

Sreepathi.E. vs the State of Kerala

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Court : Kerala

Decided On : Jul-01-2021

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/26125/2019

Appellant : Sreepathi.E.

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
THURSDAY, THE 1ST DAY OF JULY 2021 / 10TH ASHADHA, 1943
PETITIONERS :- 1 SREEPATHI.E., AGED 32 YEARS UPSA,
KOTTAYAM RAJA HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT.
2 DHANYA N.C, UPSA, KOTTAYAM RAJA HIGH SCHOOL,
PATHIRIYAD, KANNUR DISTRICT. 3 N.P. NIPIN, UPSA, KOTTAYAM
RAJA HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT. BY ADV
POOVAMULLE PARAMBIL ABDULKAREEM RESPONDENT/S:

1 THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT, 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 OF EDUCATION, KANNUR-670 001. 4 THE DISTRICT EDUCATION OFFICER, THALASSERY-670 101. 5 THE MANAGER, KOTTAYAM RAJA HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT-670 643. -: 2 :- 6 THE HEAD MASTER, KOTTAYAM RAJA HIGH SCHOOL, PATHIRIYAD, KANNUR DISTRICT-670 643. BY ADVS. SMT.NISHA BOSE, SR.GP SRI.JIJI THOMAS SMT.SMITHA MATHEW

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -: 3 :-

JUDGMENT

This writ petition is filed seeking the following reliefs :- i) To issue a writ of certiorari to quash Exhibit P14 dated denial of approval in Exts.P1, P2 and P3 as it is illegal and unjustifiable. ii) To issue a writ of mandamus or any other appropriate writ or

order or direction directing the 4th respondent to approve the

appointment of the 1st petitioner as UPSA from 4/6/2008 to as UPSA and from 3/6/2008 to 31/5/2011 to the 3 rd petitioner as UPSA and to disburse all consequential monetary benefits due to them forthwith. iii) To declare that the petitioners are entitled to get approval to their respective posts in the light of Exts.P9, P15 and P16 judgments.

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. It is submitted that the petitioners are teachers working

in the 5th respondent's school. The petitioners were appointed by Exts.P1, P2 and P3 appointment orders from 4.6.2008, 1.6.2009 and 3.6.2008 respectively. The appointments were rejected on the ground that the petitioners had been appointed against newly -: 4 :- sanctioned posts during the period of ban on appointments and that the Manager had not executed a bond in terms of G.O.(P)

No.10/10/G.Edn. dated 12.1.2010 agreeing to reserve equal number of vacancies for appointment of protected teachers. It was also contended that the appointments of the teachers in whose vacancies the petitioners had been appointed had not been duly approved. It is submitted that on the basis of Exts.P9, P15 and P16 judgments, the appointments of all the senior teachers in the same

school have been approved. The said judgments have also specifically directed the Government to deem that the Manager has executed the bond in terms of G.O.(P) No.10/10/G.Edn. dated 12.1.2010. It is, therefore, contended that the reasons stated in Ext.P14 are no longer relevant and that the petitioners are also entitled to appointment of their approval for the periods from their initial date of appointment till 31.5.2011 deeming that the Manager has executed the necessary bond in terms of the Government Orders.

4. A counter affidavit has been placed on record by the 4 th respondent. It is stated that the petitioners were appointed in -: 5 :- additional division vacancies during 2008-09 and 2009-10. It is submitted that the Manager had not executed the bond as required. It is further submitted that the appointment of the

teachers in whose vacancies the petitioners had been accommodated had also not been approved. It is contended that since there is no specific direction to deem that the bond had been executed and since the Manager had not executed such bond, the Government could only reject the claim raised by the petitioners.

5. The 5th respondent has placed a counter affidavit on

record stating that the provision in G.O.(P) No.10/10/G.Edn. dated 12.1.2010 providing that equal number of posts have been earmarked for protected teachers has been challenged by the Manager and that there is an interim stay in the SLP

pending before the Apex Court.

6. I have considered the contentions advanced. It is clear from Exts.P15 and P16 judgments that this Court has directed the

approval of appointment of K.Pradeepan, G.Suma and K.P.Ramachandran, HSAs in the school deeming that the bond had been duly executed by the Manager. The learned counsel for the -: 6 :-

petitioners submits that the said appointments have already been approved on the basis of the directions of this Court. If that be so, there is no further impediment to the approval of the appointments of the petitioners except the fact that the Manager has not executed the bond. In several cases including in Exts.P15 and P16 judgments this Court had directed the approval of appointments made during the ban period deeming that the bond, as provided in G.O.(P) No.10/10/G.Edn. Dated 12.1.2010, has been executed by the Manager. This has been done even in cases where the issue is pending before the Apex Court, of course, subject to the decision of the Apex Court.

In the above view of the matter, I am of the opinion that the rejection of approval of appointment of the petitioners on the ground that the Manager had not executed the bond is not sustainable. The impugned orders are set aside. There will be a direction to the Government to reconsider the issue deeming that the bond has been executed by the Manager in terms of G.O.(P) No.10/10/G.Edn. dated 12.1.2010. The contention of the petitioners that the appointments of the teachers in whose -: 7 :- vacancies they were appointed stand approved shall also be considered by the Government while passing orders. Appropriate orders shall be passed within a period of two months from the date of receipt a copy of this judgment. The consequential benefits shall also be disbursed within a period of three months thereafter.

This writ petition is ordered accordingly. Sd/- ANU SIVARAMAN JUDGE
Jvt/2.7.2021 -: 8 :- APPENDIX OF WP(C) 26125/2019 PETITIONER ANNEXURE
EXHIBIT P1 TRUE COPY OF THE SAID APPOINTMENT ORDER DATED
4.6.2008 ISSUED BY THE 5TH RESPONDENT EXHIBIT P2 TRUE COPY OF

THE APPOINTMENT ORDER DATED 1.6.2009 ISSUED BY THE 5TH RESPONDENT EXHIBIT P3 TRUE COPY OF THE APPOINTMENT ORDER DATED 3.6.2008 ISSUED BY THE 5TH RESPONDENT EXHIBIT P4 TRUE COPY OF THE ORDER NO K.DIS/B5/5625/08 DATED 30.5.2009 EXHIBIT P5 TRUE COPY OF THE ORDER DATED 4.6.2011 OF THE 4TH RESPONDENT EXHIBIT P6 TRUE COPY OF THE APPEAL DATED 28.6.2011 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 2ND RESPONDENT EXHIBIT P7 TRUE COPY OF THE ORDER NO EM4/7078/2011/DPI/KI.DS DATED 7.3.2011 ISSUED BY THE 2ND RESPONDENT EXHIBIT P8 TRUE COPY OF THE LETTER NO 90930/J2/G.EDN DATED 25.10.2011 ISSUED BY THE 1ST RESPONDENT EXHIBIT P9 TRUE COPY OF THE JUDGMENT DATED 26.7.2017 IN WA NO 2592/2015 PASSED BY THIS HON'BLE COURT EXHIBIT P10 TRUE COPY OF THE REVISION PETITION DATED 11.7.2017 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT EXHIBIT P11 TRUE COPY OF THE REVISION PETITION DATED 29.9.2018 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT EXHIBIT P12 TRUE COPY OF THE REVISION PETITION DATED - : 9 :- 22.9.2018 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT EXHIBIT P13 A TRUE COPY OF JUDGMENT DATED 26.10.2018 IN WPC NO 35004/2018 PASSED BY THIS HON'BLE COURT EXHIBIT P14 A TRUE COPY OF THE GO (RT) NO 3463/2019/G.EDN DATED 30.8.2019 ISSUED BY THE 1ST RESPONDENT EXHIBIT P15 TRUE COPY OF THE JUDGMENT DATED 12.4.2019 IN WPC NO 11867/19 PASSED BY THIS HON'BLE COURT EXHIBIT P16 TRUE COPY OF THE JUDGMENT DATED 26.10.2019 IN WPC NO 18109/19 PASSED BY THIS HON'BLE COURT. RESPONDENTS' ANNEXURES :- EXHIBIT R5(a) A COPY OF INTERIM ORDER OF THE APEX COURT DIARY NO.28178/2019 IN SPECIAL LEAVE PETITION (CIVIL) NO 23723/2019 IN CA NO 7698/2019 DATED 27.9.2019 EXHIBIT R5(b) STATUS OF THE COURT PROCEEDINGS IN CA NO MEMORIAL UP SCHOOL V/S. THE STATE OF KERALA