

Usha C.N, vs State of Kerala,

Usha C.N, vs State of Kerala,

SooperKanoon Citation : sooperkanoon.com/1724049

Court : Kerala

Decided On : Feb-05-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/35424/2018

Appellant : Usha C.N,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 05TH DAY OF FEBRUARY 2021 / 16TH MAGHA,1942 WP(C).No.35424 OF 2018(C) PETITIONER: USHA C.N, AGED 49 YEARS W/O SHRI C.RAVINDRAN, PRASANTHI NILAYAM, NANDIPULAM (PO), CHENGALLOOR (VIA), THRISSUR DISTRICT- 680 312. BY ADVS. SRI.KALEESWARAM RAJ SRI.VARUN C.VIJAY KUM.A.ARUNA RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM- 695001. 2 DIRECTOR OF

PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM-695001. 3
DEPUTY DIRECTOR OF EDUCATION, THRISSUR - 680003. 4
DISTRICT EDUCATIONAL OFFICER, THRISSUR DISTRICT - 680503.
5 MANAGER, P.V.S.H.S. PARAPPUKARA, THRISSUR DISTRICT-
680310. *ADDL SMITHA.T.S, R6 W/O.SUBASH V.K, THANDASSERRY
HOUSE,KANJOOR P.O, ALAGAPPA NAGAR. *(ADLL R6 IS
IMPLEADED AS PER ORDER DATED 04-01-2021 IN IA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05.02.2021, ALONG WITH WP(C).4657/2019(F), THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN
RAMACHANDRAN FRIDAY, THE 05TH DAY OF FEBRUARY 2021 /
16TH MAGHA,1942 WP(C).No.4657 OF 2019(F) PETITIONER: SMITHA
T.S., AGED 39 YEARS W/O. SUBHASH V.K, THANDASSERY HOUSE,
KANJOOR, ALANGAPPA NAGAR, PIN 680 302. BY ADV.
SMT.I.SHEELA DEVI RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO
GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM 695 001. 2 THE DEPUTY DIRECTOR OF
EDUCATION, 2ND FLOOR, CIVIL STATION, AYANTHOLE, THRISSUR,
PIN 680 003. 3 THE DISTRICT EDUCATIONAL OFFICER,
IRINJALAKUDA, THRISSUR DISTRICT, PIN 680 121. 4 THE
MANAGER, P.V.S HIGH SCHOOL, PARAPPUKARA, THRISSUR
DISTRICT, PIN 680 310. 5 USHA C.N, W/O. C. RAVINDRAN,
PRASANTHI NILAYAM, NANDIPULAM P.O, CHENGALLOOR (VIA),
THRSSIUR DISTRICT 680 312.

BY ADV. SRI.V.A.MUHAMMED BY ADV. SRI.M.SAJJAD BY ADV.
SRI.KALEESWARAM RAJ BY ADV. KUM.A.ARUNA BY ADV.
SMT.MAITREYI SACHIDANANDA HEGDE OTHER PRESENT: SRI.P M

MANOJ - SR GP THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05.02.2021, ALONG WITH WP(C).35424/2018(C), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

These two writ petitions are the result of conflicting claims made by two persons to the vacancy of High School Assistant

(HSA) in Physical Science in P.V.S.H.School, which is managed by the 5th respondent.

2. While Smt.Smitha T.S., petitioner in W.P.(C) No.4657/2019, asserts that she was enjoying a Rule 51A claim and therefore, entitled to the said vacancy; Smt. Usha C.N -

petitioner in W.P.(C).No.35424/2018, says that she was appointed to this vacancy by the Manager validly and therefore, entitled to the benefit of salary for the period she worked from 26.06.2007 to 24.10.2017.

3. I notice that the controversy in these cases arose

because the Manger initially refused to recognize the right of Smt.T.S.Smitha as a Rule 51A claimant, but it was thereafter, declared by this Court in the judgment in W.A.No.2466/2005 - a copy of which has been appended to W.P.(C).No.4657/2019 as Ext.P1 - that the Manger ought to have appointed her to the vacancy in question, since her right as a Rule 51A claimant is established and that Smt.C.N.Usha can be appointed to any

other available vacancy. This judgment appears to have been taken up in an appeal before the Hon'ble Supreme Court by the Manger by filing a Special Leave Petition and initially stayed.

4. However, through the judgment dated 19.09.2017,

the Civil Appeal, consequent to the afore mentioned Special Leave Petition, was dismissed and obviously, therefore, the declarations in the judgment in

W.A.No.2466/2005 (Ext.P1 in W.P.(C).No.4657 of 2019) have now become final.

5. Therefore, as matters now stand, Smt.T.S.Smitha is certainly entitled to be appointed against a vacancy that arose in the year 2007, and if that be so, the position of Smt.Usha C.N will become in jeopardy.

6. However, thankfully for her, it appears that there was

a vacancy consequent to a teacher, by name Smt.Demmy John, having taken Leave Without Allowances, and when this matter was called today, the learned counsel for the Manager of the School, acceded that appointment of Smt.C.N.Usha can be adjusted against that vacancy with effect from 26.06.2007.

7. In that perspective, it is clear that most of the

controversies in these cases are now coming to an end, since Smt.T.S.Smitha can certainly be now appointed against the vacancy that arose in the year 2007 - consequent to the promotion of a Teacher by name Smt.N.Geetha; while, Smt.C.N.Usha, can stand regularized against the other vacancy caused due to availing of Leave Without Allowances by Smt.Demmy John, also with effect from 26.06.2007.

8. That said, I must record the submissions of

Smt.Sheela Devi I. - learned counsel appearing for Smt.Smitha T.S., that her client, on account of the fact that she was not getting appointed in spite of all these litigations, had joined the services of the Judiciary in Irijalakuda as a Last Grade Servant in the year 2012, but that she wants to resign from there and join the school in the vacancy which is rightfully hers.

9. It is thus ineluctable that Government will have to now take a final call on all these aspects at the earliest . In the afore circumstances, I order these writ petitions in the following manner:

(a) W.P.(C).No.4657/2019 is allowed, and the

Manager is directed to issue an appropriate appointment order in favour of the petitioner namely Smt.T.S.Smitha, against the vacancy arose in the year 2007, within a period of two weeks from the date of receipt of a copy of this judgment; and forward the same to the competent District Educational Officer (DEO) without any further delay thereafter. On the proposal for approval of Smt.T.S.Smitha so reaching the DEO, the said Officer will consider the same and issue appropriate orders thereon, also taking note of the fact that Smt.T.S.Smitha, had been working in the Judicial Department from 14.12.2012, until the date on which she resigns therefrom.

(b) W.P.(C).No.35424/2018 is ordered, and

the Manager is directed to issue a fresh appointment order in favour of the petitioner - Smt.C.N.Usha, adjusting her against the vacancy of Smt.Demmy John, with effect from 26.06.2007, within a period of two weeks from the date of receipt of a copy of this judgment; and forward the

proposal for approval of the same to the jurisdictional DEO, without any further delay thereafter. Once the said proposal reaches the DEO, the said officer will issue appropriate orders thereon and will also ensure that salary and other benefits are disbursed to Smt.C.N.Usha for the period from 26.06.2007 to 24.10.2017, without any delay thereafter, but within a period of three months from the date on which the proposal

reaches. Consequently, Ext.P6 Government Order

is set aside, so as to enable the afore directed exercise to be taken forward by the DEO as per law. Needless to say, in view of the observations of the learned Division Bench in W.A.No.2466/2005, which has been confirmed by the Hon'ble Supreme Court, the Government, while completing the exercise as directed (a) above, cannot take the stand that Smt.T.S.Smitha, does not have a Rule 51A claim. After I dictated this judgment, Sri. Varun C.Vijay - learned counsel for Smt.C.N.Usha, submitted that she has also raised a claim for deployment and

prayed that same be left open, since it has not been considered by this Court on its merits. It goes without saying that since I have not considered this issue, it will be left open for her to pursue it in future, if it becomes so warranted.

SD/- DEVAN RAMACHANDRAN rp JUDGE APPENDIX OF WP(C) 35424/2018 PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 25.6.2007. EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 22.8.2007 IN W.A.NO.2466/2005. EXHIBIT P3 TRUE COPY OF THE ORDER NO.B2-10116/2017 LDS DATED 2.2.2018 PASSED BY THE 4TH RESPONDENT. EXHIBIT P4 TRUE COPY OF THE REVISION PETITION DATED 29.3.2018 ALONG WITH THE POSTAL RECEIPT. EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 12.4.2018 IN WPC.NO.13059/2018. EXHIBIT P6 TRUE COPY OF G.O(RT)NO.3503/2018/G.EDN DATED 12.9.2018. EXHIBIT P7 TRUE COPY OF THE G.O(P)NO.29/2016/G.EDN DATED 29.1.2016. APPENDIX OF WP(C) 4657/2019 PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE JUDGMENT IN W.A NO. 2466/2005 DATED 22-08-2007 OF THE HON'BLE HIGH COURT OF KERALA, ERENAKULAM. EXHIBIT P2 TRUE COPY OF THE ORDER IN CIVL APPEAL NO. COURT OF INDIA EXHIBIT P3 TRUE COPY OF THE ORDER NO. B2/16090/2018 DATED 19-11-2018 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P4 TRUE COPY OF THE APPOINTMENT ORDER NO. B2- RESPONDENT. EXHIBIT P5 TRUE COPY OF THE JUDGMENT IN W.P(C) NO. COURT OF KERALA, ERNAKULAM. RESPONDENT'S/S EXHIBITS: EXHIBIT R5(A) TRUE COPY OF THE APPOINTMENT ORDER DATED 25.6.2007. EXHIBIT R5(B) TRUE COPY OF THE ORDER NO.B2-10116/2017 LDS DATED 02.02.2018. EXHIBIT R5(C) TRUE COPY OF THE REVISION PETITION DATED 29.03.2018. EXHIBIT R5(D) TRUE COPY OF THE JUDGMENT DATED 12.4.2018 IN WPC NO.13059/2018. EXHIBIT R4(A) TRUE COPY OF THE DECISION REPORTED IN 2016 (4) SCC 216 DECIDED ON 27TH JANUARY 2016