

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 9TH DECEMBER 2008 / 18TH AGRAHAYANA 1930

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

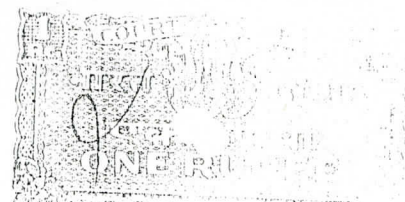
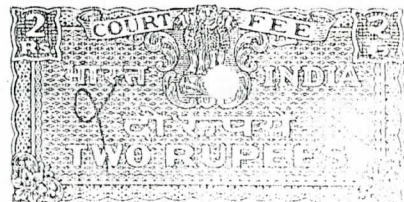
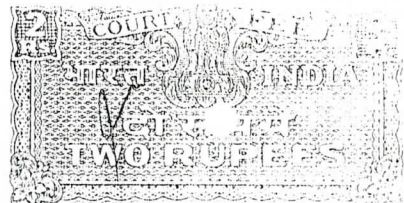
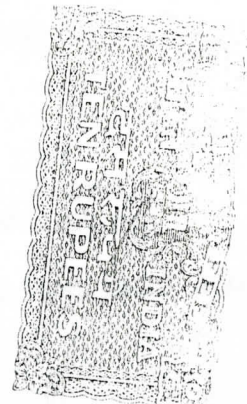
PETITIONER(S):

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.

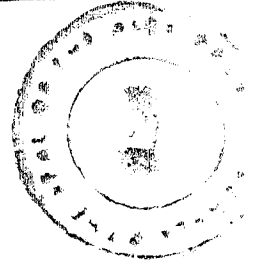


Exd P5 (2)

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WPC NO.35068/07

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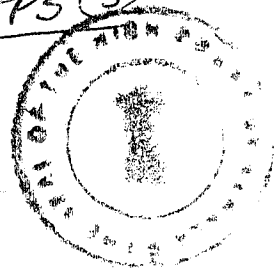


7. MRS.C.BEENA, D/O.LATE GOPALAN NAIR,  
CHENNOOTTIL HOUSE, KOYAKKAD, ORAVIL (PO),  
VIA.NADUVANNUR, KOZHIKODE DISTRICT,  
PIN-673 614.

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.**

=====  
**W.P.(C) NOS. 35068 & 35088 OF 2007**  
=====

**Dated this the 9<sup>th</sup> 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 5<sup>th</sup> respondent school. Approval sought for was rejected on the ground that the appointment was made overlooking the claims of a 51B claimant, the 7<sup>th</sup> respondent herein. Manager filed appeal to the DEO and that was allowed by Ext.P1 order.

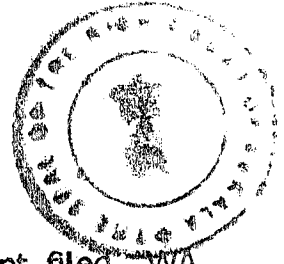
4. The petitioner submits that apparently the 51B claimant, the 7<sup>th</sup> respondent herein, had filed an appeal against Ext.P1 to the DPI and without notice or hearing, the same was allowed. For some reason which was not disclosed to her, she was not paid salary for the period when she worked and 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 7<sup>th</sup> 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.

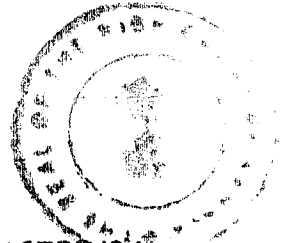
5. Accordingly, the matter was reconsidered and Ext.P4 order was rendered by the Additional Director of Public Instructions, the operative portion of which reads as under:

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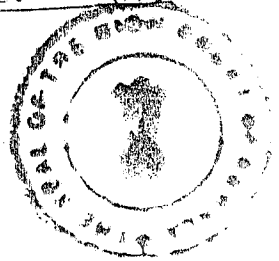
appointed against that vacancy w.e.f. 14/6/04. WP(C) No.16798/04 was disposed of by Ext.R7(3) judgment dated 30/9/05, in para 7, in so far as the petitioner in WP(C) No.35088/07 is concerned, it has been held as follows:

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 7<sup>th</sup> respondent and the Government was directed to hear the petitioner and the 7<sup>th</sup> 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:

Ext.PS (4)



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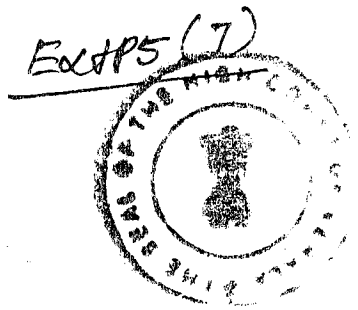
On detailed examination of the matter it is seen that Smt.C.Beena will be the legitimate claimant for the permanent post of language teacher (Hindi) arose in the school on 31/3/2004. Otherwise Smt.O.Beena will be the legitimate claimant for the post, in view of the Rule 51 A claim acquired by her by 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 7<sup>th</sup> 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.

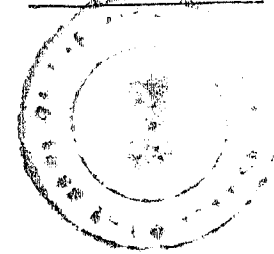
11. As far as the contention of the learned counsel for the petitioner that the claim of the 7<sup>th</sup> respondent is belated, it is true that death occurred on 17/9/77 and application was filed on 15/7/98. It is also true that the said application has been recognised in relation to a vacancy which 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

Ext P5 (8)

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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.

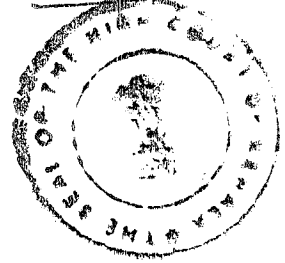
12. In so far as this case is concerned, as is evident from Ext.P7, the application in question was made on 15/7/98. If that be so, that application having been made prior to the Government order dated 24/5/99 has to be dealt with in accordance with the procedure that was prevailing prior to the Government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

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



Ext P5(9)

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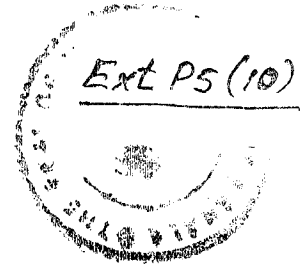


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makes it clear that the cases dealt with by the Division Bench pertain to applications made after the issue of the Government order referred to above. In the decision reported in **Corporate Manager, Diocese of Thrissur v. Jayanarayanan (2003(1) KLT 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 7<sup>th</sup> respondent pertains to a period much prior to the service rendered by the petitioner. Therefore, the claim of the 7<sup>th</sup> 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 7<sup>th</sup> 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.

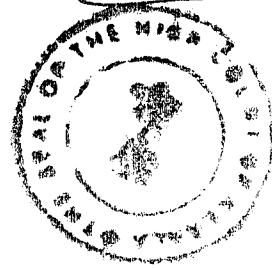
*Sd/-*

**ANTONY DOMINIC, JUDGE**

Rp

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WPC NO.35068/07

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

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K. BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE M.L. JOSEPH FRANCIS

MONDAY, THE 16TH MARCH 2009 / 25TH PHALGUNA 1930

WA.No. 519 of 2009()

AGAINST THE JUDGEMENT/ORDER IN WPC.35068/2007 Dated 09/12/2008

APPELLANT:

O.BEENA, WIFE OF PRAKASHAN,  
THAYYULLATHIL HOUSE, ULLIYERI (PO)  
VIA, QUILANDY, KOZHIKODE DISTRICT.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,  
GOVT. 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.
4. THE DIRECTOR OF PUBLIC INSTRUCTION,  
THIRUVANANTHAPURAM - 695 001.
5. THE MANAGER, NADUVANNUR SOUTH AMUP SCHOOL,  
NADUVANNUR SOUTH, NADUVANNUR (PO)  
QUILANDY TALUK, KOZHIKODE DISTRICT.
6. THE HEADMASTER, NADUVANNUR SOUTH AMUP SCHOOL,  
NADUVANNUR SOUTH, NADUVANNUR (PO)  
QUILANDY TALUK, KOZHIKODE DISTRICT. PIN - 673 614.
7. MRS.C.BEENA, D/O.LATE GOPALAN NAIR,  
CHENNOTTIL HOUSE, KOYAKKAD, ORAVIL (PO)  
VIA., NADUVANNUR, KOZHIKODE DISTRICT. PIN - 673 614

SRI.R.K.MURALEEDHARAN FOR R5.  
SRI.MULLU DANDAPANI FOR R7.  
GOVT.PLEADER, SRI.NOBLE MATHEW FOR R1 TO R4.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2009, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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Ext P6 (2)

K. BALAKRISHNAN NAIR & M.L. JOSEPH FRANCIS, JJ.

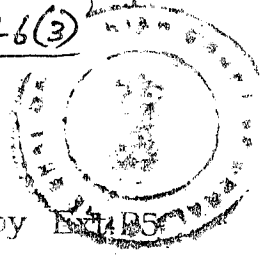
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W.A. No. 519 OF 2009  
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Dated this the 16<sup>th</sup> day of March, 2009

J U D G M E N T  
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Balakrishnan Nair, J.

The writ petitioner is the appellant. She was appointed by the 5<sup>th</sup> respondent in his school as a Hindi teacher in a leave vacancy from 5.10.1998 to 5.12.1998. The approval was sought for the said appointment. The same was rejected, on the ground that there was a claimant under Rule 51B of Chapter XIVA of the Kerala Education Rules, the 7<sup>th</sup> respondent herein, who should be preferred for appointment. The said Rule provides for appointment on compassionate ground of dependents of deceased teachers of aided schools. The order of the Assistant Educational Officer was challenged in appeal by the Manager, which was allowed by Ext.P1. The 7<sup>th</sup> respondent challenged Ext.P1 before the Director of Public Instructions. The said appeal was allowed. Pursuant to the direction of this Court, the matter was again reconsidered by the Additional Director of Public Instructions and by Ext.P4 order, the said officer directed to appoint the 7<sup>th</sup> respondent, Smt.C.Beena, in the next arising vacancy. Ext.P1 was challenged by the appellant before the Government. The 7<sup>th</sup> respondent also filed a petition before the



W.A. No.519/2009

Government. The Government disposed of them by common order and directed the District Educational Officer, Vadakara, to take steps to ensure that the 7<sup>th</sup> respondent is appointed in the leave vacancy, in which the writ petitioner was appointed. Ext.P5 order was challenged in W.P.(C) No.16798/2004. In the meantime, a retirement vacancy arose in 31.3.2004 and a third person was appointed in that vacancy with effect from 14.6.2004. The W.P.(C) No.16798/2004 was disposed of holding that the third party appointed in the vacancy of Hindi teacher on 14.6.2004 has no right to get the post. This Court directed the Government to reconsider the matter and pass fresh orders. Though the said judgment was challenged in writ appeal, the appeal was disposed of directing the Government to pass fresh orders in the matter. The Government, after hearing both sides, passed Ext.P7 order. Though the Government did not interfere with the appointment of the appellant/writ petitioner in the leave vacancy from 5.10.1998 to 5.12.1998, it was held that the regular vacancy which arose in the beginning of the academic year 2004-2005 should go to the 7<sup>th</sup> respondent, Smt.C.Beena. Aggrieved by the said direction, the writ petition

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W.A. No.519/2009

was filed. Several contentions were taken to impugn the decision of the Government. But, the learned Single Judge repelled those contentions and upheld the direction of the Government to appoint the 7<sup>th</sup> respondent in the permanent vacancy with effect from 14.6.2004. The writ petitioner, aggrieved by the said direction, has filed the present appeal.

2. The learned counsel, Sri.T.K.M.Unnithan, submitted that Ext.P8 is the petition filed by the 7<sup>th</sup> respondent for appointment under Rule 51B. The said application is not in the prescribed form. Therefore, it should not have been entertained. The said point is covered against the appellant by the decision of this Court in Manager, S.N.G.S.High School v. Reji Sagar D.R and others [2008(1)KHC 922]. It is for the Manager to alert when a vacancy arises and get the application in the proper form from the Rule 51B claimant. Her right to get appointment cannot be rejected on the technical ground like non-submission of the application in the prescribed form etc. The learned counsel next submitted that neither the Government nor the learned Single

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Excp P6(5)

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Judge set aside the approval of her appointment for the period from 5.10.1998 to 5.12.1998. So, she is obviously a Rule 51A claimant. The said Rule provides for re-appointment of retrenched teachers in future vacancies. So, her claim should get precedence over the right of a Rule 51B claimant. The direction to the contrary contained in the impugned order, Ext.P7, as well as in the judgment under appeal is liable to be set aside, it is submitted.

3. We notice that when there was a Rule 51B claimant, the petitioner could not have been appointed from the open market in the leave vacancy, which arose on 5.10.1998. In that vacancy a Rule 51B claimant should have been accommodated. Since the appellant was accommodated in the leave vacancy ignoring the Rule 51B claim of the 7<sup>th</sup> respondent, the Government as well as this Court held that in the next arising vacancy the 7<sup>th</sup> respondent must be accommodated. In fact, the direction is a concession granted in favour of the appellant. By virtue of the approval of her appointment from 5.10.1998 to 5.12.1998, she can claim the next vacancy that may arise in the





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school, after accommodating the 51B claimant. Going by the rules, the Government as well as the learned Single Judge could have set aside her appointment in the leave vacancy from 5.10.1998 to 5.12.1998, as it was made in violation of Rule 51B. So, the petitioner cannot claim any further relief based on the concession granted. No other point is urged. In the result, the appeal fails and it is dismissed.

It is clarified that in view of the approval of her appointment from 5.10.1998 to 5.12.1998, she will be eligible to claim any future vacancy in the post of Hindi teacher, that may be available after accommodating the Rule 51B claimant.

Sd/L  
(K.BALAKRISHNAN NAIR, JUDGE)

Sd/L  
(M.L.JOSEPH FRANCIS, JUDGE)

ps

(Name only)

PA to judge

True Copy

Exhibit P-7

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K. BALAKRISHNAN NAIR

AND  
THE HONOURABLE MR. JUSTICE C.T. RAVIKUMAR

WEDNESDAY, THE 22ND JULY 2009 / 31ST ASHADHA 1931

WA.No. 1279 of 2009()

AGAINST THE JUDGEMENT/ORDER IN WPC.35088/2007 Dated 09/12/2008

APPELLANT/PETITIONER:

SMT. SMITHA M.K., W/O. RAJUNATHAN,  
AGED 42 YEARS, MOOTHALIMAKANDY HOUSE,  
KOKKALLUR P.O., VIA, BALUSSERY,  
KOZHIKODE DISTRICT

BY ADV. SRI.K.PRAVEEN KUNJAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DISTRICT EDUCATIONAL OFFICER, VADAKARA, KOZHIKODE.
3. THE ASSISTANT EDUCATIONAL OFFICER, PERAMBRA, KOZHIKODE.
4. THE MANAGER, NADUVANNUR SOUTH, A M U P S, NADUVANNUR P.O., QUILANDY TALUK, KOZHIKODE.
5. SMT. C. BEENA, CHENGOTTIL HOUSE, KOVAKKAD, ORAVIL P.O., NADUVANNUR, KOZHIKODE.
6. SMT. O. BEENA, THAYYULATHIL HOUSE, ULJIYERI P.O., VIA. QUILANDY, KOZHIKODE.

ADV. SMT. SUMATHY DANDAPANI, SENIOR ADVOCATE FOR R6  
SRI. MILLU DANDAPANI FOR R6  
GOVERNMENT PLEADER, SRI. BENNY GERVAIS FOR R1 TO 3

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22/07/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

