

Bindu G. Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1163607

Court : Kerala

Decided On : Aug-28-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Bindu G.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE 28^H DAY OF AUGUST 2014 6TH BHADRA, 1936 WP(C).No. 21387 of 2013 (W) ----- PETITIONER: ----- BINDU G., AGED 40 W/O.SURESH KUMAR K., PUTHEN VEEDU, MUTHUKULAM NORTH MUTHUKULAM P.O., ALAPPUZHA DISTRICT-690 506. BY ADVS.SRI.M.R.ANISON SMT.T.B.REMANI SMT.K.P.GEETHA MANI SMT.P.A.RINUSA RESPONDENTS: ----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT GENERAL EDUCATION DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS THIRUVANANTHAPURAM-695 001.

3. THE DEPUTY DIRECTOR OF EDUCATION ALAPPUZHA-688 001.

4. THE DISTRICT EDUCATIONAL OFFICER ALAPPUZHA-688 001.

5. THE MANAGER VOCATIONAL HIGHER SECONDARY SCHOOL MUTHUKULAM, MUTHUKULAM SOUTH P.O., ALAPPUZHA DISTRICT-690 506. R4 BY SRI. A.J.

JOSE AEDAIDI, GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/08-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 21387 of 2013 (W)

----- APPENDIX PETITIONER'S EXHIBITS
----- EXHIBIT P1.A TRUE COPY OF THE

ORDER

NO.B3/5330/03/K.DIS DATED 22/9/2003 ISSUED BY THE 4^H RESPONDENT. EXHIBIT P2.A TRUE COPY OF THE

ORDER

NO.B2/23670/03/K.DIS DATED 22/7/2004 ISSUED BY THE 3^D RESPONDENT. EXHIBIT P3.A TRUE COPY OF THE

ORDER

NO.ET2/23432/05/DPI/K.DIS DATED 13/6/2005 ISSUED BY THE 2^D RESPONDENT. EXHIBIT P4.A TRUE COPY OF G.O.(RT) NO.6061/05/G.EDN DATED 31/12/2005. EXHIBIT P5.A TRUE COPY OF

JUDGMENT

DATED 23/1/2007 IN WPC NO.10976/2006 ISSUED BY THIS HONOURABLE COURT. EXHIBIT P6.A TRUE COPY OF THE

JUDGMENT

DATED 10/1.2008 IN WA242008 OF THIS HONOURABLE COURT. EXHIBIT P7.A TRUE COPY OF THE CERTIFICATE DATED 12/7/2007 ISSUED BY THE PRINCIPAL OF THE SCHOOL. EXHIBIT P8.A TRUE COPY OF THE

ORDER

BEARING G.O.(MS) NO.132/09/G.EDN DATED176/2009 ISSUED BY THE1T
RESPONDENT. EXHIBIT P9.A TRUE COPY OF THE

ORDER

BEARING G.O.(RT)2929/2013/G.EDN DATED167/2013 ISSUED BY THE1T
RESPONDENT. EXHIBIT P10.A TRUE COPY OF THE STAFF FIXATION

ORDER

OF THE5H RESPONDENT'S SCHOOL FOR THE ACADEMIC YEAR20032004.
EXHIBIT P11.A TRUE COPY OF THE

ORDER

BEARING G.O.(RT)2144/07/G.EDN DATED185/2007 ISSUED BY THE1T
RESPONDENT RESPONDENTS' EXHIBITS ----- NIL
//True copy// P.A. TO JUDGE shg/- A.K.JAYASANKARAN NAMBIAR, J.

===== W.P.(C)No.21387 of 2013 =====
===== Dated this the 28th day of August, 2014

JUDGMENT

The petitioner is an H.S.A. (Maths) working in the fifth respondent school. She was appointed to a regular vacancy in the post of H.S.A. (Maths) in the school with effect from 2.6.2003. While securing the said appointment, she had relied on the fact that she was a rule 51A claimant having worked in the said school for various spells between 1997 to 2001. The appointment of the petitioner to the post of H.S.A. (Maths) for the academic year 2003- 2004 was however not approved by the fourth respondent. Against the rejection of approval, the petitioner availed of the statutory remedies before respondents 1, 2 and 3. These did not yield any positive result for the petitioner and the decision to deny the approval to the appointment of the petitioner was upheld by all the said authorities. The reason cited for refusing approval was that the two vacancies that had arisen in the post of H.S.A. during the year in question had to be filled by candidates who were qualified to hold the post of H.S.A. (English) and further that there was no post of H.S.A. to accommodate the petitioner who was an H.S.A. (Maths).
W.P.(C)No.21387 of 2013 2 2. Aggrieved by the decisions of respondents 1 to 4,

the petitioner approached this Court through W.P.(C)No.10976/2006. The said writ petition was however dismissed by a learned single Judge. An appeal preferred against the said judgment also met with the same fate and by Ext.P6 judgment the Division Bench also rejected the claim of the petitioner. Thereafter the Government issued Ext.P8 Government order in the year 2009. Therein it was stated that those teacher who had obtained the benefit of rule 51A prior to 16.11.2002, could be accommodated to vacancies that arose in the school subsequent thereto based on the subject ratio that prevailed prior to 7.1.2002. The effect of this Government order was that the case of the petitioner could now be considered on the strength of the contention that she was a rule 51A claimant and further, that the subject ratio taking into account English as a subject would not have to be applied during the year 2003-2004 while considering whether the petitioner could be accommodated to a vacancy of H.S.A. that arose during the year in question. The petitioner therefore preferred a representation dated 18.6.2012 before the first respondent. When no action was forthcoming from the first respondent on the said representation, the petitioner approached this Court through W.P.(C)No.26636/2012 which was W.P.(C)No.21387 of 2013 3 disposed of, directing the first respondent to consider and pass orders on the representation preferred by the petitioner. Thereupon, Ext.P9 order dated 16.7.2013 was passed by the first respondent. In the said order the first respondent, while finding that there was a vacancy during 2003-2004 for the petitioner to be accommodated by relying on Ext.P8 Government order, found that on account of an inspection conducted by the Super Check Cell, a division fall from 28 to 25 had been occasioned in the school and under those circumstances, the petitioner could not be considered for continuation in the school. Ext.P9 order is impugned by the petitioner in the present writ petition.

3. A counter affidavit has been filed on behalf of the fourth respondent wherein it is pointed out, based on Ext.P9 order, that the sole reason for not accommodating the petitioner for the year 2003-2004, was that there had been a division fall consequent to a verification conducted by the Super Check Cell and in those circumstances, there was no vacancy to which the petitioner could be accommodated.

4. I have heard Sri.M.R.Anison, learned counsel appearing for the petitioner and also learned Government Pleader appearing on behalf of respondents 1 to 4. On a consideration of the facts and W.P.(C)No.21387 of 2013 4 circumstances of the case and also the submissions made across the Bar I find that the sole reason cited in Ext.P9 order for rejecting the case of the petitioner for consideration of her appointment to the post of H.S.A. (Maths) in the school during the year 2003-2004, is the finding that there was a division fall in the said school from 28 to 25 which resulted in a lack of vacancy to which the petitioner could be accommodated. On a close scrutiny of Ext.P11 order dated 18.5.2007 of the first respondent, which dealt with the staff fixation for the year 2004-2005, I notice that the division fall in question, pursuant to the verification done by the Super Check Cell, occurred in the year 2004-2005 and not in the year 2003-2004. This being the case and the admitted position with regard to the staff fixation for the year 2003-2004 being that there were 28 sanctioned posts of H.S.A.'s in the school, the reasoning in Ext.P9 for denying the claim of the petitioner appears to be palpably wrong. If there was no division fall during the year 2003-2004, then the petitioner was certainly entitled to get the benefit of Ext.P8 Government order dated 17.6.2009 as rightly found by the first respondent itself in Ext.P9 order.

5. Hence, in view of the apparent error in Ext.P9 order, I deem it fit to quash Ext.P9 to the extent it rejects the claim of the W.P.(C)No.21387 of 2013 5 petitioner therein on the ground of the alleged division fall that occurred consequent to the verification by the Super Check Cell in the school. The fourth respondent is directed to pass consequential orders based on the finding in Ext.P9 order regarding the entitlement of the petitioner to continue in the school against the vacancy that arose during 2003-2004, untrammelled by the subsequent findings in Ext.P9 with regard to the disentitlement to the same. The fourth respondent shall pass orders as aforementioned within a period of two months from the date of receipt of a copy of this judgment. The fourth respondent shall also grant approval to the appointment of the petitioner as H.S.A. (Maths) to the vacancy in question for the year 2003-2004 as already noted in Ext.P9 order. With the above directions, the writ petition is disposed of. Sd/- A.K.JAYASANKARAN
NAMBIAR JUDGE vpv