

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 2ND DAY OF SEPTEMBER 2022 / 11TH BHADRA, 1944

WP(C) NO. 26553 OF 2014

PETITIONER:

SREEJITH T.,
UPPER PRIMARY SCHOOL ASSISTANT,
A.M.UPPER PRIMARY SCHOOL, PUNNATHALA P.O.,
VIA VALANCHERRY, MALAPPURAM DISTRICT.
BY ADV DR.GEORGE ABRAHAM

RESPONDENTS:

- 1 THE MANAGER,
A.M.UPPER PRIMARY SCHOOL, PUNNATHALA P.O.,
VIA VALANCHERRY, MALAPPURAM DISTRICT-679 566.
- 2 THE ASSISTANT EDUCATIONAL OFFICER,
KUTTI PURAM-676 505.
- 3 THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-695 001.
- 4 STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 5 ASHA P.VASUDEVAN,
UPPER PRIMARY SCHOOL ASSISTANT, A.M.UPPER
PRIMARY SCHOOL, PUNNATHALA P.O., VIA
VALANCHERRY, MALAPPURAM DISTRICT-679 566.

W.P.(C) Nos.26553 of 2014
& 39925 of 2015

-: 2 :-

6 THE DISTRICT EDUCATIONAL OFFICER,
TIRUR-679 576.
SRI.K.T.SHYAMKUMAR
SRI.A.J.VARGHESE SR.GP
SRI.K.MANOJ CHANDRAN
SRI.K.K.MOHAMED RAVUF
SRI.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.09.2022 ALONG WITH W.P.(C)NO.39925/2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) Nos.26553 of 2014
& 39925 of 2015

-: 3 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 2ND DAY OF SEPTEMBER 2022 / 11TH BHADRA, 1944

WP(C) NO. 39925 OF 2015

PETITIONER:

ASHA P.VASUDEVAN
UPSA, A.M.U.P SCHOOL, PUNNATHALA,
MALAPPURAM DISTRICT.
BY ADV SRI.K.T.SHYAMKUMAR

RESPONDENT:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DISTRICT EDUCATIONAL OFFICER,
TIRUR, MALAPPURAM DISTRICT-676 101.
- 3 ASSISTANT EDUCATIONAL OFFICER,
KUTTIPPURAM, MALAPPURAM DISTRICT-676 001.
- 4 MANAGER,
A.M.U.P. SCHOOL, PUNNATHALA,
MALAPPURAM DISTRICT-676 103.
- 5 SREEJITH
LPSA, A.M.U.P. SCHOOL, PUNNATHALA,
MALAPPURAM DISTRICT-676 103.
- *6 ADDL.R6 HAJARA C.P.,
CHUNDANVEETIL, PADAYOTTIL, B.P. ANGADI,
TIRURU, MALAPPURAM DISTRICT.

W.P.(C) Nos.26553 of 2014
& 39925 of 2015

-: 4 :-

*7 ADDL.R7 SHAHNA K.,
 KUZHIPPAYIL HOUSE, KOLLETH KALPARATH,
 PUNNATHALA, MALAPPURAM DISTRICT.
 (ADDL R6 AND R7 IMPEADED AS PER ORDER DATED
 14-02-2017 IN I.A. 11036/2016)
 SRI.DR.GEORGE ABRAHAM
 SRI.V.A.MUHAMMED
 SRI.M.SAJJAD
 SRI.A.J.VARGHESE SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.09.2022 ALONG WITH W.P.(C)NO.26553/2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) Nos.26553 of 2014
& 39925 of 2015

-: 5 :-

C.R.

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

W.P.(C) Nos.26553 of 2014 & 39925 of 2015

Dated this the 2nd day of September, 2022

J U D G M E N T

P.B.Suresh Kumar, J.

The issues involved in these writ petitions are closely interlinked and they are, therefore, disposed of by this common judgment. Parties and documents are referred to in this judgment for convenience, as they appear in W.P.(C) No.26553 of 2014.

2. The petitioner was appointed in terms of Ext.P1 order as Lower Primary School Assistant (LPSA) in A.M.Upper Primary School, Punnathala (the School) on 01.06.2009 in the leave vacancy of one Sabira Pottachola for the period upto

10.10.2010. The appointment in terms of Ext.P1 was not approved initially by the Educational Officer. The leave granted to Sabira Pottachola was later extended up to 10.10.2015. When the leave of the teacher referred to above was extended up to 10.10.2015, the appointment of the petitioner was also extended up to 10.10.2015 as per Ext.P2 order. The appointment of the petitioner in terms of Ext.P2 order was also not initially approved by the Educational Officer. The Manager though took up the matter relating to the approval of the appointments in terms of Exts.P1 and P2 in appeal before the District Educational Officer, the same was rejected. The decision of the District Educational Officer was challenged by the Manager as also the petitioner before the Director of Public Instruction in separate appeals. In terms of Ext.P3 order dated 09.06.2011, the Director of Public Instruction directed the Educational Officer to approve the appointment of the petitioner from 01.06.2009 to 10.10.2015, if the same is otherwise in order. Pursuant to Ext.P3 order, the appointment of

the petitioner as LPSA for the period from 01.06.2009 to 10.10.2015 was approved by the Educational Officer by making appropriate endorsements in the copies of Exts.P1 and P2 appointment orders.

3. In the meanwhile, a permanent vacancy of LPSA arose in the School on 24.11.2010. The Manager appointed the fifth respondent, who was a Peon in the School since 10.7.2006, in the said vacancy, as according to the Manager, she was entitled to be considered for appointment against the said permanent vacancy in terms of the provisions contained in the Kerala Education Rules (the Rules). According to the petitioner, he was entitled to be considered for appointment against the permanent vacancy which arose in the School on 24.11.2010 as he was a claimant in terms of Rule 51A of Chapter XIVA of the Rules. The petitioner therefore, challenged in revision, the appointment of the fifth respondent in the vacancy which arose on 24.11.2010, before the Government. The Government, in terms of Ext.P8 order, interfered with the appointment of the

fifth respondent and directed the Educational Officer to shift the petitioner to the permanent vacancy instead of the fifth respondent.

4. Ext.P8 order was challenged by the fifth respondent in W.P.(C) No.3230 of 2012. Ext.P10 is the judgment in the said writ petition. In Ext.P10 judgment, this court found that the basic question is as to whether the petitioner is a Rule 51A claimant and Ext.P8 order was passed by the Government without considering the said question. This court, in the circumstances, set aside Ext.P8 order and directed the Government to consider the revision preferred by the petitioner afresh. In the light of the direction issued by this court, the Government considered the revision preferred by the petitioner afresh, and having found that the petitioner is not a Rule 51A claimant, cancelled Ext.P8 order and directed the Educational Officer to approve the appointment of the fifth respondent in the vacancy which arose on 24.11.2010. Ext.P12 is the order issued by the Government in this regard. Ext.P12 order is

under challenge in the writ petition.

5. Since Ext.P12 order is under challenge in the writ petition, the Educational Officer did not implement the direction contained in Ext.P12 order. W.P.(C) No.39925 of 2015 is therefore, filed by the fifth respondent seeking directions to the Educational Officer to implement Ext.P12 order in a time bound manner.

6. Although the petitioner raised grounds in the writ petition to substantiate his case that the fifth respondent is not entitled to be considered for appointment in the permanent vacancy of LPSA which arose in the School on 24.11.2010, on a consideration of the facts and circumstances of the case, we are of the view that it is unnecessary to consider the question relating to the entitlement of the fifth respondent for appointment in the vacancy, for if the petitioner is not a rival claimant for appointment against that vacancy, he cannot have the *locus standi* to challenge the appointment of the fifth respondent against that vacancy. As such, the only question to

be considered is as to whether the petitioner can be said to be a claimant in terms of Rule 51A of Chapter XIVA of the Rules for appointment against the permanent vacancy of LPSA arose in the School on 24.11.2010.

7. The essence of the submissions made by the learned counsel for the petitioner is that the appointments in terms of Exts.P1 and P2 were appointments against two separate vacancies, one against the vacancy for the period from 01.06.2009 to 10.10.2010 and the other against the vacancy for the period from 11.10.2010 to 10.10.2015. According to the petitioner, since the first vacancy was for a period exceeding one academic year, on termination of the said vacancy, the petitioner acquired a right to get reappointment in terms of Rule 51A of Chapter XIVA, and merely for the reason that he was appointed against another vacancy subsequently, he will not lose that right. The learned counsel reinforced the said argument pointing out that the word 'relieved' used in the provision will qualify only for those teachers falling under Rule

49 and Rule 52, and the right based on the third limb of the provision viz, 'on account of termination of vacancies' arises immediately on termination of the vacancy itself.

8. The relevant portion of Rule 51A of Chapter XIVA of the Rules reads thus :

51A. Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in the same or higher or lower category of teaching posts, for which he is qualified that may arise if there is no claimant under rule 43 in the lower category) in schools under the same Educational Agency or an Educational Agency to which the school may be subsequently transferred) provided they have not been appointed in permanent vacancies in schools under any other Educational Agency

Provided that a teacher who was relieved under rule 49 or rule 52 shall not be entitled to preference for appointment under this rule unless such teacher has a minimum continuous service of one academic year as on the date of relief:

Provided further that the first preference under this rule shall be given to protected teachers belonging to the same Educational Agency.

Provided further that preference shall be given to teachers from Teachers Bank for appointment in vacancies as specified in Rule 7 of Chapter XXI.

x x x x

x x x x x

As evident from the plain meaning of the words used in the provision, we are unable to accept the argument advanced by the learned counsel for the petitioner that the word 'relieved' used in the provision will qualify only those teachers falling under Rule 49 and Rule 52, and the right based on the third limb of the provision viz, 'on account of termination of vacancies' arises immediately on the expiry of the vacancy itself, for if the word 'relieved' is not understood as qualifying the third limb as well, the provision would be obscure as far as the teachers falling under the third limb are concerned. In other words, in terms of the provision, only qualified teachers who are relieved as per Rule 49 or Rule 52 or on account of termination of vacancies, shall have preference for appointment to future vacancies. We take this view also for the reason that the provision is not intended to confer a claim for preferential appointment to persons who are already working, but intended only to confer a claim for preferential appointment to those

teachers who were relieved in the contingencies mentioned in the provision and remaining unemployed. The contention of the petitioner is that the vacancy in which he was appointed in terms of Ext.P1 order terminated on 10.10.2010 and that therefore on termination of the vacancy, he became a claimant under Rule 51A of Chapter XIVA on the said date. As noted, the appointment of the petitioner in terms of Ext.P1 order was not initially approved by the Educational Officer. Nevertheless, when the leave granted to Sabira Pottachola was extended up to 10.10.2015, the appointment of the petitioner was also extended up to 10.10.2015, of course by a separate appointment order viz, Ext.P2. Even the said appointment was not approved by the Educational Officer initially. It is in terms of the directions issued by the Director of Public Instruction as per Ext.P3 order, the appointment of the petitioner as LPSA for the period from 01.06.2009 was approved. The relevant portion of Ext.P3 order reads thus:

“Smt. Saleena. K., 51 B claimant as per letter read as 8th paper above has informed that she has permanently

relinquished her claim for appointment under compassionate scheme and that she will not raise any claim for any post that may occur in future. It is noted that the request in the appeal of the Manager dated:29/03/2010 is to approve the appointment from 01/06/2009 to 10/10/10 and that the request in the appeal of Sri Sreejith. T. is to approve his appointment from 01/06/2009 to 10/10/2015 as he was again appointed against the extension of L.W.A. of Smt. Sabira Pottachola from 11/10/2010 to 10/10/2015. It is also noted that the extension of L.W.A. of Smt. Sabira Pottachola from 11/10/2005 to 10/10/2010 and from 11/10/2010 to 10/10/2015 have been sanctioned by Government as per G.O. (Rt) 4736/05/G.Edn., dated:07/10/2005 and GO (Rt) No 4110/10/G.E.,dated:20/09/2010 respectively.

In the above circumstances, it is found that the 51 B claimant has relinquished her claim for appointment permanently. Hence the appeal deserves merit and it is allowed. The Assistant Educational Officer, Kuttippuram is directed to approve the appointment from 01/06/2009 to 10/10/2015 if it is otherwise in order.”

As explicit from the extracted portion of Ext.P3 order, in the matter of issuing the said order, the appointment of the petitioner made in terms of Exts.P1 and P2 was reckoned as a single appointment, as the petitioner was continuing without any break. If the appointment of the petitioner for the period

from 01.06.2009 to 10.10.2015 is reckoned as a single appointment, there cannot be any doubt to the fact that the petitioner would not become a claimant under Rule 51A of Chapter XIVA in respect of the vacancy which arose on 24.11.2010. In other words, the contention of the petitioner that the appointments in terms of Exts.P1 and P2 are appointments against two separate vacancies cannot be accepted. Even otherwise, as noted, the benefit under Rule 51A is conferred only to those teachers who are relieved on termination of vacancy. Admittedly, the petitioner was not relieved on the expiry of the period of the initial appointment, instead he was permitted to continue without break during the extended period of leave of Sabira Pottachola and there was, therefore, no occasion for the Manager of the School to relieve the petitioner on the expiry of the term of appointment made mention of in Ext.P1 order. In other words, the petitioner cannot be treated as a person who was relieved on termination of vacancy before the permanent vacancy arose on 24.11.2010.

That being so, according to us, he cannot be considered as a claimant in terms of Rule 51A of Chapter XIVA.

9. The learned counsel for the petitioner relied on Ext.P6 order of the Government to substantiate the contention of the petitioner that he cannot be deprived of the benefit of Rule 51A merely for the reason that he was accommodated in another vacancy after termination of the initial vacancy. Ext.P6 order on which reliance was placed by the learned counsel for the petitioner reads thus:

"It has been brought to the notice of the Government that there are the cases where the leave substitutes are not regularized against permanent/regular vacancy arising in the respective schools, whereas juniors are accommodated against permanent vacancies.

2. Government are pleased to clarify that the services of leave substitutes will be regularized against the first arising permanent/regular vacancy in the respective schools in the order of seniority."

Going by the recitals in Ext.P6 order, it is evident that the same was intended only to ensure that teachers who were relieved as per Rule 49 or Rule 52 or on account of termination of

vacancies and later accommodated in leave vacancies, get the appointment on the strength of Rule 51A in future permanent vacancies, in preference to their juniors.

10. Ext.P12 order of the Government is, therefore, in order.

In the result, W.P.(C) No.26553 of 2014 is dismissed and W.P.(C) No.39925 of 2015 is allowed directing the official respondents to ensure that the appointment of the fifth respondent in the vacancy which arose on 24.11.2010 is approved in accordance with law. This shall be done within one month.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

Mn

APPENDIX OF WP(C) 26553/2014

PETITIONER EXHIBITS

- EXHIBIT P1-** TRUE COPY OF APPOINTMENT ORDER DATED 1-6-2009 APPROVING THE APPOINTMENT OF THE PETITIONER AS LOWER PRIMARY SCHOOL ASSISTANT FOR THE PERIOD FROM 1-6-2009 TO 10-10-2010.
- EXHIBIT P2-** TRUE COPY OF THE APPOINTMENT ORDER DATED 11-10-2010 SHOWING APPROVAL OF THE PETITIONER.
- EXHIBIT P3-** TRUE COPY OF THE ORDER PASSED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS DATED 9-6-2011.
- EXHIBIT P4-** TRUE COPY OF THE APPOINTMENT ORDER DATED 24-11-2010 ISSUED BY THE MANAGER TO THE 5TH RESPONDENT.
- EXHIBIT P5-** TRUE COPY OF THE ORDER OF THE DIRECTOR OF PUBLIC INSTRUCTIONS DATED 26-11-2010.
- EXHIBIT P6-** TRUE COPY OF THE GOVERNMENT ORDER, G.O. (MS) 275/99/G.EDN DATED 9-11-1999.
- EXHIBIT P7-** TRUE COPY OF THE JUDGMENT IN WPC 24365/2011 DATED 6-9-2011.
- EXHIBIT P8-** TRUE COPY OF THE GOVERNMENT ORDER G.O. (RT) 340/12/G.EDN DATED 11-1-2012.
- EXHIBIT P9-** TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO. 1663/12 DATED 18-10-2012.
- EXHIBIT P10-** TRUE COPY OF THE JUDGMENT DATED 6-11-2013 IN WPC 3230/12.
- EXHIBIT P11-** TRUE COPY OF THE HEARING NOTE SUBMITTED BY THE PETITIONER DATED 30-4-2014.
- EXHIBIT P12-** TRUE COPY OF THE GOVERNMENT ORDER, G.O. (RT) 3537/14/G.EDN DATED 4-9-2014.

W.P.(C) Nos.26553 of 2014
& 39925 of 2015

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RESPOINDENT EXHIBITS

EXHIBIT R5 (A)	TRUE COPY OF THE JUDGMENT IN WA NO.1503 OF 2013.
EXHIBIT R5 (B)	TRUE COPY OF THE APPOINTMENT ORDER ALONG WITH THE APPROVAL GRANTED BY THE EDUCATIONAL OFFICER.
EXHIBIT R5 (C)	TRUE COPY OF THE REPRESENTATION ALONG WITH ITS COVERING LETTER TOGETHER WITH ENDORSEMENT.
EXHIBIT R5 (D)	PHOTOCOPY OF COMMUNICATION DATED 3/6/2015 ALONG WITH THE AUDIT OBJECTION

APPENDIX OF WP(C) 39925/2015

PETITIONER EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE APPOINTMENT ORDER
DATED 24.11.2010.
- EXHIBIT P2: TRUE COPY OF THE ORDER
NO.E2/32585/08/DPI/L.DIS. DATED
26.11.2010.
- EXHIBIT P3: TRUE COPY OF ORDER DATED 25.3.2011 OF
DEO.
- EXHIBIT P4: TRUE COPY OF APPOINTMENT ORDER DATED
1.6.2009.
- EXHIBIT P5: TRUE COPY OF APPOINTMENT ORDER DATED
11.10.2010.
- EXHIBIT P6: TRUE COPY OF JUDGMENT DATED 6.9.2011 IN
WPC NO.24365/2011.
- EXHIBIT P7: TRUE COPY OF DETAILED PETITION DATED
3.1.2012 (WITHOUT ENCLOSURES).
- EXHIBIT P8: TRUE COPY OF ORDER DATED 21.1.2012.
- EXHIBIT P9: TRUE COPY OF JUDGMENT DATED 6.11.2013
IN WPC NO.3230/2012.
- EXHIBIT P10: TRUE COPY OF THE ORDER G.O.
(RT)NO.3537/2014/G.EDN. DATED 4.9.2014.
- EXHIBIT P11: TRUE COPY OF THE INTERIM ORDER PASSED
BY THIS HONOURABLE COURT IN WPC
NO.26553/2014.
- EXHIBIT P12: TRUE COPY OF REQUEST MADE BY THE
PETITIONER TO THE 2ND RESPONDENT ON
28.9.2015.
- EXHIBIT P13 TRUE COPY OF THE ORDER DATED 30.3.2017
OF THE 3RD RESPONDENT.

RESPONDENT EXHIBITS

- EXHIBIT R-4 (A) TRUE COPY OF THE STAFF FIXATION ORDERS
2011-12 TO 2014-2015

W.P.(C) Nos.26553 of 2014
& 39925 of 2015

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EXHIBIT R-4 (B)	TRUE COPY OF THE LETTER OF THE GOVERNMENT DATED 24.09.2016
EXHIBIT R-4 (C)	TRUE COPY OF THE G.O. (RT) NO.451/2017/G.EDN DATED 18.02.2017 OF THE GOVERNMENT.