

GOVERNMENT OF KERALA

Abstract

General Education - HSE - Aided - Judgment dated 25/07/2012 of the Hon'ble High Court in WP(C)No.12199/2012 filed by Sri.B.Padmadas, HSA, CA Higher Secondary School, Ayakkad, Palakkad Dist - complied with - Orders issued.

General Education (T) Department

G.O.(Rt)No.5145/2013/G.Edn. Dated Thiruvananthapuram, 30/11/2013

- Read: 1) Order No.B4/2903A/2012/HSE dated 01.04.2012 of the Regional Deputy Director, Higher Secondary Education, Ernakulam (Exhibit P13 in WP(C)No.12199/12).
2) Review Petition dated 19.07.2012 filed by Sri.B.Padmadas, HSA, CA HSS, Ayakkad (Exbt.P18 in WP(C)No.12199/12)
3) Judgment dated 25/07/2012 of the Hon'ble High Court in WP(C)No.12199/12 filed by Sri.B.Padmadas
4) Letter No.Acd.A2/21476/HSE/2012 dated 26.07.2013 of the Director, Higher Secondary Education, Thiruvananthapuram

ORDER

As per the Judgment read as 3rd paper above, the Hon'ble High Court directed Government to consider and pass appropriate orders on Exbt,P18 Revision Petition read as 2nd paper above within three months from the date of receipt of a copy of the Judgment after affording an opportunity of being heard to the petitioner and respondents 4 to 7.

2) The petitioner Sri.B.Padmadas commenced service as UPSA in CA Higher Secondary School, Ayakkad w.e.f 15.07.1993 and was promoted as HSA on 15.07.1994 on regular basis. The petitioner's school was upgraded as Higher Secondary School in the academic year w2010-11 as per G.O(Ms)No.128/10/GEdn dated 24/07/2010. The teaching posts in the newly upgraded higher secondary schools, for the academic year 2010-11 were created by Government as per G.O(Ms)No.211/1/GEdn dated 24/10/2011. Accordingly posts were sanctioned to petitioner's school including HSST (Jr) post in English for which he was entitled to be appointed under 25% by transfer quota, being one of the seniormost HSA of the school. The Selection Committee conducted interview on 05.12.2011. The petitioner appeared before the Selection Committee with certificates of his educational qualification and he was interviewed on the same day. But his application for appointment was declined by the committee recording that he could not produce the equivalency certificate for his B.Ed qualification attained from Utkal University in Orissa. Eventhough the petitioner produced equivalency certificate obtained from the University of

Calicut, on 07.12.2011, the Manager without waiting for that sent proposal to the Regional Deputy Director, Kozhikkode.

3) Aggrieved by this the petitioner moved Regional Deputy Director, Kozhikkode filing a petition dated 12.12.2011 and then approached the Hon'ble High Court by filing WP(C)No.2379/12. The Hon'ble High Court in the Judgment dated 31.1.2012 in the above WP(C), directed Regional Deputy Director, Kozhikkode to take a decision on his representation dated 12.12.2011 after hearing the petitioner as well as the Respondents 4 to 7 therein. The Regional Deputy Director, Kozhikkode complying with the above direction of the Hon'ble High Court issued Exbt.P13 order read as first paper above upholding the decision of the Selection Committee rejecting the claim of the petitioner. Aggrieved by the above decision of the Regional Deputy Director, Kozhikkode the petitioner filed Exbt.P18 review petition read as 2nd paper above before the Government and then moved Hon'ble High Court by filing the instant WP(C).

4) As directed by the Hon'ble High Court in the Judgment dated 25.07.2012, the petitioner and respondents 4 to 7 were heard by the Under Secretary, General Education Department. The petitioner and the respondents submitted their arguments before the hearing officer.

5) The Director of Higher Secondary Education as per his letter read as 4th paper above, reported that Sri.Padmadas was a senior most qualified HSA with continuous service w.e.f 15.07.1994, eligible to be appointed under 'by transfer' category under 25% quota. He has completed 19 years of service as HSA in the same school and hence exempted from acquiring SET qualification. As per G.O(Ms)No.141/2008/GEEdn dated 18.8.2008, it was clarified that 'by transfer' appointment in the 25% of total posts should be filled up from among the qualified HSAs in the subject concerned on 'seniority-cum-suitability' basis. The Manager, CA HSS, Ayakkad, by ignoring the Special Rules appointed Smt.Smitha.V as HSST (Jr) English from 'open quota'. Hence he had vilated the existing rules regarding the appointment of HSST in the school.

6) The case is examined as following with reference to relevant rules and orders.

- (i) Sri.B.Padmadas is one of the seniormost HSAs of the above school eligible to be promoted under 25% by transfer which is a statutory requirement to be fulfilled by the Manager as per Special Rules. Sri.Padmadas has a continuous service of 19 years as HSA in the above school. B.Ed is a manadatory qualficiation for both HSA and HSST. It is seen that no dispute has been raised by any authority regarding his appointment as HSA in the school 19 years ago. So the Manager deliberately and purposefully tried to bypass a seniormost teacher to

make appointment of his own choice from open quota. There is no justification in raising the equivalency issue at this distance of time. Moreover Sri.B.Padmadas produced equivalency certificate on 07.12.2011, ie within two days of the Selection Committee Meeting. But the Manager without waiting for the same, sent proposal to Regional Deputy Director excluding Sri.B.Padmadas. It was in the interest of natural justice that the teacher should have been given a reasonable time to produce equivalency certificate.

- (ii) It has been proved beyond doubt by settled positions of various Higher Court Judgments that an Aided School Manager has no authority to bypass a senior most teacher for the post of Higher Secondary School Teacher. Moreover the Hon'ble Supreme Court of India has also interpreted the expression 'seniority and suitability' which subsequently incorporated in Note (i) under Rule 4 of Chapter XXXII of Kerala Education Rules. The Apex Court held that the above expression did not mean comparative assessment of suitability and it only means suitability for a particular post and suitability relates to prescribed qualification and experience. The above interpretation was given in the background of rampant violation and misuse of the above mentioned provisions by the Managers of Aided Higher Secondary Schools. Subsequently on the basis of the above Apex Court Judgment, Government issued orders in G.O(Ms)No.141/2008/GE dn dated 18.8.2008 making it clear that suitability means prescribed qualification and the requisite experience and hence a suitable senior candidate cannot be overlooked when 'by transfer' appointment is made in the posts of Higher Secondary School Teacher by the Manager of Aided Higher Secondary Schools.

7) In the circumstances stated in the foregoing paras, the selection process done by the Manager, CA HSS, Ayakkad as per the interview conducted on 05.12.2011, in so far it is related to the subject of English is declared null and void by Government. The Manager is directed to appoint Sri.B.Padmadas, the petitioner in place of Smt.Smitha.V, the 5th respondent, as Higher Secondary School Teacher (Junior) in English within one month from the date of this order. Any teachers ousted due to such development shall be considered for the next arising vacancy. The Manager CA hSS, Ayakkad is also directed to show cause why disciplinary action should not be initiated against him under the provisions of KE Act/Rules for trying to deny the legitimate claim of a senior suitable teacher for promotion to the post of HSST (Jr) under 25% 'by transfer' quota which is a statutory requirement to be fulfilled, as stipulated in Special Rules governing Higher Secondary Education.

8) The Regional Deputy Director, Ernakulam will closely monitor the compliance of the above directions and a compliance report should reach in Government within one month from the date of receipt of a copy of this order.

9) Thus the Exbt. P18 review petition read as 2nd paper above is disposed of as above thereby complying with the directions contained in the judgment of the Hon'ble High Court read as third paper above.

(By order of the Governor)
S.Rajan Nair,
Under Secretary to Government

To

The Director of Higher Secondary Education, Thiruvananthapuram
The Regional Deputy Director, Higher Secondary Education,
Ernakulam

Smt.B.Padmadas, HSA, CA HSS, Ayakkad, Palakkad-678 532
(Regd.with A/d)

The Manager, CA HSS, Ayakkad, Palakkad-678 532
(Regd.with A/d)

Smt.Smitha, HSST (Jr) English, CA HSS, Ayakkad, Palakkad-678 532

Smt.Lalithambika.D, HSS Malayalam, CA HSS, Ayakkad,
Palakkad-678 532

Smt.M.P.Jini, HSST (Jr) Economics, CA HSS, Ayakkad, Palakkad-678 532

The Advocate General, Kerala, Ernakulam(with C/L)

The Principal Accountant General (A&E/ Audit), Kerala,
Thiruvananthapuram

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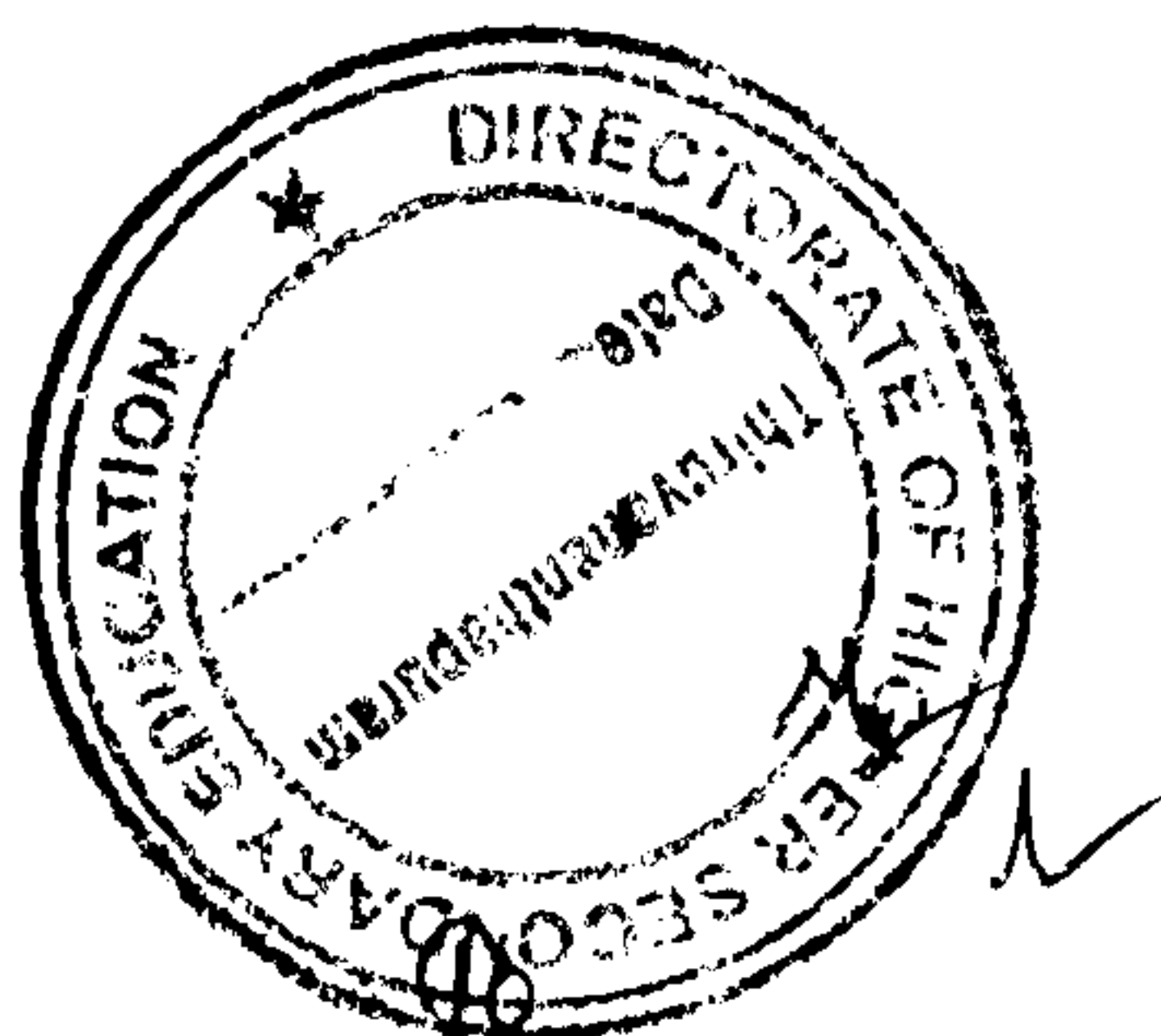
Forwarded/By Order,


Section Officer.

Endt. No. Aed G, / 59697 / 13

Dated - /12 /13

For information to all managers
of aided higher secondary schools.



The Managers of aided
higher secondary schools.


9/12/13
JOINT DIRECTOR
(ACADEMIC)