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Malu S vs the State of Kerala

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WP(C)/7436/2022

Appellant : MALU S

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 WP(C) NO. 7436 OF 2022 PETITIONER: MALU S, AGED 39 YEARS W/O.SANTHOSH KUMAR.R, THAPASYA , KURUMANDAL, PARAVUR, KOLLAM-691 301, HIGH SCHOOL ASSISTANT (ENGLISH) AT SNDP HIGHER SECONDARY SCHOOL, UDAYAMPEROOR BY ADVS. R.SANJITH C.S.SINDHU KRISHNAH RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY THE DEPUTY SECRETARY, DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001 2

THE DIRECTOR OF PUBLIC INSTRUCTIONS, OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM-695 001 3 THE DEPUTY DIRECTOR (EDUCATION), OFFICE OF THE DEPUTY DIRECTOR (EDUCATION) , ERNAKULAM-682 035 4 THE DISTRICT EDUCATIONAL OFFICER, OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, ALUVA-683 101 5 THE CORPORATE MANAGER, SNDP YOGAM SCHOOLS, OFFICE OF THE CORPORATE MANAGER, THIRUVANANTHAPURAM-695 001 6 DHANYA.B., HIGH SCHOOL ASSISTANT, (ENGLISH) , SNDP HIGHER SECONDARY SCHOOL, ALUVA-683 101. -2- 7 AMBILY RAGHAVAN, HIGH SCHOOL ASSISTANT, (ENGLISH) , SNDP HIGHER SECONDARY SCHOOL, ALUVA-683 101. BY ADVS. A.N.RAJAN BABU V.A.MUHAMMED M.SAJJAD SMT.K.T.SAROJINI, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING ON 31.01.2024, THE COURT ON 01.02.2024 DELIVERED THE FOLLOWING: -3-

MOHAMMED NIAS C.P., J.

---------- WP(C) No.7436 of 2022 ---------- Dated this the 1st day of February, 2024

JUDGMENT

The petitioner joined as HSA (English) on 4.6.20047 in the vacancy of one Ajitha S Panicker, who availed Leave Without Allowance in one of the schools of which the fifth respondent is the corporate manager. The petitioner's appointment was approved as per Ext.P5 from 4.6.2007 to 31.8.2009. While continuing under Ext.P1, the fifth respondent issued an

order dated 28.05.2008 retrenching the petitioner with effect from

1.6.2008 for want of vacancy as per Ext.P2 order dated 28.5.2008. The petitioner submits that she is entitled to the benefit of Rule 51A of Chapter XIV-A KER and is

eligible to be considered for appointment in future vacancies arising in the schools under the management of the fifth respondent.

2. The petitioner submits that an additional division vacancy of HSA (English) had arisen in SNDP Higher Secondary School, Aluva, with effect from 5.10.2007 and another additional division vacancy of Upper -4-

Primary School Assistant had arisen in SNDP Higher Secondary School, Venkurinji, Pathanamthitta with effect from 2.6.2008 and the third additional vacancy of HSA(English) had arisen with effect from 1.7.2009 in SNDP Higher secondary School, Udayamperoor. The petitioner claims that going by Ext.P1 and by virtue of her superior preferential right, the petitioner ought to have been appointed as HSA (English) or UPSA in one of the above vacancies. The petitioner, however, in violation of the KER's relevant provisions, was illegally retrenched from service by Ext.P2. The petitioner came to know about the existence of the vacancies only in the year 2018 when the fifth respondent issued orders in favour of respondents 6 and 7, conferring seniority on them above the petitioner.

3. The petitioner submits that as of 5.10.2007 when the vacancy

arose in SNDP Higher Secondary School, Aluva, the petitioner was working as a High School Assistant (English) in the leave vacancy and as per G.O. (MS)No.275/99/G. Edn dated 9.11.1999, Ext.P3, the petitioner's service ought to have been regularised in the said vacancy. The petitioner also submits that going by the judgment of this Court in Geetha S v. Geo Thomas K & others [2009 (4) KLT 514), a leave substitute working in a leave vacancy, whether approved or not had to be shifted to the next arising regular vacancy and the appointment of a fresh hand overlooking the said right of the leave substitute was held to be bad. The petitioner submits that the appointments of respondents 6 and 7 in violation of the

-5- above on 5.10.2007 and 2.06.2008 were clearly wrong.

4. The petitioner was later re-appointed as HSA (English) from 1.6.2009 in one of the schools in an additional division vacancy that arose

during the academic year 2009-2010, as seen from Ex.P4. The appointment of the petitioner was approved under the Teachers Package with effect from 1.6.2011. The petitioner submits that the sixth respondent, along with other teachers, had filed WP(C)No.15219/2013 seeking approval of their appointment from the dates of their appointment and by the

common judgment dated 18.2.2015, this Court directed the first respondent to consider the grievances. The petitioner points out that she was neither made a party to the said writ petition nor the sixth respondent, and others disclose the preferential claim of the petitioner in the writ petition.

5. The Government, pursuant to the said judgment, issued Ext.P5

order dated 9.7.2018, overlooking the claims of the petitioner without

notice to her. The petitioner's appointment is approved only with effect from 1.6.2011 on the ground that the corporate manager did not submit the requisite bond stipulated in G.O.No.10/10/ G.Edn. dated 12.01.2010 and not approving the period from 1.6.2009 to 31.05.2011. This, the petitioner again submits, violates the orders of this Court that held that the teachers should not be put to prejudice when the appointment is made in

-6- an additional division vacancy on the ground that the manager had not submitted the requisite bond. The petitioner also submits that similarly situated were conferred with benefits in tune with G.O.(Rt) No.410/2017/G.Edn. dated 16.2.2017, Ext.P12. The petitioner has preferred Ext..P13 revision before the first respondent, pointing out all the above, while making her claim, which was directed to be considered by

judgment dated 22.03.2021 in WP(C)No.33307/2018, Ext.P14. Pursuant to

that, the first respondent passed an order, Ext.P15, rejecting the revision preferred by the petitioner mainly on the ground that it was belated.

6. The first respondent has filed a counter stating that the

petitioner was not a Rule 51A claimant as of 5.10.2007, on the day the sixth respondent was appointed in that vacancy, and also submitted that the petitioner's claim is belated.

7. The fifth respondent has also filed a counter pointing out that

the petitioner was earlier retrenched from service due to the abolishment of the post in the category of HSA (English) with effect from 1.6.2008 and that the petitioner was not a Rule 51A claimant as on 5.10.2007, the date on which the sixth respondent was appointed. He also raised a contention that the claim of the petitioner is belated.

8. The sixth respondent had filed a counter again, contending that -7-

the petitioner was not a Rule 51A claimant as on the date of the arising of the vacancy, namely 5.10.2007 and that her claim is belated. The seventh respondent has not filed a counter.

9. Having considered the rival submissions with reference to

Ext.P3 order dated 9.1.1999 and the judgment of this Court in Geetha S (supra), it has to be seen that while passing Ext.P5 order, the fact that the petitioner was already working in the school was not considered and the petitioner was not even heard. Likewise, in Ext.P15, the essential reason for rejecting the revision was that the petitioner's claim was belated. While considering Ext.P15, the first respondent has not considered the fact that the petitioner was already in service under Ext.P1 from 4.6.2007, despite the fact that her claim was not considered when a regular vacancy arose. Even if the petitioner was not a 51A claimant as on the date of arising of the first vacancy, namely, 5.10.2007, her claim ought to have been considered after she was retrenched going by Rule 51A, Chapter XIV-A KER, in the next arising vacancy. The claim of the petitioner has obviously been

overlooked, and teachers appointed and figuring in the seniority list

now furnished are shown as seniors to her. It is unknown whether the manager disclosed that the petitioner was working in the school when the vacancies arose. The impact of Ext.P3 Government Order and the

judgment of this Court in Geetha S (supra) has also not been considered

while passing Ext.P5 or Ext.P15 order. The petitioner's appointment has -8- been considered only with effect from 2011 on the ground that the manager has not executed the bond, which is contrary to the judgment of this Court, Exts.P7 to P11.

10. The respondent's contention that the petitioner's claim is

belated cannot be countenanced for more than one reason. Firstly, Ext.P5 has passed without notice to the petitioner. When a stark violation in the provisions of the KER was brought out affecting the rights of the petitioner and when the same was pointed out when it came to the knowledge of the petitioner, rejection of such a claim as belated is certainly unjust and giving undue advantage to the beneficiaries of those orders which are allegedly illegal.

11. Under these circumstances, I quash Exts.P6 and P15 orders in

so far as they did not consider the claim of the petitioner for appointment. The question of approval of the petitioner's appointment from 5.10.2007 to 31.5.2011 has to be specifically considered in the light of the above observations. I direct the first respondent to re-consider Ext.P13 revision preferred by the petitioner with notice to the petitioner and also to all affected parties, including respondents 6 and 7 and consider the claim of the petitioner in accordance with law, after affording an opportunity of hearing to all the parties. If required, appropriate orders on the shifting of the teachers and reworking of the seniority will also be passed. A decision

-9- shall be taken as directed above within four months from the date of receipt of a copy of this judgment. Consequential benefits, depending on the decision as

aforesaid, will also be paid within two months from the date of the approval of the appointment. The writ petition is allowed as above. Sd/- MOHAMMED NIAS C.P. JUDGE dlk/30.1.2024 -10- APPENDIX OF WP(C) 7436/2022 PETITIONER'S EXHIBITS

EXHIBIT P1 TRUE COPY OF THE APPROVED APPOINTMENT ORDER

DATED 04.06.2007 ISSUED BY THE 5TH RESPONDENT EXHIBIT P2 TRUE COPY OF THE ORDER NO.E305/08 DATED 28.05.2008 ISSUED BY THE 5TH RESPONDENT EXHIBIT P3 TRUE COPY OF THE GOVERNMENT ORDER BEARING GO

(MS) NO.275/99/G.EDN DATED 09.11.1999 EXHIBIT P4 TRUE COPY OF THE APPOINTMENT ORDER NO.129/09 DATED 28.05.2009 ISSUED BY 5TH RESPONDENT EXHIBIT P5 TRUE COPY OF THE GOVERNMENT ORDER BEARING GO

(RT) NO.2565/2018/G.EDN DATED 09.07.2018 PASSED

BY RESPONDENT NO 1 ALONG WITH A READABLE COPY EXHIBIT P6 TRUE COPY OF THE ORDER NO.991/2018 DATED 21.08.2018 PASSED BY RESPONDENT NO.5 ALONG WITH A READABLE COPY EXHIBIT P7 TRUE COPY OF JUDGMENT IN WPC NO.6039 OF 2012 DATED 15.02.2015 EXHIBIT P8 TRUE COPY OF JUDGMENT IN WPC NO 15998 OF 2015 DATED 28.07.2015 EXHIBIT P9 TRUE COPY OF JUDGMENT IN WPC NO.3383 OF 2013 DATED 17.11.2016 EXHIBIT P10 TRUE COPY OF JUDGMENT IN WA NO.2290 OF 2015 DATED 25.07.2017 EXHIBIT P11 TRUE COPY OF JUDGMENT IN WPC NO.4938 OF 204 DATED 16.01.2018 EXHIBIT P12 TRUE COPY OF THE GOVERNMENT ORDER BEARING GO

(RT) NO.410/2017/G.EDN DATED 16.2.2017 PASSED BY

RESPONDENT NO.1 -11- EXHIBIT P13 TRUE COPY OF THE REVISION PETITION PREFERRED BY THE PETITIONER BEFORE THE 1ST RESPONDENT EXHIBIT P14 TRUE COPY OF JUDGMENT DATED 22.03.2021

IN WPC NO.33307 OF 2018 EXHIBIT P15 TRUE COPY OF THE ORDER DATED 20.01.2022 ISSUED BY THE 1ST RESPONDENT EXHIBIT P16 TRUE COPY OF TRANSFER ORDER NO.991/2018 DATED 10.07.2018 ISSUED BY THE 5TH RESPONDENT RESPONDENTS EXHIBITS EXHIBIT R-6 TRUE COPY OF THE JUDGMENT IN SREEJITH AND ORS

(A) VS. MANAGER AMUP SCHOOL PUNNATHALA AND ORS REPORTED IN 2022 (5) KLT 388

EXHIBIT R-6 TRUE COPY OF THE JUDGMENT IN SUMANGALA DEVI.K(B

ORDER VIDE COURT ORDER IN WP(C) NO. 15219/2013

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