

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY ,THE 22ND DAY OF NOVEMBER 2018 / 1ST AGRAHAYANA, 1940

WP(C) .No. 17588 of 2017

PETITIONER:

BEENA VARGHESE

W/O SAJU T.A ABRAHAM, AGED 53 YEARS, NOW WORKING AS  
HSA (MATHS), MAR ATHANASIOUS HIGH SCHOOL,  
NEDUIMBASSERY, ATHANI P.O. ALWAYE- 682 106, RESIDING  
AT THATHAMPILLIL HOUSE, ATHANI P.O. ERNAKULAM- 683  
585

BY ADV. SRI.JAMES ABRAHAM (VILAYAKATTU)

RESPONDENTS:

- 1 STATE OF KERALA  
REP. BY ITS SECRETARY, GENERAL EDUCATION DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM- 695 001
- 2 DEPUTY DIRECTOR  
DIRECTORATE OF DEPUTY DIRECTOR OF EDUCATION,  
ERNAKULAM- 682 030
- 3 THE DISTRICT EDUCATIONAL OFFICER  
ALWAYE- 682 106
- 4 THE MANAGER  
MAR ATHANASIOUS HIGH SCHOOL, NEDUMBASSERY, ATHANI P.O  
ALWAYE- 682 106

BY ADVS.

GOVERNMENT PLEADER

SRI.K.A.ANISH

SRI.K.PAUL KURIAKOSE

SRI.T.A.RAFEEK (CHERTHALA)

BY GOVERNMENT PLEADER, SRI. S.GOPINATHAN (SR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
22.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## J U D G M E N T

The petitioner Smt. Beena Varghese who was appointed as HSA (Maths) with effect from 01/07/1986. This appointment was overlooking a claim under Rule 43, Chapter XIVA of the Kerala Education Rules, 1959. The Government ultimately settled the claim under Rule 43 KER by Ext.P2 Order dated 14/03/2003. While upholding Rule 43 KER claimant, the Government ordered as follows:

*“The case is related to 1986-'87. At this distance of time it is not proper to oust the teachers who had got approval from 1986-'87 onwards and continuing as such. Therefore, Fr.Varghese and Smt.Sona Cherian will be given notional promotion with effect from 1986-'87 without any back arrears. Fr.C.A.Poulose and Smt.Beena Varghese will be accommodated in the resultant vacancies of UPSAs.”*

2. By virtue of the above Order the petitioner was reverted as a UPSCA from 01/07/1986 to 31/12/1989. Admittedly the petitioner was accommodated in the vacancy from 01/01/1990 onwards.

3. The present dispute is regarding the re-fixation of salary of the petitioner. Consequent upon upholding Rule 43 KER claimant the petitioner could naturally be reverted to a vacancy of UPSCA. The point arose for

consideration is whether salary required to be re-fixed consequent upon the Order passed by the Government.

4. There is no dispute in the fact that the petitioner had worked as HSA (Maths) during the relevant period. No salary was ordered to be paid to the claimant. They were given only notional promotion with effect from the date on which the petitioner was appointed as HSA (Maths). The Government had not sustained any loss. On the other hand, the petitioner worked as HSA. If the Manager had irregularly appointed the petitioner and if the State has suffered any loss, it is open for the State to recover such loss from the Manager. The petitioner enjoyed this benefit for more than thirty years. If the present Order is not implemented that would be too inequated. Taking note of the fact that the petitioner served as HSA and claimant was given only notional promotion, I am of the view that the petitioner's original pay shall be restored and shall not be revised.

5. The learned Government Pleader however vehemently opposed and particular reference to para(7) of the counter affidavit filed by the 3<sup>rd</sup> respondent argued that the Manager could not have appointed fresh hands from open source. As already adverted, if the State has suffered any loss it is open for the State to recover the same from the Manager. Any how, as of

now from the records produced it can be seen that the claimant was given only notional promotion and the State has not suffered any loss. That be the case, the writ petition is accordingly allowed by quashing the impugned order to the extend as above. The pay of the petitioner shall be restored as she enjoyed prior to Ext.P6 Order dated 16/03/2017. Arrears of salary if any, setting aside Ext.P6 Order shall be given to the petitioner within a period of four months. It is made clear that the Department is free to initiate proceedings against the Manager for recovering any loss suffered by the State consequent upon Ext.P6 Order of this Court.

Accordingly, the writ petition is disposed of as above.

SD/-

A.MUHAMED MUSTAQUE

JUDGE

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## **APPENDIX**

### **PETITIONER'S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE G.O (RT) 378/90/G.EDN DATED 3-2-1990 ISSUED BY THE 1ST RESPONDENT
EXHIBITP2	TRUE COPY OF THE G.O (RT) 997/03/G.EDN DATED 14-03-2003
EXHIBITP3	TRUE COPY OF THE ORDER NO.D5/12730/14 DATED 6-8-2015 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P4	TRUE COPY OF THE JUDGMENT DATED 17-12-2016 IN WPC NO.32888/2015
EXHIBITP5	TRUE COPY OF THE ORDER NO.46/2015 DATED 29-02-2016 BY THE 4TH RESPONDENT
EXHIBITP6	TRUE COPY OF THE ORDER NO.B5/393/2016/DIS DATED 16-03-2017 ISSUED BY THE 3RD RESPONDENT
EXHIBIT P7	TRUE COPY OF THE ORDER DATED 11-4-2017 IN WPC NO.12919/20917
EXHIBIT P8	TRUE COPY OF THE CERTIFICATE DATED 23.03.2018

**RESPONDENTS EXHIBITS:** NIL

\\TRUE COPY//

PA TO JUDGE

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