

ITEM NO.107

COURT NO.8

SECTION XIA

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

CIVIL APPEAL NO(s). 7944-7947 OF 2001

DEEPA AUGUSTINE

Appellant (s)

VERSUS

GEETHA ALEX & ORS.

Respondent(s)

(With appln(s) for PERMISSION TO FILE ADDITIONAL AFFIDAVIT and office report)

Date: 08/05/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s)

Mr. B.V. Deepak, Adv.

for M/S. T.T.K. Deepak & Co.,Adv.

For Respondent(s)

Mr. Romy Chacko,Adv.

Mr. G. Prakash ,Adv

**UPON hearing counsel the Court made the following
O R D E R**

The appeals are disposed of in terms of the signed order.

**(Sukhbir Paul Kaur)
Court Master**

**(P.S. Tyagi)
Court Master**

(Signed Order is placed on the file)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

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O R D E R

We have heard learned counsel for the parties.

These appeals by special leave are directed against the judgment and order dated 25th May, 2001 passed by the full bench of the High Court of Kerala at Ernakulam in W.A. Nos. 1065-1068 of 1996. The Kerala High Court has examined the proviso to Rule 43 of the Kerala Service Rules, 1959 and observed :

“Thus, if a vacancy had arisen in the post of Science Teacher, necessarily, the Science Teacher had to be promoted. But what prompted the Government to introduce the Proviso is the complaint made by certain sections of teachers that in the exigencies of service promotions may be made considering the seniority of the teacher even though he may not be qualified in the subject in which

vacancy arose. It is to implement such a position that the Proviso was enacted. An argument was advanced stating that the earlier circulars had been withdrawn and hence, they cannot be looked into to ascertain the meaning of the words “subject requirement” and finally they concluded :-

“In view of the above, we direct the Government to reconsider Ext. P7 and pass appropriate orders within two months from today in the light of the principles held in this judgment. Original Petition is disposed of.”

Exhibit P-7 is an order passed by the Kerala Government in a petition filed by the appellant before us on a remand made by the Kerala High Court in a writ petition filed by the appellant. In that, on 27th August, 1994 the Government passed the following order :-

“In the above circumstances Government order that the action of the Manager, St. Michael's High School, Kudavachoor, Ambika Market P.O. in appointing Smt. N.K. Thressiamma a Social Studies hand in the vacancy of a Physical

Science teacher will be set aside. The Manager will appoint a proper Physical Science hand. While doing so, the Manager will prefer claims if any put in by Smt. Deepa Augustine, who was appointed by the Manager earlier and terminated subsequently. In the case of Smt. Geetha Alex who claims a right to be appointed as H.S.A. (Physical Science) from 1993-94, the Manager will examine the issue as per subject ratio and available periods for physical.”

In this background we have to examine the case of the appellant. The appellant was initially appointed as High School Assistant (Physical Science) on probation on 28th October, 1991 in the vacancy of K.T. Thomas who was promoted as a Head Master. This was protested by N.K. Thressiamma, a teacher in the Social Studies in the Upper Primary Section. Therefore, the appointment of appellant was not approved by the District Education Officer. Against that, the appellant filed an appeal before the Government which was rejected. Aggrieved against that, she preferred a Revision Petition before the State Government. There also she failed. Thereafter, she filed

a Writ Petition before the High court and the High Court remanded the matter back to the Government and the Government thereafter passed the order on 27th August, 1994 (Ex.P-7) and directed the Manager to consider the case of Deepa Augustine against the Physical Science vacancy. This order was challenged by N.K. Thressiamma and many other petitions were filed. A Full Bench was constituted to examine the scope of Rule 43 and the Proviso along with the order passed by the Government dated 27th August, 1994. In that context, the Full Bench passed the order as quoted above.

However, now the situation has changed. We have been informed that N.K. Thressiamma has since been superannuated and the appellant is still working as a Physical Science Teacher. Therefore, no useful purpose will be served by examining the effect of Full Bench Judgment. However, the Full Bench has already observed that the Government should re-examine the matter in the light of the decision given by the Full Bench.

However, we may observe that whenever the question of promotion arises, the first question which is to be examined is the subject requirement of that vacancy and the person should be appointed who has the minimum

qualification for teaching that subject. To illustrate the point : in case a vacancy arises for a subject of Physical Science against that person who possess minimum qualification for teaching the Physical Science should be recruited and not a person who belongs to Social Studies. This will be doing a great harm to the interest of the students. The paramount consideration should be the interest of the students that the person who is being appointed to teach subject should possess minimum qualification of that subject.

However, now we need not dilate on Section 43 and the Proviso thereunder because N.K. Thressiamma who is from Social Studies has already superannuated and the appellant is working in the Physical Science, the authorities may consider the appointment of the appellant in Physical Science subject as she said to possess necessary qualification. We leave it to the competent authority to consider the matter of the appellant and pass appropriate orders in accordance with law.

The appeals are accordingly, disposed of.

.....J.
(A.K.MATHUR)

.....J.
(AFTAB ALAM)

New Delhi,
May 8, 2008