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Ashitha .T vs the State of Kerala

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Court : Kerala

Decided On : May-31-2022

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/3241/2020

Appellant : Ashitha .T

Respondent : The State of Kerala

Judgement :

WP(C) NO. 3241 OF 2020 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 31ST DAY OF MAY 2022 / 10TH JYAISHTA, 1944 WP(C) NO. 3241 OF 2020 PETITIONER/S: ASHITHA .T AGED 33 YEARS W/O. SHAMINKUMAR, HSST (JR.) IN COMPUTER SCIENCE, SNHSS, NORTH PARAVUR, ERNAKULAM DISTRICT (RESIDING AT THEVALIL HOUSE, METHALA P.O, THRISSUR 680 669). BY ADVS. T.T.MUHAMOOD SRI.A.RENJIT SRI.V.E.ABDUL GAFOOR SRI.A.MOHAMMED SAVAD SRI.JAYENDRAN KOCHOTH SRI.C.Y.VINOD KUMAR

RESPONDENT/S:

1 THE STATE OF KERALA REP BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. 2 THE DIRECTOR OF GENERAL EDUCATION, DIRECTORATE OF GENERAL EDUCATION (HIGHER SECONDARY WING) HOUSING BOARD BUILDING, THIRUVANANTHAPURAM 695 001 3 THE REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY EDUCATION, OFFICE OF RDD, ERNAKULAM 682 012 4 THE MANAGER, SNHSS, NORTH PARAVOOR, ERNAKULAM DISTRICT 680 669. SMT. REKHA C NAIR, SR. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.05.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 3241 OF 2020 2

JUDGMENT

The petitioner states that she is presently working as HSST (Jr.) in Computer Science in the SNHSS, North Paravur. It was when Smt. Gigi Gopal who proceeded on leave without allowance for a period of 5 years from 02.03.2012 to 1.03.2017 that the petitioner was initially appointed as HSST (Jr.) in Computer Science for the same period. The petitioner relies on Ext.P1 copy of the appointment order and Ext.P2 order passed by the 3rd respondent approving the appointment of the petitioner to substantiate the said contention. The petitioner contends that the aforesaid Smt. Gigi Gopal had later applied for an extension of leave up to 01.12.2021 and the same was sanctioned for a period from 02.03.2017 to 01.12.2021 in the light of Ext.P3 order. In the meantime, the Manager, taking note of the extension of leave of Smt. Gigi Gopal had issued orders to appoint the petitioner as HSST (Jr.) in Computer Science from 02.03.2017 to 1.12.2021 in continuation of her earlier spell of appointment as per Ext.P4 order dated 02.03.2017. Immediately

thereafter, the Manager submitted a proposal for approval of the appointment. When no action was taken, the Manager submitted Ext.P5 representation

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before the 2nd respondent. The petitioner contends that on the basis of Ext.P5, Ext.P6 order has been passed by the 3rd respondent, as per which, the appointment of the petitioner was approved from 11.08.2017 to 1.12.2021. The case of the petitioner is that she was continuing in service without any interruption whatsoever from 02.03.2012 against the leave vacancy of the very same person and the respondents were bound to grant approval from 02.03.2017 onwards. Being aggrieved by Ext.P6 order, the petitioner has approached this Court and by Ext.P8 judgment dated 07.11.2019, this Court directed the 3rd respondent to reconsider the matter. The petitioner contends that in compliance with the directions issued by this Court, the 3rd respondent has issued Ext.P9 order approving the appointment of the petitioner from 01.06.2017 to 10.08.2017. Being aggrieved by the rejection of approval for the period from 02.03.2017 to 31.05.2017, the petitioner is before this Court seeking the following reliefs :

i. Issue a writ of certiorari or any other appropriate writ, order or direction, quashing Ext.P9 order to the extent of denying approval to the petitioner from 02.03.2017 to 31.05.2017. ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 1 to 3 to approve the appointment of WP(C) NO. 3241 OF 2020 4 the petitioner as HSST (Jr) in Computer Science from 02.03.2017 to 31.05.2017 also and grant all service benefits including salary.

2. A statement has been filed by the 3rd respondent wherein it is stated

that pursuant to the orders issued by this Court in W.P.(C) No.23126 of 2019, the 3rd respondent had reconsidered the matter and after verifying the entire documents found that the petitioner had joined duty only on 02.03.2017, that too, at the fag end of the academic year and she had rendered service only up to 31.03.2017. It is also stated that the petitioner had neither been appointed nor

attended the valuation camp which was held during April 2017 to May

2017. It was in the said circumstances that the approval for the period from 02.03.2017 to 31.05.2017 was declined.

3. I have heard Sri. T.P. Muhamood, the learned counsel appearing for the petitioner and Smt Rekha C. Nair, the learned Senior Government Pleader.

4. I have considered the submissions made across the bar. Ext.P1

produced by the petitioner shows that the petitioner was appointed in the leave vacancy of a certain Smt. Gigi Gopal who had availed LWA from 02.03.2012 to 1.03.2017. It is undisputed that the petitioner had been working as HSST (Jr.) WP(C) NO. 3241 OF 2020 5 in Computer Science in the respondent school during the period from 02.03.2012 to 1.03.2017. Seeking extension of leave period, the aforesaid Smt. Gigi Gopal had filed an application and the same was considered and

sanction was granted. In view of the above, the Manager issued an appointment order permitting the petitioner to continue from 2.03.2017 onwards. In other words, it was a continuous service without any break. The reasons given by the 3rd respondent for not granting approval of appointment from 02.03.2017 to 31.05.2017 is that the petitioner was joined duty only at the fag end of the academic year and had rendered service only up to 31.03.2017. The rejection order cannot be sustained as the respondents have proceeded on the basis that the petitioner was newly appointed and that she

had joined duty only during the fag end of the academic year. Relevant facts

were not considered by the concerned respondent while passing the said order. In that view of the matter, Ext.P9 order to the extent that it denies approval of appointment to the petitioner for the period from 02.03.2017 to 31.05.2017 cannot be sustained and the same is set aside.

5. Resultantly, this writ petition is disposed of directing the respondents 1 to 3 to approve the appointment of the petitioner as HSST (Jr.) in Computer WP(C) NO. 3241 OF 2020 6

Science from 02.03.2017 to 31.05.2017 and grant all consequential benefits. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment. This writ petition is disposed of. Sd/- RAJA VIJAYARAGHAVAN V JUDGE NS WP(C) NO. 3241 OF 2020 7

APPENDIX OF WP(C) 3241/2020 PETITIONER(S) EXHIBITS : EXHIBIT P1 TRUE COPY OF APPOINTMENT ORDER ISSUED BY THE MANAGER ON 02-03-2012 EXHIBIT P2 TRUE COPY OF ORDER NO. B1/72/HSE DATED 23-08- 2012 ISSUED BY THE 3RD RESPONDENT EXHIBIT P3 TRUE COPY OF G.O(RT) NO. 2756/2017 /G.EDN DATED 11-08-2017 EXHIBIT P4 TRUE COPY OF APPOINTMENT ORDER ISSUED BY THE MANAGER 02-03-2017 EXHIBIT P5 TRUE COPY OF REPRESENTATION SUBMITTED BY THE MANAGER BEFORE THE 2ND RESPONDENT ON AUGUST EXHIBIT P6 TRUE COPY OF ORDER NO. B2/9392/RDD/HSE/EKM/17 DATED 23-07-2019 ISSUED BY THE 3RD RESPONDENT EXHIBIT P7 TRUE COPY OF G.O(MS) NO. 47/85/G.EDN DATED 13- 03-1985 (WITH TYPED COPY) EXHIBIT P8 TRUE COPY OF JUDGMENT DATED 07-11-2019 PASSED BY THIS HON'BLE COURT IN WP(C) NO. 23126/2019 EXHIBIT P9 TRUE COPY OF ORDER NO. B2/12/12359/RDD/HSE/EKM/2019 DATED 15-01-2020

RESPONDENT(S) EXHIBITS : NIL

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