

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 30TH DAY OF OCTOBER 2019 / 8TH KARTHIKA, 1941

WP(C).No.4368 OF 2014 (U)

PETITIONER/S:

SHAMEENA A.A.  
H.S.A (MATHS), S.S.M.H.S. AZHIKODE,  
THRISSUR DISTRICT, PIN -680 666.

BY ADVS.  
SRI.ELVIN PETER P.J.  
SRI.K.R.GANESH  
SRI.T.G.SUNIL (PRANAVAM)

RESPONDENT/S:

- 1 STATE OF KERALA -  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM -695 001.
- 2 THE DIRECTOR OF PUBLIC INSTRUCTION,  
THIRUVANANTHAPURAM -695 001.
- 3 THE DEPUTY DIRECTOR OF EDUCATION,  
THRISSUR-680 611.
- 4 THE DISTRICT EDUCATIONAL OFFICER,  
IRINJALAKUDA - 680 631.
- 5 THE MANAGER,  
S.S.M.H.S., AZHIKODE,  
THRISSUR DISTRICT, PIN - 680 666.

R1 TO R4 BY SRI. JESTIN MATHEW, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
30-10-2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

This writ petition is filed by the petitioner challenging the endorsement made in Ext.P2 order of appointment and Exts.P3, P4, P5 and P7 orders passed by the educational authorities, whereby the approval of appointment of the petitioner with effect from 06.06.1994 as H.S.A. (Maths) sought for by the Manager of the school was declined, and granted the approval only with effect from 17.10.1994 to 31.03.1995. Basic material facts for the disposal of the writ petition are as follows:

2. Petitioner was appointed as H.S.A (Maths) in S.S.M.H.S., Azhikode as per Ext.P2 order dated 06.06.1994 of the 5<sup>th</sup> respondent. The said appointment of the petitioner when forwarded for approval of the 4<sup>th</sup> respondent, i.e., the District Educational Officer, Irinjalakuda, the same was approved only with effect from 17.10.1994, instead of 06.06.1994. Challenging the said endorsement in Ext.P2 appointment order, petitioner filed appeal before the Deputy Director of Education, Thrissur, which was declined as per Ext.P3 order dated 23.07.1995. Though a revision petition was filed before the Director of Public Instruction, Thiruvananthapuram, it was declined as per Ext.P4

order. Thereupon, being aggrieved, a revision was preferred before the State Government, it was also dismissed as per Ext.P5 order dated 11.06.1996. Even though a representation was again preferred before the Government, it was also dismissed as per Ext.P7 order dated 19.08.2010. It is thus challenging the aforesaid orders, this writ petition is filed.

3. A detailed counter affidavit is filed by the 3<sup>rd</sup> respondent, refuting the claims and demands raised by the petitioner. Among other contentions, it is stated that, the 7<sup>th</sup> division at Std. IX was actually started functioning only from 17.10.1994 with clubbing arrangement of excess students. Therefore, the demand to approve the appointment as H.S.A (Maths) with effect from 06.06.1994 before the date of functioning of a particular class division cannot be considered. It is also stated that, the petitioner did not work from the said period. The anticipated additional division was actually sanctioned only with effect from 17.10.1994, and therefore, petitioner can put forth the claim from 17.10.1994 alone.

4. It is also pointed out that, the Director of Public Instruction has clarified that the new division with an additional post of H.S.A (Maths) was sanctioned

in the academic year 1994-95. Therefore, the appeal submitted by the Manager was devoid of any merit. That apart, it is submitted that, the educational authorities while considering the appeal/revision has taken into account the entire *pros and cons* of the matter and was found that the staff fixation for the year 1995 has been revised only with effect from 17.10.1994 with the inclusion of the additional division vacancy, and therefore, the claim raised by the petitioner to approve her appointment from 06.06.1994 as H.S.A (Maths) cannot be sustained.

5. A reply affidavit is filed by the petitioner, reiterating the stand adopted and producing a copy of the Staff Attendance Register to establish that the petitioner was marking attendance with effect from 06.06.1994.

6. I have heard learned counsel for the petitioner and the learned Government Pleader, and perused the pleadings and the documents on record.

7. I have evaluated the rival submissions made across the Bar. On going through the orders passed by the educational authorities, it is clear that the additional division vacancy has occurred on and with effect from 17.10.1994. The case put forth by the

Manager was that the appointment of Smt. Shameena A.A. as H.S.A (Maths) was made with effect from 06.06.1994 in anticipation of the division vacancy. However, from the orders passed by the authorities, it is clear that the additional division, i.e., 7<sup>th</sup> division in Std. IX has started functioning with effect from 17.10.1994, as per the report of the District Educational Officer, Irinjalakuda.

8. It is also clear that there is no provision in the Kerala Education Rules to appoint a teacher in a school in anticipation of an additional post where the division has not actually started functioning at the beginning of the academic year. The authorities, while considering the appeal as well as the revision, have taken into account all *pros and cons* of the matter and has also taken into account the Rules in vogue, and accordingly it was found that petitioner is not entitled to get approval of appointment from 06.06.1994, on which date petitioner was allegedly appointed by the Manager, anticipating that a division vacancy will occur during the academic year 1994. Whereas in reality, the division vacancy has come into existence only from 17.10.1994 with clubbing arrangement of the excess students, which thus means,

additional students were accommodated till such time in six divisions, and the 7<sup>th</sup> division functioned only with effect from 17.10.1994.

9. On evaluating the situations, I am of the considered opinion that, the authorities have passed the orders after providing sufficient opportunity of hearing to the petitioner and taking into account the circumstances put forth by the Manager as well as the petitioner. Therefore, I do not think petitioner has made out any case of arbitrariness or illegality, justifying interference of this Court under Article 226 of the Constitution of India.

Resultantly, the writ petition fails, accordingly it is dismissed.

**Sd/-**

**SHAJI P. CHALY**

**JUDGE**

**St/-31.10.2019**

**APPENDIX****PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE STAFF FIXATION ORDER DATED 31.10.1994 ISSUED BY THE 4TH RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE APPOINTMENT ORDER DATED 6.6.1994 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.
EXHIBIT P3	TRUE COPY OF THE ORDER DATED 23.7.95 ISSUED BY THE 3RD RESPONDENT.
EXHIBIT P4	TRUE COPY OF THE ORDER DATED 1.2.1996 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P5	TRUE COPY OF THE ORDER DATED 11.6.96 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P6	TRUE COPY OF THE REPRESENTATION DATED 8.3.2010 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT.
EXHIBIT P7	TRUE COPY OF THE ORDER DATED 19.8.2010 ISSUED BY THE GOVERNMENT.
EXHIBIT P8	TRUE COPY OF THE APPOINTMENT ORDER DATED 5.6.1995 ISSUED TO THE PETITIONER BY THE 5TH RESPONDENT.
EXHIBIT P9	TRUE COPY OF THE ATTENDANCE REGISTER OF THE S.S.M.H.S., AZHIKODE, FROM JUNE, 1994 UP TO OCTOBER, 1994.

**RESPONDENTS' EXHIBITS: NIL**