

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 7<sup>TH</sup> DAY OF DECEMBER 2022/16TH AGRAHAYANA,  
1944

WA NO. 1021 OF 2021

AGAINST THE JUDGMENT DATED 05.03.2021 IN WP(C) 34725/2019

OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

NEETHA LUKOSE,  
AGED 58 YEARS  
WIFE OF M.T.BABU (LATE), MANEMEL, KARUKALTHRA,  
CRA-99, CHENCHERRY, NALANCHIRA,  
THIRUVANANTHAPURAM DISTRICT-695 015.  
BY ADVS.  
V.A.MUHAMMED  
M.SAJJAD  
P.A.JENZIA

RESPONDENTS/RESPONDENTS:

- 1 THE STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY, GENERAL EDUCATION  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695  
001.
- 2 THE DIRECTOR OF GENERAL EDUCATION,  
JAGATHY, THIRUVANANTHAPURAM-695 014, (SHOWN IN  
THE CAUSE TITLE OF THE CERTIFIED COPY OF THE  
JUDGMENT AS DIRECTOR GENERAL OF EDUCATION).
- 3 THE DEPUTY DIRECTOR OF EDUCATION,  
THIRUVANANTHAPURAM-695 001.
- 4 THE DISTRICT EDUCATIONAL OFFICER,  
THIRUVANANTHAPURAM-695 001.

5 THE MANAGER, ST.JOSEPH'S HIGHER SECONDARY  
SCHOOL,  
THIRUVANANTHAPURAM-695 001.  
BY ADV.A.J.VARGHESE, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
07.12.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**C.R.**

**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Writ Appeal No.1021 of 2021**  
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**Dated this the 7<sup>th</sup> day of December, 2022.**

**JUDGMENT**

**P.B.Suresh Kumar, J.**

This appeal is directed against the judgment dated 05.03.2021 in W.P.(C) No.34725 of 2019. The appellant was the petitioner in the writ petition. Parties and documents are referred to in this judgment, as they appear in the writ petition.

2. The petitioner was appointed as an Upper Primary School Teacher in St.Joseph's Higher Secondary School, Thiruvananthapuram (the School), initially in a temporary vacancy for the period from 28.07.2010 to 31.12.2013. In the meanwhile, another temporary vacancy arose in the School on 01.10.2013 and the Manager of the School shifted the petitioner to that vacancy. The petitioner was accordingly working in the said vacancy till 13.01.2014. The said appointment was approved initially on daily wage basis. Ext.P2 is the order of approval of the said appointment.

Immediately on termination of the said vacancy, the petitioner was appointed in another temporary vacancy which arose in the School on 14.01.2014. The said appointment was also approved initially only on daily wage basis under two spells namely, 14.01.2014 to 31.03.2014 and from 01.06.2014 to 13.01.2015. Ext.P3 is the order of approval of the said appointment. As the appointments were approved only on daily wage basis, without vacation salary, the Manager of the School challenged Exts.P2 and P3 orders in appeal before the Deputy Director of Education, and in the said appeal, the Deputy Director of Education directed the Educational Officer to approve the appointment of the petitioner for the period from 01.10.2013 to 31.03.2014 and from 02.06.2014 to 13.01.2015 on regular scale. Ext.P9 is the order issued by the Deputy Director of Education in this regard. Dissatisfied with Ext.P9 order, inasmuch as the same declines salary to the petitioner for the period of vacation after the academic year 2013-14, the Manager preferred a revision petition against the said order before the then Director of Public Instruction, and in terms of Ext.P12 order, the Director affirmed Ext.P9 order. Ext.P12 order was though challenged by the petitioner in revision before the Government, in terms of Ext.P14 order, the Government affirmed Ext.P12 order.

3. In the meanwhile, on termination of the vacancy covered by Ext.P3 order, the petitioner was appointed again in the School in another temporary vacancy for the period from 14.01.2015 to 31.05.2017. Immediately thereupon, another temporary vacancy arose in the School on 01.06.2015. The Manager shifted the appointment of the petitioner to the said vacancy for the period from 01.06.2015 to 31.03.2017. As orders have not been passed approving the appointment of the petitioner for the period from 14.01.2015 to 31.05.2017 before the appointment of the petitioner was shifted to the vacancy which arose on 01.06.2015, the Educational Officer approved the said appointment of the petitioner only for the period from 14.01.2015 to 31.03.2015 on daily wage basis. Ext.P4 is the order issued by the Educational Officer in this regard. The appointment of the petitioner for the period from 01.06.2015 to 31.03.2017 was, however approved by the Educational Officer in the meanwhile on 31.01.2017. Ext.P5 is the order issued by the Educational Officer in this regard. According to the petitioner, the Educational Officer ought to have approved the appointment covered by Ext.P4 order on regular scale and she, therefore, challenged Ext.P4 order before the Government on that ground. Ext.P16 is the representation preferred by the petitioner in

this regard before the Government. Ext.P16 representation was rejected by the Government in terms of Ext.P18 order. The writ petition was preferred challenging Exts.P14 and P18 orders.

4. The learned Single Judge dismissed the writ petition taking the view that since the petitioner has not challenged the various orders approving her appointment under different spells in the manner referred to above and since those orders have become final, the petitioner is not entitled to any relief in the writ petition. The petitioner is aggrieved by the said decision of the learned Single Judge and hence, this appeal.

5. The learned counsel for the petitioner contended, at the outset, that the view taken by the learned Single Judge that the petitioner has not challenged the orders approving her appointments in the manner referred to above, is incorrect. According to the learned counsel, the learned Single Judge, in the circumstances, ought to have considered the case of the petitioner on merits. As regards the merits of the matter, it was argued by the learned counsel that insofar as the petitioner was working on regular scale right from 01.10.2013 to 31.03.2014 without interruption, there is absolutely no justification to decline her salary for the vacation after the academic year 2013-14. It was also argued by the

learned counsel that the appointment of the petitioner for the period from 14.1.2015 to 31.05.2017 being an appointment for a period spreading over more than one academic year, there was absolutely no justification to approve only a portion of the said period from 14.01.2015 to 31.03.2015 on daily wage basis so as to deprive her regular scale for the said period.

6. Heard the learned counsel for the petitioner as also the learned Government Pleader.

7. As revealed from the narration of facts, the view taken by the learned Single Judge that the petitioner has not challenged the various orders approving her appointment, does not appear to be fully correct. Be that as it may, we therefore propose to deal with the case of the petitioner on merits.

8. The grievance of the petitioner in the writ petition is mainly two fold. The first part is that insofar as the petitioner was working on regular scale right from 01.10.2013 to 31.03.2014 without interruption, there was absolutely no justification to decline her salary for the vacation after the academic year 2013-14. The statutory provision dealing with payment of vacation salary is Rule 49 of Chapter XIV-A of the Kerala Education Rules. Rule 49 reads thus:

“Qualified teachers except Headmasters appointed in vacancies which are not permanent which extend over the summer vacation and who continue in such vacancies till the closing date shall be retained in the vacancies during the vacation, if their continuous service as on the closing day is not less than eight months. The teachers so retained shall be entitled to the vacation salary. These teachers shall be relieved on the closing day if their continuous service as on that day is less than the aforesaid period. This rule shall not apply to teacher appointed in training vacancies.”

As evident from the extracted Rule, teachers appointed in vacancies which are not permanent are entitled to vacation salary if the vacancy in which they are appointed extend over the summer vacation, if their continuous service as on the closing day is not less than eight months. The petitioner was denied vacation salary after the academic year 2013-2014 as she did not have continuous service of eight months from the date of her appointment till the closing day. According to the petitioner, she did have continuous service of more than eight months as on the closing day before the summer vacation if her service is reckoned from 01.10.2013. She admits that her continuous service from 01.10.2013 to 31.03.2014 was under two different appointments against two different vacancies which were not permanent. The pointed question therefore is as to whether service under two different appointments



against two different vacancies which are not permanent can be reckoned for the purpose of claiming vacation salary. The argument of the learned counsel for the petitioner is that since the expression used in the provision is “vacancies” and not vacancy, there is no justification in the stand that the expression “continuous service” used in the provision shall be in relation to the vacancy extending over the academic year. On a close reading of the Rule, it appears to us that for the purpose of claiming vacation salary, the teacher should have a continuous service of eight months in the vacancy which extends over summer vacation. We take this view as we find that the expression “vacancies” has been used in the provision, as there would be different types of vacancies which are not permanent and the purpose of the Rule is to confer on all those who are appointed in such vacancies, the benefit of vacation salary, provided the conditions stipulated in the provision are duly satisfied. If the provision is understood in the said fashion, there cannot be any doubt to the fact that the expression “continuous service” has been used in the context of those vacancies which extend over summer vacation in which the teacher is appointed. Needless to say, there is absolutely no basis for the grievance voiced by the petitioner in this regard.

9. The second part of the grievance of the petitioner is that her appointment for the period from 14.01.2015 to 31.05.2017 ought not have been split up by the Educational Officer for the purpose of granting approval. According to the learned counsel, in terms of Rule 8 of Chapter XIV-A KER, the appointment of the petitioner for the said period should have been approved by the Educational Officer within 30 days and had this statutory obligation been discharged by the Educational Officer, the petitioner would have been entitled to regular scale for the entire period of appointment. We do not find any merit in this grievance voiced by the petitioner as well. True, as already indicated, on termination of the vacancy covered by Ext.P3 order, the petitioner was appointed again in another temporary vacancy for the period from 14.01.2015 to 31.05.2017. As noted, immediately thereupon, another temporary vacancy also arose in the School on 01.06.2015 and the Manager, for reasons best known to him, shifted the appointment of the petitioner to that vacancy. As orders have not been passed approving the appointment of the petitioner for the period from 14.01.2015 to 31.05.2017 before the appointment of the petitioner was shifted to the vacancy which arose on 01.06.2015, the Educational Officer approved the said appointment of the petitioner

for the period from 14.01.2015 to 31.03.2015 only on daily wage basis. The Educational Officer cannot be blamed for having approved the appointment of the petitioner in the said fashion, as the petitioner accepted her appointment in the vacancy which arose on 01.06.2015. Having accepted appointment in the vacancy which arose on 01.06.2015, the petitioner cannot be heard to contend that her earlier appointment in the vacancy for the period from 14.01.2015 to 31.05.2017 should have been approved by the Educational Officer.

The writ appeal, in the circumstances, is without merits and the same is, accordingly, dismissed.

**Sd/-**

**P.B.SURESH KUMAR, JUDGE.**

**Sd/-**

**C.S.SUDHA, JUDGE.**

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