

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944

WP(C) NO. 7208 OF 2022

PETITIONER/S:

SOUMYA HARIHARAN
AGED 40 YEARS
UPSA, AMUPS, POOVATHANI, THAZHEKODE POST, PERINTHALMANNA,
MALAPPURAM DISTRICT-679341.

BY ADV POOVAMULLE PARAMBIL ABDULKAREEM

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL EDUCATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR OF GENERAL EDUCATION,
OFFICE OF THE DIRECTOR OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM-695014.
- 3 DEPUTY DIRECTOR OF EDUCATION,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM-676519.
- 4 ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
PERINTHALMANNA, MALAPPURAM DISTRICT-679322.
- 5 MANAGER,
AMLPS PONNIAKURSSI NORTH, PONNIAKURSSI POST,
PERINTHALMANNA, MALAPPURAM DISTRICT-679322.

SMT.NISHA BOSE, SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner states that she is working as a UPSA in the AMUP School, Poovathani, an aided school managed by the 5th respondent, with effect from 01.06.2010 onwards. According to the petitioner, her appointment was rejected by the Educational Authorities on the ground that she was accommodated in the newly created post during the economic ban and her appointment was approved with effect from 1.6.2011 only. Seeking approval of appointment, the petitioner is stated to have preferred Ext.P10 revision petition before the 1st respondent, which is pending. The prayer in this writ petition is for expeditious consideration of Ext.P10 within a time frame and with due notice.

2. Sri. P.P.Abdul Kareem, the learned counsel appearing for the petitioner, submitted that it is settled by now that even in cases wherein bonds have not been executed by the Managers, the Managers would be deemed to have executed the bond, and they would be obliged to make appointments from the list of protected teachers, equal to the number of appointments approved during the ban period.

3. The learned Government Pleader submitted that all appointments in additional division vacancies are liable to be apportioned

in the ratio of 1:1 and if the appointment of the protected teacher is not done as provided in G.O.(P) No.10/10/G.Edn. dated 12.1.2010, then the Manager ought to have executed a bond stating that such appointments would be made in accordance with the provisions of the Government Order. It is further submitted that some of the managers have challenged G.O.(P) No.10/10/G.Edn. dated 12.01.2010 and those matters are now pending before the Apex Court.

4. I have considered the submissions advanced. The writ petitioner was appointed during the period when the ban, pursuant to G.O.(P) No.10/10/G.Edn. Dated 12.1.2010, was in force. The appointment of the petitioner was approved only with effect from 1.6.2011 on the ground that there was a ban on appointments at the time of her initial appointment and that the Manager had failed to execute the bond in terms of G.O.(P)No.10/10. A Division Bench of this Court in **State of Kerala and Ors. v. V.S.Suma Devi and Ors.** [judgment dated 1.8.2017 in W.A.No.2111/2015], has held that in the case of non-execution of the bond by the Managers, it should be deemed that bonds have been executed and the Managers would be obliged to make an equal number of appointments when the appointments to additional vacancies made during the ban period are approved. Insofar as the pendency of the petitions instituted by the Managers before the

Hon'ble Apex Court is concerned, the orders passed shall be subject to the final orders that may be passed by the Apex Court in the pending litigation.

5. After having carefully evaluated the contentions raised in this writ petition, the submissions made across the bar and the facts and circumstances, I am of the view that this writ petition can be disposed of by issuing the following directions:

a) The 1st respondent is directed to take up, consider and pass orders on Exhibit P10 revision petition filed by the petitioner with notice to the petitioner as well as the 5th respondent and take a decision, taking note of the law laid down by this Court in **Suma Devi** (supra). Orders shall be passed expeditiously, in any event, within a period of four months from the date of receipt of a copy of this judgment.

b) While considering the revision petitions, the Secretary to Government shall be free to reckon that the manager would be deemed to have executed the bond and also that they would be obliged to make appointments from the list of protected teachers equal to

the number of appointments approved during the ban period. It is made clear that the orders passed by the 1st respondent shall be subject to the final orders passed by the Apex Court in the pending petitions.

c) It would be open to the petitioner to produce a copy of the writ petition along with the judgment before the concerned respondent for further action.

The writ petition is disposed of.

sd/-

RAJA VIJAYARAGHAVAN V
JUDGE

sru

APPENDIX OF WP(C) 7208/2022

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 1.6.2010 ISSUED BY THE 5TH RESPONDENT.

Exhibit P2 TRUE COPY OF THE STAFF FIXATION ORDER NO. D.DIS.C/2118/2010 DATED 18.11.2010 ISSUED BY THE 4TH RESPONDENT.

Exhibit P3 TRUE COPY OF THE ORDER NO. K.DIS.C/1980/10 DATED 15.12.2010 ISSUED BY THE 4TH RESPONDENT.

Exhibit P4 TRUE COPY OF THE APPOINTMENT ORDER DATED 1.6.2010 ISSUED TO THE PETITIONER AS UPSA BY THE 5TH RESPONDENT.

Exhibit P5 TRUE COPY OF THE LETTER NO.60930/J2/G.EDN. DATED 25.10.2011 ISSUED BY THE 1ST RESPONDENT.

Exhibit P6 TRUE COPY OF THE ORDER NO.K.DIS.C/4420/2011 DATED 19.12.2011 ISSUED BY THE 4TH RESPONDENT.

Exhibit P7 TRUE COPY OF THE JUDGMENT DATED 26.7.2017 IN W.A.NO.2592/2015 PASSED BY THIS HON'BLE COURT.

Exhibit P8 TRUE COPY OF THE CIRCULAR NO.100/J2/2017/G.EDN. DATED 11.9.2018 ISSUED BY THE 1ST RESPONDENT.

Exhibit P9 TRUE COPY OF THE G.O.(P) NO.4/2021/G.EDN. DATED 6.2.2021 ISSUED BY THE 1ST RESPONDENT.

Exhibit P10 TRUE COPY OF THE REVISION PETITION DATED 9.2.2022 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

Exhibit P11 TRUE COPY OF THE JUDGMENT DATED 31.1.2022 IN WP(C) NO.3057/2022 PASSED BY THIS HON'BLE COURT.

RESPONDENTS EXHIBITS : NIL