.2023**
Exhibit P9	**TRUE COPY OF THE GO (MS) NO: 15/2023/ GEDN DATED 17.02.2023, ISSUED BY THE GENERAL EDUCATION DEPARTMENT**
Exhibit P10	**A TRUE COPY OF THE GO (RT) NO: 4369 /2023/ GEDN DATED 01.08.2023**
Exhibit P11	**A TRUE COPY OF THE JUDGMENT DATED 25.08.2023 IN WP(C) 28855 OF 2023**
Exhibit P12	**A TRUE COPY OF THE GOVERNMENT ORDER G.O(P) NO. 4369/2023/GEDN, DATED 01-08-2023, REJECTING THE REPRESENTATION OF THE 6TH RESPONDENT**
Exhibit P13	**A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 25.07.2023**
Exhibit P14	**A TRUE COPY OF THE GOVERNMENT ORDER G.O(P)NO. 6275/2023/GEDN DATED 17-10-2023, TO ALLOW THE APPOINTMENT OF 6 TH RESPONDENT**