

**N. Binukumar Vs. the Manager**

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**SooperKanoon Citation :** [sooperkanoon.com/1163609](http://sooperkanoon.com/1163609)

**Court :** Kerala

**Decided On :** Aug-28-2014

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

**Appellant :** N. Binukumar

**Respondent :** The Manager

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE 28<sup>H</sup> DAY OF AUGUST 2014 6<sup>TH</sup> BHADRA, 1936 WP(C).No. 28802 of 2013

(A) ----- PETITIONER(S)/PETITIONER:  
----- N. BINUKUMAR HEAD MASTER, UPPER PRIMARY SCHOOL, KURUMPAKARA PATHANAMTHITTA DIST BY ADV. SRI.S.MUHAMMED HANEEFF RESPONDENT(S)/RESPONDENTS:  
----- 1. THE MANAGER UPPER PRIMARY SCHOOL, KURUMPAKARA PATHANAMTHITTA DIST-689 695 2. ASSISTANT EDUCATIONAL OFFICER , ADOOR-691 523 3. DEPUTY DIRECTOR OF EDUCATION, PATHANAMTHITTA AT THIRUVALLA, THIRUVALLA PO-689 101 4. ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION (ACADEMIC) THIRUVANANTHAPURAM-695 001 5. STATE OF KERALA REP BY ITS SECRETARY TO THE GOVERNMENT GENERAL EDUCATION DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695 001 6. AMPILI Y., U P S A, UPPER PRIMARY SCHOOL, KURUMPAKARA PATHANAMTHITTA DIST-689

695 R1 BY ADV. SMT.ANNIE JACOB R2-R5 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK R6 BY ADVS. SRI.M.R.ANISON SMT.K.P.GEETHA MANI SMT.P.A.RINUSA SMT.T.B.REMANI SMT.V.BHARGAVI (PANANGAD) THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-08-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 28802 of 2013 (A) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- P1:- A TRUE COPY OF THE COMMUNICATION REGARDING RELINQUISHMENT OF CLAIM OF THE PETITIONER SUBMITTED BEFORE THE 2D RESPONDENT DTD NIL P2:- TRUE COPY OF THE ENDORSEMENT MADE BY THE 2D RESPONDENT IN THE SERVICE BOOK OF THE PETITIONER DTD NIL P3:- TRUE COPY OF THE APPOINTMENT

ORDER

DTD 315/2012 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER P4:- TRUE COPY OF THE

ORDER

NO F/2624/2012 DTD 107/2012 OF THE 2D RESPONDENT P5:- A TRUE COPY OF THE

ORDER

NO B2-9854/2012/K.DIS DTD 16/10/2012 OF THE 3D RESPONDENT P6:- A TRUE COPY OF THE

ORDER

NO F3/81398/12/DPI/K.DIS DTD 24/2013 OF THE 4H RESPONDENT P7: A TRUE COPY OF THE GO(RT)NO 424/2013/G.EDN DTD 11/10/2013 ISSUED BY THE 5H RESPONDENT RESPONDENT(S)' EXHIBITS ----- EXT.R6(a): COPY OF THE APPOINTMENT

ORDER

DATED 6.11.1996 ISSUED BY THE 2D RESPONDENT. EXT.R6(b): COPY OF THE APPOINTMENT

ORDER

DATED 26.1.1997 ISSUED BY THE 2D RESPONDENT. EXT.R6(c): COPY OF THE ACCOUNT TEST (LOWER) CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION DATED 29.8.2003. EXT.R6(d): COPY OF THE ACCOUNT TEST (HIGHER) CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION DATED 29.8.2003. EXT.R6(e): COPY OF THE DEPARTMENTAL TEST CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION DATED 29.8.2003. EXT.R6(f): COPY OF THE STAFF STATEMENT OF THE SCHOOL PUBLISHED ON 31.3.2011. /TRUE COPY/ P.A. TO JUDGE VPV A.K.JAYASANKARAN NAMBIAR, J.

===== W.P.(C)No.28802 of 2013 =====  
===== Dated this the 28th day of August, 2014 =====

## JUDGMENT

The petitioner, who was appointed as a U.P.S.A. in the first respondent school with effect from 2.8.1999, was a candidate for appointment to the post of Headmaster, which arose in the school on 1.5.2006. On the said date he was the seniormost U.P.S.A. in the school who was entitled, as per the law then in force, for appointment to the post of Headmaster. He, however, relinquished his claim through Ext.P1 relinquishment letter, so as to facilitate the appointment of Sri.Balachandran who was also a U.P.S.A. in the same school, and senior in service to the petitioner, but who faced the irregularity of not having the necessary qualifications for the post, at the relevant point in time. It is pointed out that the irregularity with regard to the qualification was a condonable one and the Manager of the school had applied for a condonation and was awaiting favourable orders from the department in the matter. At any rate, acting on Ext.P1 relinquishment letter given by the petitioner, the said Sri.Balachandran was appointed to the vacancy that arose with effect from 1.5.2006 and continued up till his W.P.(C)No.28802 of 2013 2 retirement on 31.5.2012. The said appointment was also approved by the educational authorities in terms of the Kerala Education Rules.

2. It would appear that, thereafter, on the retirement of the said Sri.Balachandran, a vacancy arose to the post of Headmaster in the school with effect from 1.6.2012.

The first respondent Manager thereupon appointed the petitioner as the Headmaster and his appointment was sent for approval to the second respondent. The second respondent, by Ext.P4 order, denied the approval of the petitioner's appointment as Headmaster. The further appeals and revisions pursued by the petitioner in terms of the provisions of the Kerala Education Rules also did not yield any favourable result at the hands of the educational authorities. Eventually, Ext.P7 order came to be passed by the fifth respondent wherein it was found that as between the petitioner and the sixth respondent, it was the sixth respondent who was eligible to be considered to the post of Headmaster, in the vacancy that arose on 1.6.2012. In Ext.P7 order the reason stated by the fifth respondent is that the sixth respondent was senior to the petitioner and, while she was qualified for the post when the vacancy arose with effect from 1.5.2006, she could not be considered then on account of the preference that the W.P.(C)No.28802 of 2013 3 petitioner enjoyed, for consideration to the post. On account of a subsequent amendment to the Kerala Education Rules, however, the petitioner stood eligible for consideration to the post of Headmaster to the vacancy that arose on 1.6.2012. It was in these circumstances that the sixth respondent was found eligible for appointment as Headmistress to the vacancy that arose in the school on 1.6.2012 as per Ext.P7 order. Ext.P7 order, to the extent it does not recognise the petitioner as the person who was entitled to the post of Headmaster to the vacancy that arose with effect from 1.6.2012, is impugned in the writ petition inter alia on the ground that, in so far as the fifth respondent finds that Ext.P1 relinquishment letter given by the petitioner was defective, and consequently that the approval of the appointment of Sri.Balachandran as Headmaster was also not in order, the petitioner should have been considered for the post of Headmaster by treating the vacancy as one which arose with effect from 1.5.2006.

3. Counter affidavits have been filed on behalf of respondents 3 and 6. Therein it is pointed out that the vacancy that came up to be filled was one that arose with effect from 1.6.2012 consequent to the retirement of the earlier Headmaster Sri.Balachandran. As on W.P.(C)No.28802 of 2013 4 the date of arising of the vacancy, the sixth respondent and the petitioner were both qualified for the post of Headmaster. The sixth respondent however, being senior to the petitioner in service, had a preferential right to be appointed as the Headmistress. It was under

these circumstances that the sixth respondent was declared as entitled to the post in Ext.P7 order. It is also pointed out that, in as much as the order approving the appointment of Sri.Balachandran as Headmaster with effect from 1.5.2006 till the date of his retirement on 31.5.2012 has not been challenged in any proceedings, the continuance of the said Sri.Balachandran as Headmaster during the said period cannot be ignored.

4. I have heard Sri.S.Muhammed Haneef, learned counsel appearing on behalf of the petitioner, Smt.Annie Jacob, learned counsel appearing on behalf of the first respondent Manager, Sri.V.K.Rafeek, learned Government Pleader appearing on behalf of respondents 2 to 5 and Sri.M.R.Anison, learned counsel appearing on behalf of the sixth respondent.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar I am of the view that the writ petition must fail. This is a case where the petitioner, who stood eligible to be appointed as Headmaster in the school W.P.(C)No.28802 of 2013 5 against the vacancy that arose with effect from 1.5.2006, chose to relinquish his claim by issuing Ext.P1 relinquishment letter. No doubt, while issuing Ext.P1 letter, the petitioner had qualified the same by indicating that the relinquishment was only for a period up to 31.5.2011 or the relinquishment of Sri.Balachandran, whichever is earlier. The facts in this case would indicate that acting on Ext.P1 relinquishment letter, Sri.Balachandran was appointed to the post of Headmaster with effect from 1.5.2006. Thereafter, he continued in that post till his retirement on 31.5.2012. The entire service of Sri.Balachandran as Headmaster of the school during the period aforementioned was approved by the educational authorities. The said order of approval has not been impugned in any valid legal proceedings. It must be taken therefore that there was an incumbent in the post of Headmaster in the school during the period from 1.5.2006 to 31.5.2012. It is in this factual back-drop that I have to consider the contention of the petitioner with regard to his claim for appointment as Headmaster. The petitioner would contend that in so far as the relinquishment letter itself was conditional and the educational authorities have taken a view that a conditional relinquishment letter was inherently invalid and the consequential appointment of Sri.Balachandran as Headmaster was

W.P.(C)No.28802 of 2013 6 also not in order, he ought to have been considered for appointment as Headmaster by treating the vacancy that arose with effect from 1.6.2012 as one that related back to 1.5.2006. In other words, the contention is that the events in the interregnum, that arose consequent to Ext.P1 relinquishment letter, must be deemed as not having taken place in view of the fact that Ext.P1 relinquishment letter itself was found to be bad. Attractive as this contention might appear at first blush, I am afraid I cannot accept the same. Accepting the said contention of the petitioner would effectively mean that the order granting approval, to the appointment of Sri.Balachandran as Headmaster during the period from 1.5.2006 to 31.5.2012, must be treated as non-existent. This cannot be done especially when the said approval order has not been challenged or impugned in any validly instituted legal proceedings. The appointment of Sri.Balachandran as the Headmaster of the school, and his continuation as such for the period from 1.5.2006 to 31.5.2012, must therefore be accepted as a fact. Consequently, the next vacancy that arose in the school, and to which the petitioner could validly seek consideration, was the vacancy that arose with effect from 1.6.2012. As already noted, by that date the sixth respondent became eligible for a preferential consideration, as W.P.(C)No.28802 of 2013 7 against the petitioner, since she is admittedly senior to the petitioner in service and qualified in all other respects for the post. The finding in Ext.P7 order to the effect that the vacancy that arose to the post of Headmaster in the school is with effect from 1.6.2012 and it was the sixth respondent who had a better claim than the petitioner, cannot be said to be in any manner illegal. I therefore find no reason to interfere with Exts.P4 to P7 orders that are impugned in the present writ petition. The writ petition fails and is accordingly dismissed. Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE vpv

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