

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 31ST DAY OF JANUARY 2017/11TH MAGHA, 1938

WP(C).No. 3126 of 2017 (M)

PETITIONER :

**MAYA GOPINATH,
WIFE OF RAJAGOPALAN NAIR, AGED 41 YEARS,
UPPER PRIMARY SCHOOL ASSISTANT, G P M U P SCHOOL
POOTHAMKARA, ADOOR, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SMT.PA.JENZIA**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM -695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM -695 014**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA AT TIRUVALLA -689 101**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA DISTRICT -689 001.**
- 5. THE ASSISTANT EDUCATIONAL OFFICER,
ADOOR, PATHANAMTHITTA DISTRICT -691 523.**
- 6. THE MANAGER, G P M U P SCHOOL,
POOTHAMKARA, ADOOR,
PATHANAMTHITTA DISTRICT -691 523.**
- 7. THE HEADMASTER,G P M U P SCHOOL,
POOTHAMKARA, ADOOR,
PATHANAMTHITTA DISTRICT -691 523.**

R1 TO R5 BY GOVERNMENT PLEADER SRI. B.UNNIKRISHNA KAIMAL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-01-2017, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 3126 of 2017 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE G.O.(P) NO.175/99/G.EDN. DATED 26/7/1999 OF THE GOVERNMENT**
- EXT.P2 TRUE COPY OF THE G.O(P) NO.240/99/G.EDN. DATED 29/9/1999 OF THE GOVERNMENT**
- EXT.P3 TRUE COPY OF THE G.O.(RT) NO.2800/09/G.EDN. DATED 8/7/2009 OF THE GOVERNMENT**
- EXT.P4 TRUE COPY OF THE ENDT. ON RA1-53844/2009/DPI/K.DIS. DATED 3/8/2009 OF THE 2ND RESPONDENT**
- EXT.P5 TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE GOVERNMENT DATED 22/7/2013**
- EXT.P6 TRUE COPY OF THE LETTER NO.44703/L2/2013/E.EDN. DATED 18/2/2016 OF THE GOVERNMENT**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P.V.ASHA, J.

W.P.(C) No.3126 of 2017

Dated this the 31st day of January, 2017

JUDGMENT

The writ petition is filed seeking the following reliefs:

- i. Call for the records relating to Ext.P6 and set aside the original of the same by the issue of a writ of certiorari or other appropriate writ or order.*
- ii. Call for the records relating to Ext.P3 and set aside the original of the same to the extent it denies service and monetary benefits to the petitioner for the period from 19.6.1997 to 31.7.1997 and 15.7.2006 to 25.10.2009 by the issue of a writ of certiorari or other appropriate writ or order.*
- iii. Issue a writ of mandamus or other appropriate writ order or direction commanding the respondents to grant service and monetary benefits to the petitioner for the period from 19.6.1997 to 31.7.1997 and 15.7.2006 to 25.10.2009 forthwith.*

2. In Ext.P6 order the Government stated that the petitioner who was appointed as UPSA by the 6th respondent was given the benefit of protection as a special case. It was also stated that as per order issued in G.O(P) No.240/99/G.Edn dated 29.9.1999, the retrenched period of protected teachers ie. the period during which they stood outside shall be treated as eligible leave or leave without allowance and the period of leave without allowance will not be counted for increment, higher grade, pension and accumulation of earned leave.

3. The petitioner claims salary on the basis of Ext.P3 Government order. Ext.P3 is an order passed by Government based on her petition before the Minister for Education requesting to

approve her appointment as UPSA from 19.6.1997 in order to enable her to enjoy protection as per G.O.(P) No.240/99/G.Edn. dated 29.9.1999, saying that appointment was given to her as UPSA in GPM UPS, Poothamkara from 19.6.1997 in an anticipatory additional division vacancy. The Government considered her case, taking note of the fact that approval was declined to her appointment since there was no sufficient post in the school for accommodating her because there was reduction of one post in the staff fixation for the year 1997-98. The management had shifted the petitioner against another vacancy arose in the school on account of retirement of Headmaster on 31.3.1997 consequent to which one Smt.Gayathridevi was given charge with effect from 1.8.1997. Management had shifted the petitioner to that vacancy. Taking note of the fact that there was division fall in the school and that the date of commencement of continuous service of the petitioner was only from 1.8.1997, Government found that the petitioner was not entitled to get the benefit of protection. Therefore the Government ordered that Smt.Gayathridevi ought to have been given posting as teacher in charge of the school with effect from 1.4.1997 and in that event the petitioner could have been accommodated in the school on 19.6.1997 and accordingly approval could have been granted to her. The

Government in Ext.P3 order ordered that steps shall be taken to approve the appointment of the petitioner with effect from 19.6.1997 without monetary benefit and to grant her the benefit of protection as per G.O.(P) No.240/99/G.Edn dated 29.9.1999.

4. The petitioner has no case that she had ever taken up the said order passed by the Government, challenging the restriction of monetary benefits. It is only in this writ petition that she chose to challenge Ext.P3 Government order, by which protection was granted to her while directing approval with effect from 19.6.1997 without monetary benefit. Therefore, at this stage, the petitioner cannot be heard to say that she is entitled to salary for the said period.

5. Further claim of the petitioner is for deemed appointment as UPSC from 15.7.2006 to 25.10.2009. Petitioner does not even explain the circumstances under which there was break in service. It is seen that the petitioner was kept out of service on reduction of post. When there is reduction of post and consequential retrenchment the period of absence can only be treated as eligible leave or leave without allowance. Therefore the period from 15.7.2006 to 25.10.2009 which is treated as leave without allowance cannot be reckoned for any benefit, in terms of rule 88 of Part I KSR which provides that increment, higher grade etc. will not be available for the said period of

leave without allowance. The claim of the petitioner for benefits for the LWA period, when she has not worked due to reduction of post during 2006-2009 is also unsustainable, apart from being stale.

Under the above circumstances, the petitioner is not entitled to any reliefs sought for in the writ petition. Accordingly, the writ petition is dismissed.

Sd/-
P.V.ASHA
JUDGE

rkc