**IN THE HIGH COURT OF****KERALA**

**W.P. (C) No. 5048 of 2013**

Decided On: 27.02.2013

Appellants: **Subhashchandran**
**Vs.**
Respondent: **State of****Kerala**

**Hon'ble Judges/Coram:**P.N. Ravindran, J.

**JUDGMENT**

**P.N. Ravindran, J.**

1. The petitioner is the Manager of two aided High Schools governed by the Kerala EducationAct, 1958 and the Kerala Education Rules, 1959. A leave vacancy arose in S.C.V. Boys High School, Chirayinkeezhu when Smt. L.N. Lathika, H.S.A. (Maths) availed leave without allowances for the period from 20.8.2008 to 19.8.2013. In that leave vacancy, the petitioner appointed the fourth respondent as H.S.A. (English) as per Ext.P2 appointment order dated 28.1.2008. The said appointment was approved by the District Educational Officer, Attingal as per order dated 29.11.2008, for the period from 21.8.2008 till 19.8.2013. While the fourth respondent was thus continuing in service as H.S.A. (English) in the leave vacancy of Smt. L.N. Lathika, the petitioner appointed Smt. Chithra as H.S.A. (English) in S.S.V. Girls High School, Chirayinkeezhu with effect from 1.6.2011 against an anticipated additional post for the academic year 2011-2012. The fourth respondent thereupon submitted Ext.P3 representation dated 2.9.2011 before the District Educational Officer, Attingal staking her claim for appointment against the said regular vacancy. Later, Smt. P. Binitha, who was working as H.S.A. (English) in S.C.V. Boys High School, Chirayinkeezhu, resigned from service to take up employment in Government. The fourth respondent thereupon submitted a representation dated 15.6.2012 to the District Educational Officer, Attingal. By Ext. P4 letter dated 17.7.2012, he directed the petitioner to appoint the fourth respondent in that regular vacancy. The fourth respondent thereafter moved the Government by filing representations and still later she filed W.P. (C) No. 18721 of 2012 in this Court. By Ext.P5 judgment delivered on 8.8.2012, this Court directed the Government to take a decision in the matter after affording the petitioner, the fourth respondent and others an opportunity of being heard. The Government heard the parties and issued Ext.P6 order dated 16.1.2013, upholding the claim of the fourth respondent for being appointed as H.S.A. (English) in the regular vacancy which arose in S.C.V. Boys High School, Chirayinkeezhu. The Government also directed the District Educational Officer to approve the said appointment with effect from the date of eligibility. The District Educational Officer in turn issued Ext.P7 order dated 25.1.2013 shifting the fourth respondent to the regular vacancy which arose in S.C.V. Boys High School, Chirayinkeezhu consequent on the resignation of Smt. P. Binitha, H.S.A. (English) with effect from 13.6.2012. In this Writ Petition the petitioner challenges Exts. P4, P6 and P7 orders and also Ext.P8 Government order dated 9.11.1999 which was relied on while issuing Ext.P6.

2. The principal contention raised in the Writ Petition is that Ext.P8 Government order cannot operate in view of the provisions contained in the Kerala Education Rules, more particularly R. 7A of Chapter XIVA thereof. It is contended that the right of the fourth respondent to claim reappointment would arise only if she is retrenched from service on cessation of the leave vacancy, that the vacancy which arose consequent on the resignation of Smt. P. Binitha, H.S.A. (English) is a regular vacancy against which the Manager is entitled to make an appointment and therefore, the District Educational Officer and the Government erred in shifting the fourth respondent to the regular vacancy which arose consequent on the resignation of Smt. P. Binitha, H.S.A. (English). It is also contended that the teacher in whose leave vacancy the fourth respondent was appointed has applied for further extension of the leave and therefore, the fourth respondent can have no apprehension that she will be thrown out of service. I heard Sri. Elvin Peter, learned counsel appearing for the petitioner. I have also gone through the pleadings and the materials on record. By the orders impugned in this Writ Petition, the District Educational Officer and the Government have only shifted the fourth respondent who is admittedly a teacher appointed by the petitioner as H.S.A. (English) from the leave vacancy against which she was appointed to the regular vacancy of H.S.A. (English) which arose consequent on the resignation of Smt. P. Binitha, H.S.A. (English) with effect from 13.6.2012. The fact that the fourth respondent's appointment was approved is not in dispute. The fact that if the leave vacancy terminates, the fourth respondent will have a preferential claim for future appointment by virtue of R. 51A of Chapter. XIV-A of the Kerala Education Rules is also not in dispute. From a reading of the Writ Petition it appears that the attempt of the petitioner is to appoint another teacher in the resignation vacancy, which is a regular vacancy and seek approval of that appointment, thereby creating in that teacher a right under R. 51A of Chapter XIV-A of the Kerala Education Rules, which right can be enforced at a later point of time. The petitioner cannot pretend to be ignorant of the fact that if the fourth respondent is thrown out of service, she being a teacher having approved service is entitled to be re-appointed in the very same school. At some point of time or other, the leave vacancy will terminate necessitating such a course of action. The Government being the pay master, if the Government thought that the rights of such a teacher should be protected and it issued Ext.P8 order to protect such rights, in the absence of any provision in the Kerala Education Act or the Kerala Education Rules which militates against the stand taken by the Government in Ext.P8, I am of the opinion that no interference is called for. Ext.P8 takes note of a contingency which is not covered by the rules. The petitioner who is not the pay master cannot in my opinion be heard to contend that the teacher who was appointed earlier in a leave vacancy and whose appointment is approved, should be physically thrown out and thereafter await reappointment though a regular vacancy has arisen in the school, on the ground that he has the right to fill up that vacancy having regard to the terms of R. 7A of Chapter XIVA of theKerala Education Rules, by appointing another person from the open market. The order passed by the Government even assuming that it is one without jurisdiction, metes out justice to the fourth respondent and takes note of, recognizes and gives effect to her statutory right for reappointment. Therefore for that reason also, I am of the opinion that no interference is called for with the impugned orders.

I accordingly hold that there is no merit in the instant Writ Petition. The writ petition fails and is dismissed in limine.