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Mini Mathew vs the State of Kerala

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/20053/2022

Appellant : Mini Mathew

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944 PETITIONER: MINI MATHEW AGED 53 YEARS WIFE OF JOSE MATHEW HIGH SCHOOL TEACHER (HINDI) S B HIGHER SECONDARY SCHOOL, CHANGANACHERRY, KOTTAYAM DISTRICT-686101 (RESIDING AT ASSARICHERIL HOUSE P.O. MAMMODU, DAIVAMPADY, CHANGANACHERRY, KOTTAYAM DISTRICT- 686536) (M-82818 27033). BY ADVS. V.A.MUHAMMED V.RAJASEKHARAN NAIR RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEX - II, THIRUVANANTHAPURAM-695 001. 2 THE DIRECTOR OF GENERAL EDUCATION JAGATHY, THIRUVANANTHAPURAM-695 014. 3 THE DEPUTY DIRECTOR OF EDUCATION, VAYASKARAKUNNU, NEAR PULIMOODU JUNCTION KOTTAYAM DISTRICT-686 001. 4 THE DISTRICT EDUCATIONAL OFFICER, NEAR THIRUNAKKARA TEMPLE, KOTTAYAM-686 001 . 5 THE CORPORATE MANAGER CORPORATE MANAGER OF SCHOOLS, ARCHDIOCESE OF CHANGANACHERRY, CHANGANACHERRY, KOTTAYAM DISTRICT-686001. BY ADV ADVOCATE GENERAL OFFICE KERALA SMT. NISHA BOSE, SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

---------- W.P.(C)No. 20053 of 2022 ---------- Dated this the 28th day of February, 2023

JUDGMENT

The above writ petition is filed with the following prayers: (i) call for the records relating to Exhibits P-4, P-6 and P-8 of the DEO, Kottayam and Exhibit P-16

order of the DDE, Kottayam and set aside the originals

of the same by the issue of a writ of certiorari or other appropriate writ or order.

(ii) declare that the continuance of Petitioner as HSA (Hindi) from 01.06.2017 to 05.06.2019 against the 4th post of HSA (Hindi) in SBHSS, Changanacherry is

legally valid and sustainable.

(iii) declare that the Petitioner is entitled to get her annual increments due 01.07.2019, pay revision benefits and senior grade due on 16.05.2020.

(iv) issue a writ of mandamus or other

appropriate writ, order or direction commanding the DEO, Kottayam to sanction the annual increments due to the Petitioner from 01.07.2019, pay revision benefits and senior grade due on 16.05.2020.

(v) pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case.[SIC]

2. Petitioner commences her continuous approved service as Lower Grade Hindi Teacher from 02.06.2003 onwards in St. Mary's Upper Primary School,

Koothrappally, an aided School in the Karukachal educational sub district in Kottayam educational district under the 5th respondent Corporate Management. She was promoted and posted as High School Teacher (HST) Hindi from 05.06.2006 in St. Mary's High School, Athirampuzha, another School under the same Corporate Management. Subsequently she was transferred to Holy Family High School, Kainakary from 03.06.2013. On 01.06.2017, the petitioner was again transferred and posted to St. Berchmans Higher Secondary School, Changanacherry which is also another School under the same management and she is continuing in that School

as on today. The petitioner was paid salary regularly from 01.06.2017 from St. Berchmans Higher Secondary School, Changanacherry on her transfer to that School. She was also granted her annual increment due on 01.07.2017 and 01.07.2018. But on 01.07.2019 her annual increment has been denied on the score that her transfer to St. Berchmans Higher Secondary School,

Changanacherry on 01.06.2017 was against an additional post and the issue is pending before the Deputy Director of Education, Kottayam. The petitioner's grievance is that the increment due on 01.07.2019, Pay Revision due on

01.07.2019, annual increment due on 01.07.2020, senior grade due on 16.05.2020 and annual increment due on 01.07.2021 were withheld without any valid and cogent reasons. Aggrieved by the same, this writ Petition is filed.

3. Heard counsel appearing for the petitioner and the learned Government Pleader. Even though notice is issued to the 5th respondent, there is no appearance for the 5th respondent.

4. It is an admitted fact that the petitioner was

transferred on 01.06.2017 to St. Berchmans Higher Secondary School, Changanacherry and it is also an admitted fact that the petitioner is getting regular salary from that date onwards. The learned Government Pleader on the other hand submitted that the Manager appointed the petitioner in the 4th additional post of HSA (Hindi) which post ought to have been filled up by

appointing a protected teacher and therefore, thetransfer

Government Pleader also submitted that the Manager was directed to adjust the lean of the petitioner from 01.06.2017 onwards to any other established vacancy in any other School under the 5 th respondent Corporate Management. It is also an admitted fact that with effect from 01.07.2019, the petitioner's lean was adjusted in

the St. Berchmans Higher Secondary School, Changanacherry in the 3rd post of HSA (Hindi). But the Government Pleader submitted that, from 01.06.2017 to 01.07.2019 the lean was not adjusted in any other vacancy in the Schools of the 5 th respondent Corporate Management, even though directions were issued to the 5th respondent Corporate Manager.

5. I am not in a position to accept the above

contentions of the Government Pleader. It is an admitted fact that the petitioner was transfered to St. Berchmans Higher Secondary School, Changanacherry and it is also an admitted fact that the petitioner was getting salary from 01.06.2017. If the transfer of the petitioner is to a vacancy in which a protected teacher is to be appointed, how the salary was disbursed to the petitioner is not clear. I think the

officer concerned may

be responsible. But since they are not parties in thiswri

because according to the Government Pleader, the 4th post of HSA (Hindi) is to be filled up by a protected teacher. Even though notice is issued to the 5 th respondent in this writ petition, there is no appearance for the 5th respondent. The department is free to take appropriate action against the 5th respondent in accordance with law. But that is not a reason to deny the legal benefits entitled to the petitioner. I think the petitioner is entitled all consequential benefits from 01.06.2017 to 01.07.2019. If there is any loss to the Government, the department is free to initiate appropriate proceedings against the 5th respondent and concerned officers after giving notice to them in accordance with law. Therefore, this writ petition is disposed of in the following manner:

> i. Exts.P4, P6 and P8 are set aside. ii. It is declared that the petitioner is entitled to get her increments due from 01.07.2019, pay revision benefits and senior grade due on 16.05.2020. iii. There will be a direction to the 3 rd and 4th respondents to sanction the annual increment due to the petitioner from 01.07.2019, pay revision benefits and senior grade due on 16.05.2020, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. iv. I make it clear that the department is free to proceed against the 5th respondent and officials concerned, if there is any loss to the government.

Sd/- P.V.KUNHIKRISHNAN DM JUDGE APPENDIX OF WP(C) 20053/2022 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 02.06.2003. EXHIBIT P2 TRUE COPY OF THE RELEVANT PAGE OF THE SERVICE BOOK OF THE PETITIONER.

EXHIBIT P3 TRUE COPY OF THE STAFF FIXATION ORDER

2016-2017 DATED 15.12.2017 OF THE 4TH RESPONDENT. EXHIBIT P4 TRUE COPY OF THE LETTER NO. B1/5103/ 2017 DATED 18.05.2019 OF THE DEO,

KOTTAYAM. EXHIBIT P5 TRUE COPY OF THE REPLY LETTER OF THE CORPORATE MANAGER DATED 10.06.2019. EXHIBIT P6 TRUE COPY OF THE LETTER NO. B1/1517/ 2020 DATED 16.10.2020 OF THE DEO, KOTTAYAM. EXHIBIT P7 TRUE COPY OF THE LETTER OF THE PETITIONER DATED 16.08.2021 ADDRESSED TO THE DEO, KOTTAYAM. EXHIBIT P8 TRUE COPY OF THE LETTER NO. B1/1517/ 2021 DATED 13.09.2021 OF THE DEO, KOTTAYAM. EXHIBIT P9 TRUE COPY OF THE STATEMENT OF FIXATION OF PAY OF THE PETITIONER DATED 07.09.2012. EXHIBIT P10 TRUE COPY OF THE JUDGMENT IN W.P. (C) NO. 16037/2020 DATED 08.09.2020. EXHIBIT P11 TRUE COPY OF THE LETTER ADDRESSED TO THE DEO, KOTTAYAM BY THE HEADMASTER DATED 18.08.2020 ALONG WITH STATEMENT OF FIXATION OF PAY. RESPONDENTS EXHIBITS : NIL //TRUE COPY// PA TO JUDGE

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