

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 9TH DECEMBER 2009 / 18TH AGRAHAYANA 1930

WP(C).No. 35068 of 2007(Y)

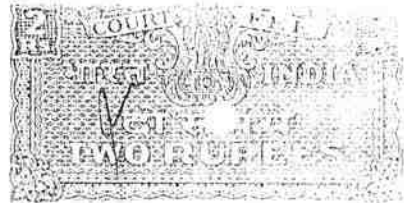
PETITIONER(S):

O.BEENA, W/O.PRAKASHAN,
THAYYULLATHIL HOUSE, ULLIYERI (PO),
VIA. QUILANDY, KOZHIKODE DISTRICT.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN
SRI.V.JAYAKUMAR

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.
2. THE ASSISTANT EDUCATIONAL OFFICER, (PERAMPRA) NOW FUNCTIONING AT THAMARASSERY, QUILANDY, KOZHIKODE DISTRICT, PIN-673 523.
3. THE DISTRICT EDUCATIONAL OFFICER, VADAKARA, KOZHIKODE DISTRICT, PIN-673 106.
4. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM-695 001.
5. THE MANAGER, NADUVANNUR SOUTH AMUP SCHOOL, NADUVANNUR SOUTH, NADUVANNUR (PO), QUILANDY TALUK, KOZHIKODE DISTRICT, PIN-673 614.
6. THE HEADMASTER, NADUVANNUR SOUTH AMUP SCHOOL, NADUVANNUR SOUTH, NADUVANNUR (PO), QUILANDY TALUK, KOZHIKODE DISTRICT, PIN-673 614.



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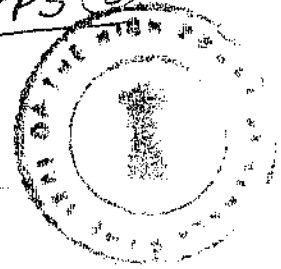


7. MRS.C.BEENA, D/O.LATE GOPALAN NAIR,
CHENNOOTTIL HOUSE, KOYAKKAD, ORAVIL (PO),
VIA.NADUVANNUR, KOZHIKODE DISTRICT,
PIN-673 614.

ADV. SRI.MILLU DANDAPANI FOR R.7
SRI.R.K.MURALEEDHARAN FOR R5
GOVT.PLEADER SMT.T.B.REMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/12/2008,
ALONG WITH WPC NO. 35088 OF 2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Ext P5 (3)



ANTONY DOMINIC, J.

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W.P.(C) NOs. 35068 & 35088 OF 2007
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Dated this the 9th day of December, 2008

J U D G M E N T

In these writ petitions, what is under challenge is GO(Rt) No.4395/07/G.Edn dated 24/9/07 produced as Ext.P7 in WP(C) No.35068/07 and Ext.P3 in WP(C) No.35088/07.

2. For the sake of convenience, I shall refer to the facts and documents as are mentioned in WP(C) No.35068/07.

3. The petitioner herein was appointed in a leave vacancy during the period 5/10/98 to 5/12/98 in the 5th respondent school. Approval sought for was rejected on the ground that the appointment was made overlooking the claims of a 51B claimant, the 7th respondent herein. Manager filed appeal to the DEO and that was allowed by Ext.P1 order.

4. The petitioner submits that apparently the 51B claimant, the 7th respondent herein, had filed an appeal against Ext.P1 to the DPI and without notice or hearing, the same was allowed. For some reason which was not disclosed to her, she was not paid salary for the period when she worked and that claim was urged by the petitioner, by filing OP 6336/2000 resulting in Ext.P2 judgment. In that judgment, this Court directed the petitioner to submit papers to the AEO and the AEO was directed to act

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upon the same. Against Ext.P2 judgment, the 7th respondent filed WA No.3386/2000 resulting in Ext.P3, by which the Division Bench directed the Additional Director of Public Instructions to reconsider the claim of the petitioner.

5. Accordingly, the matter was reconsidered and Ext.P4 order was rendered by the Additional Director of Public Instructions, the operative portion of which reads as under:

It is understood that Smt.O.Beena was appointed from 5.10.1998 to 5.12.1998 at that school and she had worked at that school during this period and her appointment was also approved. But Smt.C.Beena being the 51B claimant, she is to be considered against the next arising vacancy as per existing rules. So the Assistant Education Officer, Perambra is directed to take steps to see that Smt.C.Beena is appointed in the next arising vacancy under the management concerned.

6. Against Ext.P4 order, the 7th respondent filed a revision before the Government in which Ext.P5 order was passed by the Government allowing the revision and directing the DEO, Vadakara to take necessary steps for appointing the 7th respondent in the leave vacancy to which the petitioner herein was appointed. Ext.P5 order was challenged before this Court in WP(C) No.16798/04. In the meanwhile, there arose a regular vacancy w.e.f. 31/3/2004 and the petitioner in WP(C) No.35088/07 was

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appointed against that vacancy w.e.f. 14/6/04. WP(C) No.16798/04 was disposed of by Ext.R7(3) judgment dated 30/9/05, in para 7, in so far as the petitioner in WP(C) No.35088/07 is concerned, it has been held as follows:

I have considered the rival submissions made before me, the rival pleadings and the decisions cited. Even though Smt.Smitha was issued notice from this Court, she has not entered appearance or filed pleadings. Under these circumstances, the appointment given to Smt.Smitha by the manager after the issues arose between Smt.C.Beena and Smt.O.Beena can be ignored and there will be a direction to the approving authority to reject any proposal for approving that appointment.

7. Proceeding further, the learned Judge disposed of the writ petition directing reconsideration of the revision filed by the 7th respondent and the Government was directed to hear the petitioner and the 7th respondent and take a fresh decision on the revision. Against Ext.R7(3) judgment, the petitioner in WP(C) No.35088/07 filed WA No.2660/05. That writ appeal was disposed of by Ext.P6 judgment directing the Government to pass fresh orders as directed in Ext.R7(3) judgment.

8. It was accordingly that the Government heard the parties and Ext.P7 order dated 24/9/07 was passed. In Ext.P7, the Government held as follows:

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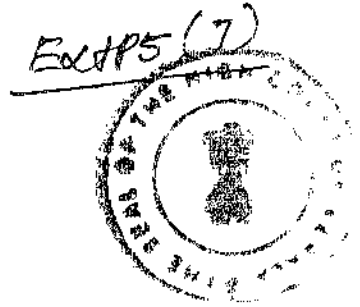
On detailed examination of the matter it is seen that Smt.C.Beena will be the legitimate claimant for the permanent post of language teacher (Hindi) arose in the school on 31/3/2004. Otherwise Smt.O.Beena will be the legitimate claimant for the post, in view of the Rule 51 A claim acquired by her by virtue of her appointment in the leave vacancy from 5/10/98 to 5/12/98. In any case, Smt.Smitha M.K. cannot be appointed in the permanent vacancy arose on 31/3/2004, as there is Rule 51 B or Rule 51 A claimant in the school.

In the circumstances, the District Educational Officer, Vadakara/the Assistant Educational Officer, Perambra are directed to take urgent steps to appoint Smt.C.Beena, the legitimate 51 B claimant for the permanent post of language teacher (Hindi), if otherwise eligible as per rules.

It is challenging Ext.P7, the writ petition is filed.

9. Learned counsel for the petitioner contends that the death in question occurred on 17/9/77 and that even according to the Government, application was made on 15/7/98 and the vacancy against which claim is raised arose on 31/3/2004. It is stated that the claim made is belated, and could not have been recognised under Rule 51B of Chapter XIV A KER. Counsel made reference to Ext.R7(1), circular No.37833/J3/2001/G.Edn dated 4/5/2002, issued by the Government of Kerala and also the the judgments of the Division Bench in **Corporate Manager, Diocese of Thrissur v. Jayanarayanan (2003(1) KLT S.N Case NO.45)** and **Sarada v. Pradeep Kumar (2004(3) KLT 1019)**. It is also his

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contention that once the claim of the petitioner under Rule 51A has been recognised as done in Ext.P7, the claim of the 7th respondent under Rule 51B, cannot be recognised as according to learned counsel both cannot stand together.

10. Learned Government Pleader on the other hand would point out that Ext.P7 is valid and proper. It is pointed out that the right of a claimant is governed by Rule 51B of Chapter XIV A KER and that if the claim is decided on the terms of the rule, the same cannot be rejected on the ground of delay. It is stated that there is no substance in the plea raised by the petitioner that the claim is belated.

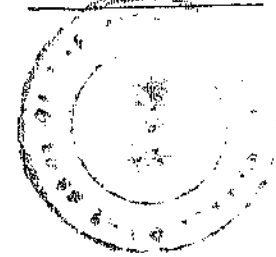
11. As far as the contention of the learned counsel for the petitioner that the claim of the 7th respondent is belated, it is true that death occurred on 17/9/77 and application was filed on 15/7/98. It is also true that the said application has been recognised in relation to a vacancy which arose on 31/3/2004. As contended by the learned Government Pleader, Rule 51B of Chapter XIV A KER does not make any provision that the claim should be made within any time frame. However, the learned counsel for the petitioner made reference to Ext.R7(1) Government circular which refers to the earlier order vide GO(P) No.12/99/P&ARD

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dated 24/5/99 providing a two year time frame for making claims under Rule 51B, Chapter XIVA KER. In so far as Ext.R7(1) is concerned, as is evident from Ext.R7(1), the Government themselves have ordered that in respect of claims made after 24/5/99, an application for employment assistance should be filed as provided in the Government order. It also clarifies that all pending application as on the date of issue of the Government order dated 24/5/99 shall be dealt with as per the earlier orders governing the matter. This necessarily means that in respect of applications made prior to 24/5/99, there is no time frame for making claim for appointment.

12. In so far as this case is concerned, as is evident from Ext.P7, the application in question was made on 15/7/98. If that be so, that application having been made prior to the Government order dated 24/5/99 has to be dealt with in accordance with the procedure that was prevailing prior to the Government order. Logically, therefore, the time frame incorporated in the Government order dated 24/5/99 is inapplicable to the claim raised by the 7th respondent in her application dated 15/7/98.

13. True the judgments referred to above negated claims under Rule 51B on the ground of delay. A closer reading of those judgments,

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makes it clear that the cases dealt with by the Division Bench pertain to applications made after the issue of the Government order referred to above. In the decision reported in **Corporate Manager, Diocese of Thrissur v. Jayanarayanan (2003(1) KLT S.N. Case No.45)** referred to above, the first sentence itself says that the application was not submitted within two years from the date of death of the deceased. This evidently has to be understood in the context of the Government order dated 24/5/99. Similar is the case with the judgment reported in **Sarada v. Pradeep Kumar (2004(3) KLT 1019)**. There also, as is evident from para 12 and 13, the Division Bench has heavily relied on the Government order dated 24/5/99, fixing two years time limit. If that be so, these two judgments, being rendered in the context of the situation subsequent to the Government order referred to above are not of any relevance in so far as this case is concerned.

14. Admittedly, the claim of the 7th respondent pertains to a period much prior to the service rendered by the petitioner. Therefore, the claim of the 7th respondent having crystallised into a right under Rule 51B, prior to the right of the petitioner under Rule 51A, has to take precedence over the right of the petitioner. If that be so, the reasoning in Ext.P7 is



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liable to be upheld.

15. Now, coming to the claim of the petitioner in WP(C) No.35088/07 is concerned, in my view, her fate is completely sealed by Ext.R7(3) judgment in WP(C) No.16798/04, para 7 of which has been extracted earlier. That judgment has become final. If that be so, the fact that she was appointed w.e.f. 14/6/04 in the vacancy which arose on 31/3/2004 is of no consequence when the rival claims of the petitioner and the 7th respondent in WP(C) No.35068/07 is concerned. WP(C) No.35088/07 is only to be dismissed on that ground.

For the above reasons, both the writ petitions are only to be dismissed and I do so.

Sd/-

ANTONY DOMINIC, JUDGE

Rp

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APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER DT 3.6.99 ISSUED BY THE DEO, VADAKARA.

EXT.P2: TRUE COPY OF JUDGMENT DT 9.11.2000 PASSED BY THIS HON'BLE COURT IN OPNO.6336/2000.

EXT.P3: TRUE COPY OF JUDGMENT DT 5.4.2001 PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT IN WA NO.3386/2000.

EXT.P4: TRUE COPY OF ORDER DT.15.6.2001 ISSUED BY THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION.

EXT.P5: TRUE COPY OF GOVERNMENT ORDER DT 27.1.2004 PASSED BY THE GOVERNMENT OF KERALA.

EXT.P6: TRUE COPY OF JUDGMENT DT 12.2.2007 PASSED BY THE DIVISION BENCH OF THIS HON'BLE COURT IN WA NO.2660/2005.

EXT.P7: TRUE COPY OF ORDER DT 24.9.2007 PASSED BY THE GOVERNMENT OF KERALA.

EXTS. OF R7

EXT.R7(1): TRUE COPY OF THE CIRCULAR DT 4.5.2002 ISSUED BY THE GOVERNMENT.

EXT.R7(2): TRUE COPY OF JUDGMENT DT 22.1.2002 IN OPNO.8573/01.

EXT.R7(3): TRUE COPY OF THE JUDGMENT DT 30.9.2005 IN WP(c) NO.16798/2004.

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P.A. TO JUDGE