

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.

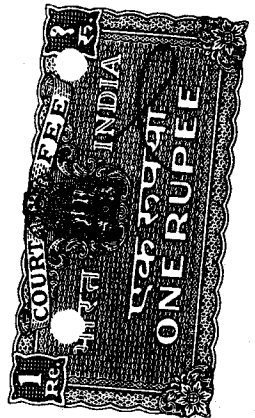
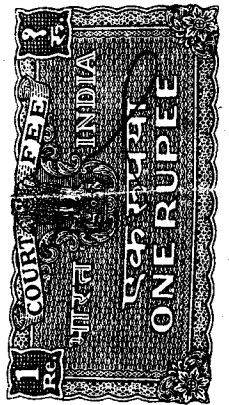
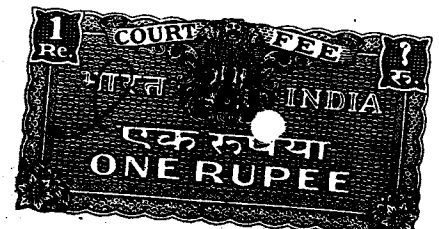
BY ADV. SRI.T.K.MARTHANDAN UNNITHAN

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:



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

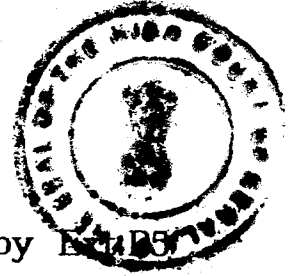
W.A. No. 519 OF 2009

Dated this the 16th 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.P4 was challenged by the appellant before the Government. The 7<sup>th</sup> respondent also filed a petition before the



Government. The Government disposed of them by Ext.P5 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



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



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



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

*(True copy)*

*JM*  
PA to Judge

**True Copy**

*[Signature]*  
**Examiner.**

**HIGH COURT OF KERALA  
AT ERNAKULAM**

**Year and Number Of Suit : WA/519/2009  
or other proceedings**

**Name Of Applicant / :  
Advocate MILLU DANDAPANI**

**Application Number : 5515/2009**

**Date Of Application : 17-MAR-09**

**Date Of Calling for Stamp : 27-MAR-09**

**Date Of Production of Stamp : 27-MAR-09**

**Date When Copy was Ready : 17-MAR-09**

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to receive the copy : 19-MAY-09**

**Date When copy was delivered : 12/5/09**



**Examiner**