

**(2018) 03 KL CK 0063**

**In the High Court Of Kerala**

**Case No : Writ Petition (Civil) No. 35910 Of 2017**

**Rekha N.R @APPELLANT@Hash State Of Kerala And Ors**

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**Date of Decision : 01-03-2018**

**Acts Referred:**

**Citation : (2018) 03 KL CK 0063**

**Hon'ble Judges : Anu Sivaraman, J**

**Bench : Single Bench**

**Advocate : Elvin Peter P.J., K.R.Ganesh, U.Balagangadharan, E.S.Ashrf**

**Final Decision : Disposed Off**

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## **Judgement**

1. This writ petition is filed with the following reliefs:

"(i) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 1 to 4 to disburse the arrears of salary to the petitioner for the period from 15.7.2010 onwards together with all other consequential monetary benefits, such as increments, revised pay scale etc. from 15.7.2007 onwards, in the light of Ext.P9 Government Order forthwith;

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the 4th respondent to consider and pass orders in Ext.P11 communication and to disburse the salary arrears and other monetary benefits to the petitioner forthwith;

(iii) To declare that the petitioner is entitled to get the arrears of salary for the period from 15.7.2010 onwards together with all other consequential monetary benefits, such as increments, revised pay scale etc. from 15.7.2007 onwards, in the light of Ext.P9 Government Order."

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner was appointed as LPSA in the fifth respondent's school on 1.6.2007. Approval was rejected on the ground that there is ban on appointments during the relevant

period. It is stated that thereafter G.O.No.10/210 dated 12.1.2010 had been issued and since the 5th respondent Manager had executed a bond, the petitioner's appointment is liable to be approved. However, even thereafter, the appointment was not approved and the petitioner had taken up the matter before this Court. It is stated that during the academic year 2010-11, one post UPSA was reduced and the petitioner was retrenched by the Manager on the ground that she was the junior most teacher. However, the petitioner contended that since she had been appointed as UPSA, she was not liable to be retrenched on reduction to the post of LPSA. The matter was taken up in appeal and review and ultimately by Ext.P9 order, the Government found that the petitioner, who was an LPSA, was not liable to be retrenched on the reduction to the post of UPSA. It is stated that the junior most UPSA was directed to be reverted and the petitioner was held to be eligible to continue in service as LPSA. The contention of the petitioner is that in spite of Ext.P9 order and the steps taken by the Manager thereafter, the petitioner had not been granted the benefits of Ext.P9.

4. A counter affidavit has been filed on behalf of the fourth respondent contending that after the issuance of Ext.P9 order, Smt. M.Meena, UPSA, who was directed to be retrenched in Ext.P9, had approached this Court filing W.P.(C) No.29411 of 2016, which was disposed of directing consideration of her claim. It is stated that a Government order was issued on 7-7-2017 holding that Smt. Meena was not the junior most UPSA and that she was transferred to U.P. Section, from L.P. Section, being a T.T.C. Holder. Government had clarified that consequent to reduction of one post of UPSA in the school, Smt.Meena was liable to be retained as UPSA and the Junior most UPSA was liable to be retrenched. It is contended by the learned Government Pleader that in spite of repeated requests that the Manager has not made available the seniority list of teachers to show who was the junior most UPSA and this is the reason why Ext.P9 order has not been complied with.

5. I have considered the contentions advanced. It is clear that the petitioner had been appointed as LPSA in the school on 1.6.2007. Going by the orders passed by the Government, the petitioner was clearly entitled to be retained even during 2010-11, because the post that was reduced was one of UPSA. The petitioner's appointment being as LPSA, she would definitely not be liable to be retrenched, since the post reduced was of UPSA. In the above view of the matter, the contention raised that the details of the junior most UPSA had not been made available by the manager which is a reason for not complying with the direction contained in Ext.P9, cannot be sustained.

6. The petitioner is before this Court claiming the benefit of Ext.P9 order passed by the Government. There is no contention that the finding in Ext.P9 that the petitioner was entitled to continue in service has been varied in any manner. There is no reason stated in the counter affidavit for denying the benefits to the petitioner.

In the above view of the matter, the petitioner will be entitled to the benefits of

Ext.P9 including all monetary benefits on account of continuance in service uninterruptedly from 1.6.2007. These benefits are to be made available to the petitioner in a time bound manner, at any rate, within a period of two months from the date of receipt of a copy of this judgment. As regards the retrenchment of the junior most UPSA, it is made clear that the educational authorities are free to take action in accordance with law as also to move against the manager, if so advised. This writ petition is disposed of as above.