

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

SATURDAY, THE 22ND DAY OF NOVEMBER 2014/1ST AGRAHAYANA, 1936

WP(C) .No. 9263 of 2012 (G)

PETITIONER(S) :

ANITHA.R. AGED 45 YEARS
W/O.AJITHKUMAR AGED 45 LOWER PRIMARY SCHOOL ASSISTANT LOWER
PRIMARY SCHOOL KELAMANGALAM THAKAZHI ALAPPUZHA RESIDING AT
AMBILY (VATTAPARAMBIL) NORTH PILAPUZHA HARIPAD P.O PIN 690514

BY ADV. SRI.P.MARTIN JOSE

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF GENERAL EDUCATION
SECRETARIAT TRIVANDRUM
2. THE DIRECTOR
PUBLIC INSTRUCTIONS TRIVANDRUM- 695001
3. THE DEPUTY DIRECTOR OF EDUCATION
ALAPPUZHA DISTRICT
4. THE ASSISTANT EDUCATIONAL OFFICER
THALAVADY ALAPPUZHA-688002
5. THE MANAGER
LOWER PRIMARY SCHOOL KELAMANGALAM THAKAZHI ALAPPUZHA
6. SMT.SINI M.NAIR
W/O.UNNIKRISHNAN NAIR AGED ABOUT 40
HEADMISTRESS IN CHARGE LOWER PRIMARY SCHOOL
KELAMANGALAM THAKAZHI ALAPPUZHA
RESIDING AT NANDANAM KELAMANGALAM P.O PIN 688562

R5-R6 BY ADV. SRI.V.A.MUHAMMED
R5-R6 BY ADV. SRI.K.E.HAMZA
R5-R6 BY ADV. SRI.V.RAJASEKHARAN NAIR
R1, R3 BY ADV. GOVERNMENT PLEADER SRI. V.A.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-11-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1 TRUE COPY OF ORDER DATED 12-6-2009 PASSED BY 4TH RESPONDENT.

EXT.P2 TRUE COPY OF ORDER DATED 31-10-2009 PASSED BY 3RD RESPONDENT.

EXT.P3 TRUE COPY OF ORDER DATED 23-6-2010 PASSED BY 2ND RESPONDENT.

EXT.P4 TRUE COPY OF REVISION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 27-09-2010

EXT.P5 TRUE COPY POF REMINDER DATED 18-01-2011 SEND TO THE 1ST RESPONDENT.

EXT.P6 TRUE COPY OF TRUE COPY OF ORDER DATED 9-12-2011 PASSED BY 1ST RESPONDENT.

RESPONDENTS' EXHIBITS :

EXT.6(A) - TRUE COPY OF THE ORDER NO. B/1738/03/K.DIS. OF THE ASSISTANT EDUCATIONAL OFFICER DATED 1.12.2003.

EXT.R6(B) - TRUE COPY OF THE ORDER OF APPOINTMENT OF THE 6TH RESPONDENT DATED 1.6.2004 AND THE APPROVAL THEREOF DATED 7.7.2004.

EXT.R6 (C) - TRUE COPY OF THE DECLARATION OF PROBATION OF THE 6TH RESPONDENT PASTED IN THE SERVICE BOOK DATED 21.6.2005.

TRUE COPY

P.A. TO JUDGE

AL/-

P.V.ASHA, J.,

W.P.(C) No.9263 of 2012

Dated this the 22nd day of November 2014

JUDGMENT

Asha, J.,

Petitioner who claimed promotion as Headmistress in an aided school under the management of 5th respondent school, is challenging the orders Exts.P1, P2, P3 & P6 by which all the educational authorities including Govt rejected her appeals/revisions against orders promoting 6th respondent as Headmistress and rejected her claim for promotion as Headmistress.

2. Petitioner was originally appointed as Lower Primary School Assistant (LPSA for short) in A.M.Lower Primary School, Mangalam, Malappuram District on 31.7.1993. On the basis of her request, she was granted inter-management transfer and accordingly she joined the 5th respondent school on 24.6.2003. The order of transfer is produced by 6th respondent as Ext.R6(a) which indicates that she was transferred to the 5th respondent school, based on the declaration of the Manager, Kelamangalam LP school,

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(where the petitioner was working prior to the transfer), of the petitioner and of the Manager of the 5th respondent School, on condition that she will be treated as junior to the junior most teacher under the management.

3. A vacancy of Headmaster arose in the 5th respondent school on 1.5.2004, consequent to a retirement. The Manager appointed 6th respondent as Headmistress as per Ext.R6(b) order dated 1.6.2004, which was approved with effect from 1.6.2004 as per endorsement dated 7.7.2004 of the Assistant Educational Officer, Thalavady, as seen from Ext R6(b).

4. According to the petitioner, she was the teacher entitled to promotion against that vacancy in preference to the 6th respondent, as she was having the longest total service as LPSA, by virtue of initial appointment in AMLPS, Mangalam from 31.7.1993, whereas the 6th respondent was having service as LPSA only from 1.12.1997 onwards. Learned counsel for the petitioner pointed out that petitioner was having 9 years and 10 months' service at the time when she joined 5th respondent school in 2003, whereas the 6th respondent was having only less than 7 years service when the vacancy arose in the post of Headmaster on 1.5.2004.

5. Aggrieved by the promotion granted to 6th respondent, petitioner approached the Assistant Educational Officer, Thalavady in appeal, which was rejected as per Ext.P1 order dated 12.6.2009. Her second appeal to the Deputy Director of Education, Alappuzha was also rejected as per Ext.P2 order dated 31.10.2009. The revision petition filed before the Director of Public Instructions was rejected as per Ext.P3 order dated 23.6.2010. By Ext.P6 order dated 9.12.2011, Govt also rejected her revision petition.

6. All these statutory appeals/revision were rejected on the ground that, on account of the inter management transfer granted to petitioner, in accordance with Rule 13 of Chapter XIV A of KER, based on her own request, she became the junior most in the 5th respondent school as on the date of her transfer; i.e. 24.6.2003. All the Educational authorities found that 6th respondent was the senior most qualified LPSA, with the longest continuous service under the 5th respondent school and hence they upheld her promotion as Headmistress.

7. Petitioner challenges all these orders on the ground that, the services rendered by the petitioner in the former school is not lost on account of inter management transfer and there is no

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reason to deny her promotion, on account of an inter-management transfer, effected at a time when she had completed almost 10 years' service as LPSA. According to her, being an LPSA with the longest continuous service in the post from 31.07.1993, she should have been granted promotion; the inter-management transfer does not take away the service rendered by her in the previous school and she was the person, eligible to be appointed as Headmistress when the vacancy arose on 1.5.2004. According to the petitioner, the only disqualification she has incurred on transfer to the 5th respondent school is a mere change in her position in the seniority list, which cannot have any relevance for promotion as Headmistress in the LP School.

8. I heard the learned counsel appearing on either side. Learned counsel for the petitioner vehemently argued that going by Rule 45A of Chapter XIV A of KER, the petitioner was entitled to promotion as Headmistress in preference to any other teacher in the 5th respondent School. Relying on the Full Bench decisions reported in ***Sasidharan Nair v. State of Kerala [2003 (1) KLT 998]*** and ***Pushparaj v. Manoharan [2006 (2) KLT 951]***, the learned counsel for the petitioner asserted that seniority list

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of LPSAs is irrelevant as far as promotion to the post of Headmaster in LP School is concerned. On the other hand, the contention of the learned counsel appearing for the 6th respondent as well as the learned Senior Govt Pleader is that the Full Bench decisions relied upon by the petitioner, do not apply to the facts and circumstances arising in this case and promotion is made purely based on seniority of LPSAs: petitioner who came to the School as the junior most, cannot be granted promotion in preference to her seniors in the School.

9. In this context it is necessary to examine the relevant provisions in KER, relating to promotion to the post of Headmaster in LP School. Rule 43 of Chapter XIVA of KER provides that subject to Rule 44, 45 and 51A and considerations of efficiency and any general order that may be issued by Govt, vacancies in any higher grade of pay shall be filled up by promotion of qualified hands in the lower grade according to seniority. Appointment to the post of Headmasters in LP Schools are governed by Rule 45A, which read as follows:

"45A. Subject to rule 44, when the post of Headmaster of a complete L. P. School is vacant or when an incomplete L. P. School becomes complete the post shall be filled up from among the qualified teachers on the staff of the school or schools under the educational agency. The person appointed as Headmaster shall have passed S. S. L. C. or equivalent examination with T T C issued by the Board of Public

Examination, Kerala or T. C. H. issued by the Karnataka Secondary Education Examination Board, Bangalore or a pass in Pre-degree Examination with Pedagogy as an elective subject conducted by the University of Kerala or any other equivalent training qualification prescribed for appointment as Primary School Assistant. In the case of those who are continuing as teachers with Standard VII or its equivalent with H.E.T.T.C. or its equivalent training qualification they shall have 12 years of continuous qualified service as Assistant for appointment as Headmasters of Lower Primary School.

Note : -The language / Specialist teachers according to their seniority in the combined seniority list of teachers shall also be appointed as Headmaster of L. P. School or schools under an Educational Agency, provided the teacher possesses the prescribed qualifications for promotion as Headmaster of L. P. Schools on the date of occurrence of vacancy."

Rule 44 reads as follows:

"44. (1) The appointment of Headmasters shall ordinarily be according to seniority from the seniority list prepared and maintained under clauses (a) and (b) as the case may be of rule 34. The manager will appoint the Headmaster subject to the Rules laid down in the matter. A teacher if he is aggrieved by such appointment will have the right of appeal to the Department Note: Whenever the Manager intends to appoint a person as Headmaster other than the senior claimant, the Manager shall obtain a written consent from such senior claimant renouncing his claim permanently. Such consent shall have the approval of the Educational Officer concerned."

10. Thus it can be seen that Rule 45A read with Rule 44 of Chapter XIVA provides that the senior most qualified hand as per the seniority list of LPSAs prepared under Rule 34 shall be appointed as Headmaster in the LP School.

Rule 34 provides as follows:

"34. Every Management shall prepare and maintain in Form 11A a staff list otherwise called the seniority list of teachers as specified below:-

- (a) In the case of High Schools, a combined seniority list of teachers specified in clauses (ii) and (iiA) of rules 3, Chapter XXIII shall be prepared.*

- (b) *In the case of Upper Primary School and Lower Primary school a combined seniority list of teachers if any, specified in clauses (iii), (iv) and (V) of Rule 3, Chapter XXIII shall be prepared."*

11. The criteria for determining seniority is provided only in Rule 37, which reads as follows:

*"37. (1) Seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit provided he is duly qualified for the post
(2) In the case of teachers in the same grade in the same unit whose date of commencement of continuous service is the same, seniority shall be decided with reference to the date of first appointment. If the date of first appointment is also the same, seniority shall be decided with reference to age, the older being the senior."*

12. Therefore from the above provisions i.e Rules 34,37, 43, 44 and 45A, it can be seen that (i) the only qualification required for promotion as Headmaster in LP School is SSLC with T T C; (ii) the promotion to the post of Headmaster in LP School is to be made by appointing the senior most teacher from the seniority list of LPSAs maintained for that unit and (iii) the position of the teachers in the seniority list of LPSAs is to be arranged on the basis of the length of continuous service in the grade of LPSAs in that unit. Petitioner admittedly joined the 5th respondent School only on 24.06.2003, based on her own request, on inter management transfer, after furnishing her willingness to be treated as the junior to the junior most teacher in the School. Inter management transfer is governed by Rule

11. The consequences of the transfer is provided in Rule13 of Chapter XIVA of KER, which reads as follows:

"13. Teachers who are transferred as per these Rules will continue to receive in the latter school the pay and the scale of pay they were receiving in the former school provided they are transferred to a post carrying the same scale of pay, and their rank in the new school will be fixed next below the junior most teacher in that particular grade in that school, except in the case of transfers under Rule 10 in which case the existing seniority will continue."

13. In the present case the petitioner is admittedly junior to 6th respondent, with continuous service in the post of LPSA in 5th respondent School from 24.06.2003 onwards only, whereas the 6th respondent has got continuous service as LPSA from 01.12.1997 onwards. It is an admitted fact that the petitioner joined the 5th respondent school on inter management transfer, on condition that the teacher she has to join as junior most teacher in the transferee school as on the date of transfer and on the basis of her written willingness for the same. Her service in another school will not be counted for seniority in the unit of 5th respondent School. As far as promotion to the post of Headmaster in a lower primary school is concerned, there is no particular eligibility criteria prescribed, other than the qualification of SSLC and TTC. Therefore the Manager promoted the 6th respondent, rightly, as she is the senior most teacher in that

School. Therefore the order passed by the manager promoting the 6th respondent as Headmistress or the orders passed by the educational authorities upholding that promotion and rejecting the appeal and revision petitions are perfectly in accordance with law.

14. Despite all these the learned Counsel for Petitioner asserts petitioner should have been granted the promotion, relying on the following observations of the Full Bench in paragraph 13 and 20 in the judgment **Pushparaj v. Manoharan (2006 (2) KLT 951)**:

*"13. From a reading of the above paragraphs in the said judgment it is clear that in that case the decision of the Court was on a general question as to whether or not a teacher (**whether of High School or of U.P. School or L.P. School**) loses the benefit of past service on transfer from one school to another which is under a different management for the purposes of promotion and not with particular reference to promotion to the post of Headmaster of a High School in accordance with R.44A alone."*

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*"20. Therefore, we have no hesitation to hold that the ratio of the decision in Sasidharan Nair's case, even though the fact situation in that case required resolution of a dispute in the context of R.44A, was rightly extended to promotions under R.45 also, as a general proposition of law that, for the purposes of promotion as Headmaster of an aided school, **whether of High School or U.P. School or L.P. School**, a teacher does not lose the benefit of past service on transfer from one school to another, which is under a different management, for deciding the eligibility conditions prescribed, since the Rule itself does not expressly state that such service shall be in the same school itself."*
(emphasis supplied)

15. It is evident that the issue which arose before either of the

judgments of the Full Bench were not with respect to the promotion to the post of Headmaster in LP School, where no separate eligibility criteria is prescribed as in the case of Headmasters in UP School and that of High Schools at the relevant time. The Full Bench has made it clear that the service rendered by a teacher prior to transfer to a school under different management is not wiped out except for seniority. It has not held that seniority will not be lost on inter management transfer or that promotion to the post of LPSA should be made contrary to Rule 45 A of KER ignoring the seniority. It is pertinent to note that in **Pushparajan Vs Manoharan (1996(2)) KLT 951**), the Full Bench was dealing with promotion to the post of Headmasters in UP Schools, under R.45 of Chapter XIV A of the KER, as it stood at the relevant time. As per that Rule, a graduate teacher with B.Ed or other equivalent qualification with 5 years teaching experience had to be preferred in case he has got a service equal to half of the period of service of the senior-most undergraduate teacher. It was in that context that this court held that the "service" or "teaching experience" mentioned therein need not be in the same School and that the service rendered by the teacher prior to inter management transfer can be reckoned towards the said service and such service is not completely wiped out. Similarly in the earlier judgment Saidharan Nair Vs State of Kerala 2003(1) KLT 998 the Full Bench of this Court was considering the issue relating to promotion to

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the post of Headmaster in High School under R.44A, according to which the minimum service qualification was 12 years of continuous graduate service with pass in the tests in Kerala Education Act and Rules and Account test (lower) conducted by the Kerala Public Service Commission. It was in that context that this court held that 12 years graduate service will take in the service rendered prior to transfer. There also what was held was that except for seniority, the service prior to transfer can be reckoned.

16. The provisions contained in the rules governing promotion as Headmasters in High School, UP School and LP School i.e Rule 44A, 45 and 45A are distinct and different. At any rate none of these decisions has laid down any proposition that seniority will not be lost on inter management transfer or that promotion to the post of Headmaster in LP School is to be made in disregard of the seniority of LP School Assistants, or that it cannot be made as per rule 45A. Therefore I am unable to accept the contentions raised on behalf of the Petitioner.

17. In the light of the specific provisions in Rule 11 read with 13 of Chapter XIVA of KER as well as the declarations made by the petitioner furnishing her willingness to be junior to junior most; by the managers to treat her as the junior most, petitioner who joined the 5th respondent school only on 24.06.2003 , after

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availing inter management transfer, cannot stake any valid claim for promotion as Headmistress against the vacancy, which arose on 1.4.2004, when the 6th respondent, with continuous service in the very same school from 01.04.1997 was available.

18. In the aforesaid circumstances, I do not find any merit in the Writ Petition and hence no circumstance to interfere under Article 226 of the Constitution of India.

The Writ Petition fails and is dismissed.

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

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P.A to Judge