

**HIGH COURT OF KERALA****Bench: Justice T.R. Ravi****Date of Decision: 14th May 2024**

Writ Petition (Civil) No. 20799 of 2019

**PETITIONER:****Sathi Devi K.****VERSUS****RESPONDENTS:****The Guruvayoor Devaswom Managing Committee, represented by its Administrator, Guruvayoor, Thrissur-680101.****The Administrator, Guruvayoor Devaswom, Guruvayoor-680101, Thrissur District.****The Deputy Administrator, Guruvayoor Devaswom, Guruvayoor-680101, Thrissur District.****A.C. Liji, LPSA (Maths), Guruvayoor Devaswom English Medium School, Guruvayoor, Thrissur District, PIN-680101.****C.V. Divya, LPSA (Maths), Guruvayoor Devaswom English Medium School, Guruvayoor, Thrissur District, PIN-680101.****Legislation:**

Constitution of India – Article 226

**Subject:** Writ petition seeking direction to not overlook petitioner for promotion and regularisation from earlier date.

**Headnotes:**

Service Law – Regularisation and Seniority – Petitioner sought confirmation and regularisation from dates when junior colleagues were regularised – Claimed entitlement to statutory pension scheme instead of contributory scheme – Tribunal found petitioner accepted confirmation order without challenge for six years – Rejected petition for modification of confirmation date citing delay and settled seniority position [Paras 1-6].

Promotion – Eligibility for Higher Post – Petitioner’s claim for promotion to HSA (Maths) – Seniority disputed due to regularisation date – Tribunal found petitioner’s claim unsubstantiated without challenging earlier orders – Upheld decision to maintain existing seniority and promotional considerations [Paras 2, 6].

Scope of Writ Jurisdiction – Belated Claims – High Court emphasized doctrine of delay and laches – Accepted established seniority and denied modification of settled orders – Found no infringement of fundamental or statutory rights justifying extraordinary writ jurisdiction [Paras 7-10].

Decision: Writ petition dismissed – Existing orders and seniority confirmed – No interference warranted in the absence of timely challenge or demonstrated prejudice.

**Referred Cases:**

- Prem Ram v. Managing Director, Uttarakhand Pev Jal and Nirman Nigam, Dehradun and Others, [2015 KHC 4385]

**Representing Advocates:**

**For Petitioner: Smt. V. Renju**

**For Respondents: Sri. P. Ramakrishnan, Smt. Preethi Ramakrishnan, Sri. C. Anil Kumar, Smt. Asha K. Shenoy, Sri. Pratap Abraham Varghese, Sri. T.K. Vipindas**

## **JUDGMENT**

The prayer in the writ petition is for a direction to respondents 1 to 3 not to appoint anyone to the post of HSA (Maths) by promotion in Guruvayoor Devaswom English Medium School (hereinafter referred to as the 'School') overlooking the claim of the petitioner, for a direction to the respondents 1 to 3 to declare that the petitioner's appointment stands confirmed with effect from 04.06.2007 or 20.05.2012, on which date the respondents 4 & 5 were confirmed in service and for a direction to the respondents 1 to 3 to declare that the petitioner is also entitled to get all the benefits granted to respondents 4 & 5.

2. According to the petitioner, she started working as a Teacher in the School on 04.06.2007 after being selected by a selection body constituted by the school management and representatives of respondents 1 & 2. The petitioner claims that she was fully qualified as per the CBSE Regulations and Rules and was permitted only to work during the academic year and services were dispensed with during the vacations. It is stated that from the next academic year, she was permitted to work throughout. The 1<sup>st</sup> respondent on 25.11.2010 decided to regularise all temporary employees working in various units including this School, who had completed at least 2 years of service. According to the petitioner, she had more than 2 years of service then, but she was not included in the list for regularisation. She had filed WP(C) No.10051/2011 challenging the decision and termination and this Court had passed an interim order directing the petitioners to be allowed to continue in service. The petitioner stated that from 1996 onwards, no permanent appointments were made in the School. The petitioner further stated that in 2012, the 1<sup>st</sup> respondent had decided to confirm 18 Teachers working in the School after reinstating them in service and that even though the petitioner was fully qualified and entitled to be regularised, she was being wilfully avoided. Ext.P1 is the order by which respondents 4 & 5 who had joined along with the petitioner were confirmed in service with effect from

20.05.2012. Ext.P1 says that as per the CBSE by-laws, Teachers who have completed 2 years of service in the School should be confirmed in the School. It is also stated that the service is considered with effect from their first date of appointment in the School and the service before 20.05.2012 will be considered for pensionary benefits. The petitioner along with other Teachers, who did not get the benefits, submitted a representation, and WP(C) No.15001/2011 was dismissed as not pressed on a request made by the petitioner. The 1<sup>st</sup> respondent by Decision No.29 dated 17.04.2013 decided to confirm 5 Teachers including the petitioner with effect from 17.04.2013. Ext.P2 is the order issued pursuant to the decision. Ext.P2 is dated 13.05.2013. The said order is not challenged by the petitioner. According to the petitioner, 4 years later, it was noticed that a sum of ₹3,500/- was being deducted from her salary from April 2017 onwards and the petitioner was informed on enquiry, that she is included in the contributory pension scheme, which was introduced with effect from 01.04.2013 in the School. According to the petitioner, if the petitioner had been confirmed in service from the date on which respondents 4 & 5 were confirmed, she would have been included in the statutory pension scheme and not the contributory pension scheme. The petitioner also submitted that one Sharmi who had entered service along with the petitioner, and one Ragi S.Varier and Shruthy K.S., who had joined after the petitioner, were confirmed in service with effect from 30.03.2013 and hence all of them were included in the statutory pension scheme, instead of the contributory pension scheme. Even though the petitioner submitted representations against the above alleged anomaly, it is stated that the requests were rejected. The petitioner further submitted that there is a vacancy of HSA (Maths) in the School due to the retirement of Smt.Shoba, and the petitioner being the senior among the Maths Teachers, is entitled to get promotion to the said post.

3. Respondents 1 to 3 have filed a counter affidavit. It is stated that the petitioner accepted Ext.P2 order, whereby she was appointed and confirmed with effect from 17.04.2013 and the said order is not under challenge. The request for regularisation with effect from 04.06.2007 had been rejected and the request to restore seniority and include her in the statutory pension scheme had also been rejected. The said Decision No.16 of the 1<sup>st</sup> respondent dated 12.01.2018 has also not been challenged by the petitioner. It is stated in the counter affidavit that respondents 4 & 5 and other Teachers were appointed as per Decision No.41 of Guruvayoor Devaswom

Management Committee dated 20.05.2012 [Ext.R1(a)]. Ext.R1(a) would show that the Teachers were reinstated in service. The decision of the 1<sup>st</sup> respondent was approved by the Devaswom Commissioner as per Ext.R1(b). Ext.R1(c) produced along with the counter affidavit is the request made by the petitioner along with others requesting for regularisation. Exts.R1(d) & R1(e) are the decisions taken by the 1<sup>st</sup> respondent on the representations submitted by the petitioners and others on 29.03.2013 and 17.04.2013 respectively, whereby it was decided to regularise them in service with effect from 17.04.2013. It is seen that the 1<sup>st</sup> respondent had considered CBSE affiliation bye-laws 27 & 28 under Chapter II, which says that a person with 2 or more years of service can be appointed permanently, and also the fact that the 5 Teachers regularised had crossed the age limit for making any applications for appointment. It is also stated that the order is issued on humanitarian considerations. The decision also says that their case had not been considered earlier since they had crossed the age limit even at the time of entering the service originally. As already stated, even though the above order was issued in April 2013, the same has not been challenged. Without challenging the order, it is not open to the petitioner to seek a modification of the same under the guise of a prayer for a declaration.

4. Respondents 4 & 5 have also filed a counter affidavit, which is similar to the contentions taken in the counter affidavit of respondents 1 to 3. Along with the counter affidavit, Ext.R4(a) order has been produced, whereby the 4<sup>th</sup> respondent has been promoted to the post of TGT (Maths) with effect from 04.11.2022.

5. Heard the counsel for the petitioner and the counsel for the respondents.

6. The petitioner's claim for regularisation with effect from 2007 had been taken up initially in WP(C) No.10051/2011, which was dismissed as not pressed. The order of this Court does not specifically say that the petitioner can raise the claims made in the writ petition over again. That is to say, the dismissal was not with liberty to move the court again. The petitioner apparently was hopeful that the representation would be considered, and all the reliefs claimed by the petitioner would be extended to her. However, admittedly, the relief of confirmation in service alone was granted, and that too with effect from 17.04.2013 and not with effect from 2007. Even after 6 long years, the petitioner has not challenged the orders but only seeks modification of the order of confirmation, which if allowed, can result in the

petitioner being senior to respondents 4 & 5. As contended by the respondents, the petitioner cannot seek such a relief at this stage having accepted the order of confirmation of appointment. The claim is highly belated and cannot be entertained by this Court while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. The sit-back theory will also apply in this case since the challenge, if allowed would unsettle the settled position of seniority.

7. The petitioner relied on the decision in **Prem Ram V. Managing Director, Uttarakhand Pey Jal and Nirman Nigam, Dehradun and Others** reported in **[2015 KHC 4385]** to submit that there should be a direction to regularise the petitioner from the date on which her juniors were regularised. A reading of the judgment would show that the facts involved in the case before the Hon'ble Supreme court were not similar to the one in the case on hand. That was a case where the Hon'ble Supreme Court found that there was no real difference between the case of the petitioners before the Supreme Court and their juniors who were regularised. The claim of the petitioner and respondents 4 & 5 for regularisation cannot be termed to be similar. It is evident that the Teachers who were qualified at the initial stage of appointment were all regularised and 5 Teachers who had an age bar even at the time of initial appointment alone were not regularised with effect from 2012. It is also evident that the case of these 5 Teachers was later reconsidered and on humanitarian grounds, their services were also regularised, though with effect from a later date. As already stated, the above order of confirmation has also not been challenged. None of the fundamental rights or statutory rights of the petitioners are affected and the contention that the petitioner is entitled to similar treatment as the respondents 4 and 5 also cannot be sustained since there were sufficient reasons for the official respondents to treat them differently. No grounds are made out warranting interference by this Court in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

The writ petition fails and is dismissed.

\*Disclaimer: Always compare with the original copy of judgment from the official website.