

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 27TH DAY OF MAY 2020 / 6TH JYAISHTA, 1942

WA.No.230 OF 2016(B)

AGAINST THE JUDGMENT IN WPC 22214/2015 DATED 15-12-2015 OF
HIGH COURT OF KERALA

APPELLANT/5TH RESPONDENT:

MANAGER
MM HIGHER SECONDARY SCHOOL, NEW MAHE,
KANNUR DISTRICT-673 311.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 4 & 6 TO 8:

- 1 DIVYA.K
HSST(JR-MAL), MM HIGHER SECONDARY SCHOOL, NEW
MAHE, THALASSERY, KANNUR DISTRICT.
- 2 STATE OF KERALA
REP. BY SECRETARY TO GENERAL EDUCATION
DEPARTMENT, GOVERNMENT OF KERALA, TRIVANDRUM.
- 3 THE DIRECTOR OF HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM.
- 4 REGIONAL DEPUTY DIRECTOR OF EDUCATION
KANNUR, KANNUR DISTRICT.

-:2:-

5 Y.P.ABDUL NAZAR
 HSA (ARABIC) , MM HIGHER SECONDARY SCHOOL, NEW
 MAHE, THALASSERY, KANNUR DISTRICT-673 311.

6 NISARANI
 HSA (MAL) , MM HIGHER SECONDARY SCHOOL,
 NEW MAHE, THALASSERY,
 KANNUR DISTRICT 673311.

7 THE PRINCIPAL
 MM HIGHER SECONDARY SCHOOL,
 NEW MAHE, THALASSERY,
 KANNUR DISTRICT 673311.

R1 BY ADV. SRI.P.C SASIDHARAN (BY ORDER)
R2-4 BY SR GOVERNMENT PLEADER SMT.RAJI
T.BHASKER
R5 BY ADV. SRI.K.B.GANGESH
R6 BY ADV. SRI.M.SASINDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26-02-
2020, ALONG WITH WA.234/2016, WA.250/2016, WA.262/2016, THE
COURT ON 27-05-2020 DELIVERED THE FOLLOWING:

-:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 27TH DAY OF MAY 2020 / 6TH JYAISHTA, 1942

WA.No.234 OF 2016

AGAINST THE JUDGMENT IN WPC 22214/2015 OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER IN THE WRIT PETITION:

DIVYA K.
HIGHER SECONDARY SCHOOL TEACHER (JUNIOR)
(MALAYALAM), M.M.HIGHER SECONDARY SCHOOL, NEW
MAHE, KANNUR DISTRICT - 673 311.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS/RESPONDENTS IN THE WRIT PETITION:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 THE DIRECTOR OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.
- 3 THE REGIONAL DEPUTY DIRECTOR OF HIGHER
SECONDARY EDUCATION
REGIONAL OFFICE, KOZHIKODE - 673 001.

-:4:-

- 4 THE REGIONAL DEPUTY DIRECTOR OF HIGHER
SECONDARY EDUCATION
KANNUR - 670 001.
 - 5 THE MANAGER
M.M.HIGHER SECONDARY SCHOOL, NEW MAHE, KANNUR
DISTRICT - 673 311.
 - 6 Y.B.ABDUNNASIR
HIGHER SECONDARY SCHOOL TEACHER (JUNIOR)
(ARABIC), M.M.HIGHER SECONDARY SCHOOL, NEW
MAHE, KANNUR DISTRICT - 673 311.
 - 7 NISA RANI
HIGH SCHOOL ASSISTANT (MALAYALAM), M.M.HIGHER
SECONDARY SCHOOL, NEW MAHE,
KANNUR DISTRICT - 673 311.
 - 8 THE PRINCIPAL
M.M.HIGHER SECONDARY SCHOOL, NEW MAHE,
KANNUR DISTRICT - 673 311.
- R1-4 BY GOVERNMENT PLEADER SMT.RAJI T. BHASKAR
R5, R8 BY ADV. SRI.R.K.MURALEEDHARAN
R6 BY ADV. SRI.V.A.MUHAMMED
R7 BY ADV. SRI.M.SASEENDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26-02-
2020, ALONG WITH WA.230/2016(B), WA.250/2016, WA.262/2016,
THE COURT ON 27-05-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 27TH DAY OF MAY 2020 / 6TH JYAISHTA, 1942

WA.No.250 OF 2016

AGAINST THE JUDGMENT IN WPC 12330/2014 DATED 15-12-2015 OF
HIGH COURT OF KERALA

APPELLANT/RESPONDENT NO.6 IN THE WRIT PETITION:

DIVYA K
HIGHER SECONDARY SCHOOL TEACHER (JUNIOR)
(MALAYALAM), M.M.HIGHER SECONDARY SCHOOL, NEW
MAHE, KANNUR DISTRICT - 673 311.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 5 IN THE WRIT
PETITION:

- 1 NISARANI
HIGH SCHOOL ASSISTANT (MALAYALAM), M.M.HIGHER
SECONDARY SCHOOL, NEW MAHE,
KANNUR DISTRICT-673311.
- 2 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 3 THE DIRECTOR OF HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM - 695 001.

-:6:-

- 4 THE REGIONAL DEPUTY DIRECTOR OF HIGHER
SECONDARY EDUCATION
KOZHIKODE - 673 001.
- 5 THE MANAGER
M.M.HIGHER SECONDARY SCHOOL, NEW MAHE 673 311,
KANNUR DISTRICT.
- 6 Y.P.ABDUL NAZAR
HIGH SCHOOL ASSISTANT (ARABIC), M.M.HIGHER
SECONDARY SCHOOL, NEW MAHE - 673 311,
KANNUR DISTRICT.

R1 BY ADV. SRI.M.SASINDRAN
R6 BY ADV. SRI.V.A.MUHAMMED
GOVT.PLEADER SMT.RAJI T. BHASKER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26-02-
2020, ALONG WITH WA.230/2016(B), WA.234/2016, WA.262/2016,
THE COURT ON 27-05-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 27TH DAY OF MAY 2020 / 6TH JYAISHTA, 1942

WA.No.262 OF 2016

AGAINST THE JUDGMENT IN WPC 12330/2014 DATED 15-12-2015 OF
HIGH COURT OF KERALA

APPELLANT/4TH RESPONDENT:

MANAGER, MM HIGHER SECONDARY SCHOOL
MM HIGHER SECONDARY SCHOOL, NEW MAHE, KANNUR
DISTRICT-673311.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3 AND 5,6:

- 1 NISARANI
HSA (MAL) , MM HIGHER SECONDARY SCHOOL, NEW MAHE,
THALASSERY, KANNUR DISTRICT.
- 2 STATE OF KERALA
REPRESENTED BY SECRETARY TO GENERAL EDUCATION
DEPARTMENT, GOVERNMENT OF KERALA, TRIVANDRUM.
- 3 THE DIRECTOR OF HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM.
- 4 REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY
EDUCATION
KOZHIKODE-673001.

- 5 Y.P.ABDUL NAZAR
 HSA (ARABIC), MM HIGHER SECONDARY SCHOOL, NEW
 MAHE, THALASSERY, KANNUR DISTRICT-673311.
- 6 DIVAYA.K
 KUNNIL HOUSE, P.O.CHANDAYAD, PANOOR,
 KANNUR DISTRICT-670692.

R1 BY ADV. SRI.M.SASINDRAN (BY ORDER)
R2-4 BY GOVERNMENT PLEADER SMT.RAJI T.BHASKER
R5 BY ADV. SRI.V.A.MUHAMMED (BY ORDER)
R6 BY ADV. SRI.K.B.GANGESH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26-02-
2020, ALONG WITH WA.230/2016(B), WA.234/2016, WA.250/2016,
THE COURT ON 27-05-2020 DELIVERED THE FOLLOWING:

J U D G M E N T

WA Nos.230 234, 250, & 262/2016

Dated this the 27th day of May, 2020

Shaffique, J.

These appeals are filed against common judgment dated 15/12/2015 in WP(C) Nos. 12330/2014 and 22214/2015.

2. WA Nos. 230/16 and 262/2016 have been filed by the Manager of MM Higher Secondary School and WA Nos. 234/2016 and 250/2016 have been filed by Smt.Divya K., who was appointed as Higher Secondary School Teacher (Jr) Malayalam. By the impugned judgment, the learned Single Judge having set aside an order passed by the Government on 8/4/2014 directed that Smt.Nisarani, the petitioner in WP(C) No. 12330/14 has to be appointed as HSST (Jr) Malayalam and that Smt.Divya shall be offered appointment as HSA in the vacancy that had arisen on the appointment of the said petitioner and that she should also be appointed in the next arising vacancy of HSST (Jr) Malayalam. WP(C) No.22214/2015 which was filed by Smt.Divya for

implementing the Government order dated 8/4/2014 was dismissed.

3. The short facts of the case concern two appointments made by the Manager of MM Higher Secondary School pursuant to a notification dated 18/11/2011 issued for the purpose of filling up eleven posts of HSST in the said school. The school was sanctioned Higher Secondary status in the academic year 2010-2011. As per the provisions of KER, the post of HSST (Jr) has to be filled up by way of, by transfer appointment from qualified High School Teachers and by way of direct recruitment in the ratio 1:3. The by transfer appointments have to be made from among the senior-most HSA Teachers depending on seniority and suitability. Pursuant to a selection process held on 18/12/2011, the Manager appointed two teachers who were holding posts as HSA English and HSA Maths as HSST (Jr). The post of HSST (Jr) Malayalam remained vacant. The Manager therefore appointed Smt.Divya K., who is the petitioner in WP(C) No. 22214/2015 by way of direct recruitment. Subsequently, the Manager appointed Sri.Y.P.Abdunnasir as HSST (Jr) Arabic. The appointment of the

aforesaid person came to be challenged by the petitioner in WP(C) No. 12330/2014, Smt.Nisarani. Sri.Abdunnasir was appointed on the basis of selection held on 30/6/2012 which was approved by the Educational Authority. Challenging the order approving the appointment of Abdunnasir as HSST, Smt.Nisarani preferred an appeal which was allowed as per order passed by the Regional Deputy Director of Higher Education. It was observed that the 5th respondent did not attend the interview and therefore the appellate authority directed that Smt.Nisarani should be appointed as HSST(Jr) Malayalam. The Manager filed a revision before the Director of Higher Secondary Education against the said order, who confirmed the order passed by the Appellate Authority. Another revision was filed before the Government, which was ultimately disposed of by order dated 8/4/2014 (Ext.P11 in WP(C) No. 22214/2015 and Ext.P8 in WP(C) No.12330/2014).

4. In the meantime, while approving the appointment of Smt.Nisarani, it was held that the appointment of Divya as HSST (Jr) Malayalam cannot be approved. Smt.Divya also challenged

the aforesaid orders and therefore while disposing of the revision filed by the Manager, the claim of Sri.Abdunnasir, Nisarani and Divya were taken note of. The Government in the order dated 8/4/2014 held that (i) Smt.Nisarani could not produce any supporting documents to prove the allegation that Sri.Abdunnasir has relinquished his right to the post of HSST (Jr.) Arabic in writing. (ii) He did not abstain himself from the interview for the reason that he will lose his higher grade promotion in the existing scale as HSA (Arabic). (iii) Abdunnasir is the senior-most teacher and his seniority could not be overlooked. (iv) Nisarani was not selected by the selection committee as per the copy of the consolidated mark sheet and she could not claim promotion. Accordingly, the impugned order was set aside and the Director of Higher Secondary Education was directed to approve the appointment of Sri.Y.B.Abdunnasir as HSST (Jr) Arabic and Smt.Divya K. as HSST (Jr) Malayalam.

5. While impugning the aforesaid order, Smt.Nisarani, who is the petitioner in WP(C) No.12330/2014 took up two specific contentions. One is that for the filling up of by-transfer

vacancy, an interview was conducted by a Selection Committee in which Sri.Abdunnasir did not attend. He did not attend the interview since he thought he will lose his Higher Grade, which was due as HSA (Arabic). The contention of the Manager and Sri.Abdunnasir was that he got his Higher Grade as early as on 1/7/2011, which is taken note of by the Government in its order dated 8/4/2014. He could not attend the interview since he had some personal religious matters to attend. A second selection was conducted on 30/6/2012 and he was appointed as HSST (Arabic). That apart, Smt.Nisarani was not selected by the Selection Committee in the selection process held on 18/12/2011. In so far as Abdunnasir was the senior-most HSA (Arabic), Smt.Nisarani who is junior to Abdunnasir is not entitled for being appointed as HSST. Abdunnasir's seniority cannot be overlooked. Smt.Nisarani has been appointed as HSST(Jr) Malayalam by orders passed by the educational authorities in an appeal filed by the said candidate. But in the meantime, pending the appointment of Abdunnasir as HSST (Jr) Arabic, the post of HSST (Jr) Malayalam was filled up by direct recruitment and Smt.Divya

was appointed.

6. The learned Single Judge had called for the files relating to the appointment and selection process. It is observed that the Manager notified all the vacancies that had arisen in the school by issuing an advertisement on 18/11/2011 and applications were invited to be submitted before 24/11/2011. The interview was scheduled on 11/12/2011 and thereafter adjourned to 18/12/2011. The subjects notified were Malayalam, Arabic, Physics, Chemistry, Zoology, Botany, Computer Applications and Mathematics.

7. Learned Single Judge after considering the materials placed on record observed that there is no material to indicate that Sri.Abdunnasir did not attend the interview on account of any religious function and such a contention remains unsubstantiated. Further it was found that there is no material to indicate that he had applied for leave on the date of interview and that the same was placed before the Selection Committee. Sri.Abdunnasir was appointed as HSST (Arabic) after 6 months, i.e., on 30/6/2012. Learned Single Judge proceeded to consider

whether Sri.Abdunnasir applied for the post of HSST pursuant to the notification, whether he appeared for the interview and what would be the consequence of his action. It was found that since Abdunnasir has not even applied for the post pursuant to the notification made by the Manager, there was no necessity for considering him to the said post especially when he was informed of the interview orally. It was held that there was no warrant for keeping aside the selection of one HSST post remaining reserved for by-trasfer appointment and therefore the next senior-most HSA who was available should be considered. Smt.Nisarani was the senior-most HSA and she was present for the interview and therefore her appointment is regular in the said vacancy to be filled up from in-service candidates holding the post of HSA. Having found so, it was held that Smt.Divya who was appointed as HSST(Malayalam) would cease to be in the said post and directions had been issued to accommodate her as HSA.

8. Having heard the learned counsel on either side and having perused the records, there is no dispute about the fact that Abdunnasir was senior to Smt.Nisarani in the post of HSA.

The Government in the impugned order had clearly stated that Smt.Nisarani was not selected by the Selection Committee as per the copy of the consolidated marksheet. The contention urged is that the Manager has sent the names of two teachers only after omitting the name of the petitioner which is deprecated by the Director in Ext.P6 order. In the order dated 23/4/2013, the Director of Higher Secondary Education has observed that when a senior-most HSA did not appear before the selection committee, the interview has to be either postponed or it should be carried out as per Rule, whereas the Manager conducted an interview to accommodate a senior-most HSA later. It was further found that appointing a person through direct recruitment without filling the by-transfer quota is another mistake committed by the Manager. This finding, according to us, is absolutely baseless. Though interview was held together, there are two different quotas one for by-transfer and other by way of direct recruitment. All the persons who are eligible for direct recruitment were selected. As far as by-transfer is concerned, two of the teachers were selected and in respect of the other, the selection process has been

adjourned especially when Abdunnasir who was the senior-most teacher could not participate in the interview. Further selection was conducted on 30/6/2012 and he was appointed.

9. There is no mandate that a selection should be conducted for the direct recruits and for in-service candidates on the same date. As far as in-service candidates are concerned, there is no dispute about the fact that seniority and suitability is the basis.

10. In ***Valsala Kumari Devi M v. Director, Higher Secondary Education*** [(2007) 8 SCC 533], the Apex court after considering a similar issue held as under:-

“16. The Government Order dated 27-6-1990 makes it clear that the selection of teachers will be subject to seniority and suitability and G.O. dated 13-5-1998 specifically prescribes that the teachers appointed from General Education Subordinate Service will be treated as appointment by promotion. As stated earlier, the selection will be subject to seniority and suitability and there is no dispute that the appellant is senior to the fifth respondent. She is eligible and qualified for appointment by promotion to HSST. It is not the case of the management that she is unsuitable for promotion.

17. The expression “subject to seniority and suitability” occurring in G.O. dated 27-6-1990 does not mean the

comparative assessment of suitability and it only means the suitability for the particular post and the suitability is related to the prescribed qualification and requisite experience. In view of the distinction between the appointment by promotion from General Education Subordinate Service and an appointment to the 75% vacancies earmarked for direct recruitment, we are of the view that the finding arrived at by the Director, Higher Secondary School, Thiruvananthapuram, Kerala that seniority is not the criterion for "appointment by promotion to HSST" is erroneous and is not in terms of the government orders referred to above".

11. When one senior teacher is not present for the interview, unless he had specifically relinquished his right to be considered, it was incumbent on the part of the Manager to consider him for appointment on a later occasion and give him an opportunity. Otherwise, the seniority of such persons will be overlooked. Even in this case, no specific letter was issued to any of the teachers to attend the interview. It is stated that they have been orally asked to attend the interview. Therefore, it is the contention of Sri.Abdunnasir that he has informed the Manager that he will not be available. It is apparent that he would have asked for time orally and one cannot expect a written letter. The learned Single Judge however proceeded to consider whether

there is justification in asking for leave when the selection process was going on and on factual considerations, arrived at a finding that there was no justification. We do not think that such an enquiry was required at all.

12. The main contention urged by Smt.Nisarani was that Sri.Abdunnasir was waiting for a Higher Grade and therefore he did not attend the selection process. There is a clear finding by the Government that Abdunnasir got Higher Grade as early as on 1/7/2011 which was well before the main selection process held on 18/11/2011. Therefore, the said contention cannot be sustained. The Government had only ensured that the senior-most teacher should be given priority over a junior in the matter relating to promotion. Sri.Abdunnasir has 28 years of service whereas Smt.Nisarani had only 7 years service at the relevant time. By accommodating Nisarani as directed by the learned Single Judge, it would render overlooking seniority. There is no dispute about the said fact that a second selection was conducted on 30/6/2012 and Abdunnasir was selected. It was definitely a post set apart for in-service candidates.

13. In the light of the aforesaid discussion, we are of the view that the learned Single Judge was not justified in interfering with the impugned orders. Hence, these appeals are allowed are under:-

(i) The judgment of the learned Single Judge shall stand set aside.

(ii) WP(C) No. 12330/2014 is dismissed

(iii) WP(C) No. 22214/2015 is allowed. The 4th respondent is directed to implement Ext.P11 order within a period of 3 months from the date of receipt of a copy of this judgment and the salary and allowances due to the petitioner from the date of appointment shall be released to her.

Sd/-

A.M. SHAFFIQUE

JUDGE

Sd/-

MARY JOSEPH

JUDGE

Rp

True Copy

PS to Judge