

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 3262 of 2005 (L)

PETITIONER :

FR.SEBASTIAN SANKOORIKKAL, S/O. JOSEPH,
AGED 68 YEARS, MANAGER, ST.MARY'S L.P. SCHOOL
ALANGAD-683 511, ERNAKULAM DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS :

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.
3. THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM.
4. THE DISTRICT EDUCATIONAL OFFICER,
ALUVA, ERNAKULAM DISTRICT.
5. THE ASSISTANT EDUCATIONAL OFFICER,
ALUVA, ERNAKULAM DISTRICT.
6. SMT.VIMALA JOSEPH,
LOWER PRIMARY SCHOOL ASSISTANT, ST.MARY'S L.P. SCHOOL
ALANGAD-683 511, ERNAKULAM DISTRICT.
7. SR.JINI K.D,
LOWER PRIMARY SCHOOL ASSISTANT, ST.MARY'S L.P. SCHOOL
ALANGAD-683 511, ERNAKULAM DISTRICT.
8. SMT.ROSY PAUL,
LOWER PRIMARY SCHOOL ASSISTANT, ST.MARY'S L.P. SCHOOL
ALANGAD-683 511, ERNAKULAM DISTRICT.

R1 TO R5 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3262 of 2005 (L)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE ORDER NO.K.DIS.B3/18746/97 OF THE 3RD RESPONDENT DATED 25.11.1997

EXT.P2 : COPY OF THE ORDER CIRCULAR NO.H3/66286/85 OF THE 2ND RESPONDENT DATED 5.6.1985

EXT.P3 : COPY OF THE G.O(MS)NO.147/85/G.EDN.OF THE GOVERNMENT DATED 6.7.1985

EXT.P4 : COPY OF THE G.O.(MS)NO.123/91/G.EDN. OF THE GOVERNMENT DATED 5.8.1991

EXT.P5 : COPY OF THE LETTER NO.50319/H2/95/G.EDN. OF THE GOVERNMENT DATED 22.1.1996

EXT.P6 : COPY OF THE ORDER NO.K.DIS./RT2/38137/97/DPI OF THE 2ND RESPONDENT DATED 18.11.1997

EXT.P7 : COPY OF THE PROCEEDINGS NO.K.DIS.ET2/36896/97/DPI OF THE 2ND RESPONDENT DATED 23.04.1998

EXT.P8 : COPY OF THE GO(RT)NO.3923/99/G.EDN OF THE GOVERNMENT DATED 18.8.1999

EXT.P9 : COPY OF THE GO(RT)NO.78/05/G.E OF THE GOVERNMENT DATED 5.1.2005

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.3262 of 2005

Dated this the 18th day of March, 2015

J U D G M E N T

The petitioner is the Manager of St.Mary's L.P.School, Alangad. According to the petitioner, the school was started 75 years prior to the date of filing of the writ petition. The petitioner had appointed respondents 6, 7 and 8 as Lower Primary School Assistants ('LPSA' for short) on different dates. However, the appointments were objected to by the Department insisting that, the vacancies could be filled up only by posting protected teachers. The petitioner objected to the said stand. The contention of the petitioner was that, in view of Exts.P2 and P3, he was entitled to make the appointments that were in dispute. He filed a review petition before the Government. However, by Ext.P9 proceedings, the review petition has been dismissed. The petitioner has filed this writ petition challenging Ext.P9.

2. This writ petition has been posted before me for hearing. Service of notice on the 6th respondent is remaining incomplete. However, according to the counsel for the petitioner, this writ petition has been filed for her benefit also seeking approval of her appointment. In view of the above, I have heard the learned counsel appearing for the petitioner as well as the learned Government Pleader who appears for respondents 1 to 5.

3. According to Adv.Sri.V.A.Muhammed who appears for the petitioner, in view of Exts.P2 and P3, the obligation of the petitioner is

limited to accommodating protected teachers under the same management, if there were any. It is the case of the petitioner that there were no protected teachers under the same management. The school was not a newly opened school, having completed more than 75 years of existence, at the time of filing of the writ petition. For the above reasons, it is contended that the petitioner has no obligation to accommodate protected teachers from other schools as per the relevant order in force.

4. The learned Government Pleader refutes the contentions of the learned counsel for the petitioner and points out that, the shift system that was being continued in the school had been abolished on the request of the management. It was a condition for doing away with the shift system that, protected teachers be appointed to the resultant vacancies. However, the petitioner has not complied with the said condition and has appointed fresh teachers. It was for the said reason that the appointments were not approved.

5. A perusal of Ext.P1 shows that, the shift system that was in existence in the petitioner's school had been abolished by the said proceedings. It is a specific condition in the said order that, the additional posts consequent to the abolition of shift system should be filled up by protected teachers. However, Ext.P2 circular issued by the 2nd respondent limits the obligation to accommodate protected teachers to those available under the same management. In other words, the obligation of the petitioner herein was limited to

accommodating the protected teachers, if any, available under the same management. It is the case of the petitioner that, no protected teachers were so available under the same management. No evidence or material has been placed before me to justify a conclusion that the said assertion is not correct. Ext.P3 Government Order also makes the above position clear that, the additional posts need be filled up only by accommodating protected teachers available under the same educational agency. Since no protected teachers were available under the educational agency of the petitioner, the petitioner was at liberty to appoint fresh hands to the vacancies that had arisen consequent to the abolition of shift system in his school. The said action of the petitioner cannot be described as a violation of the condition contained in Ext.P1. Therefore, there is no justification for the stand adopted in Ext.P9 that, the appointments of respondents 6 to 8 could not be approved.

For the foregoing reasons, this writ petition is allowed. Ext.P9 is set aside. Respondents 1 to 5 are directed to grant approval to the appointments of respondents 6 to 8 by issuing necessary orders. Orders in this regard shall be issued, as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV