

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 3364 of 2005 (A)

PETITIONER:

**M.K.SALAHUDHEEN
S/O.P.IBRAHIMKUTTY, AGED 30 YEARS, ARABIC TEACHER
ADI-DRAVIDA LOWER PRIMARY SCHOOL, KORANHIYUR
P.O.EDAKKAZHIYOOR, VIA-CHAVAKKAD-680 515
THRISUR DISTRICT.**

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

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT
SECRETARIAT, TRIVADNRUM.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR AT AYYANTHOLE.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
CHAVAKKAD, THRISSUR DISTRICT.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
CHAVAKKAD, THRISSUR DISTRICT.**
- 5. THE MANAGER
ADI-DRAVIDA LOWER PRIMARY SCHOOL, KORANHIYUR
P.O.EDAKKAZHIYOOR, VIA-CHAVAKKAD-680 515
THRISUR DISTRICT.**

BY GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|---------|---|---|
| EXT.P1 | - | COPY OF THE PROCEEDINGS OF THE 4TH RESPONDENT. |
| EXT.P2 | - | COPY OF THE APPOINTMENT ORDER. |
| EXT.P3 | - | COPY OF THE ORDER NO.D/3359/96 OF THE 4TH RESPONDENT. |
| EXT.P4 | - | COPY OF THE ORDER NO.B1.10880/96/L.DIS. OF THE 3RD RESPONDENT. |
| EXT.P5 | - | COPY OF THE REPRESENTATION SUBMITTED BEFORE THE HON'BLE MINIST FOR EDUCATION. |
| EXT.P6 | - | COPY OF THE ORDER NO.55887/S2/02/G.EDN. OF THE GOVERNMENT. |
| EXT.P7 | - | COPY OF THE LETTER NO.27386/S2/02/G.EDN. OF THE GOVERNMENT. |
| EXT.P8 | - | COPY OF THE ORDER NO.D-5231/02 OF THE 4TH RESPONDENT. |
| EXT.P9 | - | COPY OF THE ORDER NO.B4-30718/2002 OF THE 2ND RESPONDENT. |
| EXT.P10 | - | COPY OF THE G.O.(RT) NO.254/2001/G.EDN. OF THE GOVERNMENT. |

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.3364 of 2005

Dated this the 16th day of October, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's appointment as on 27.07.1996 as a Lower Grade Arabic Teacher was not approved. Admittedly, the petitioner was appointed to an anticipated additional vacancy for the academic year 1996-1997. The same is also said to have been sanctioned as per Ext.P1 staff fixation order. But, however, there was a Higher Level Verification, by which shortage of students was detected and the post was not sanctioned. The petitioner's contention is that, the shortage occurred only due to five students having gone to an adjacent Medical Centre for medical checkup. However, the fact remains that the Manager never challenged the Higher Level Verification.

2. The petitioner relies on Ext.P6 and the judgment in ***State of Kerala v. Manager, M.T.M. Higher Secondary School (2014 (3) KLT 23)*** to contend that the Deputy Director of

Education, on Higher Level Verification, could not have gone into the facts and there could be no interference caused to the staff fixation, by verifying the physical strength as on the date of Higher Level Verification.

3. Primarily, it is to be noticed that the Higher Level Verification and the orders passed thereunder were never challenged by the Manager. The Manager, by Ext.P5 dated 22.10.2002, after 6 years, filed a representation before the Government and the Government issued Ext.P6, directing review of the staff fixation for the year 1996-1997 and to sanction admissible posts as per the provisions in the KER. In fact, there is absolutely no authority in the Government to pass such orders, since it interferes with the statutory powers conferred on the authorities under the KER. In any event, the statutory authority, rightly, refused to do so by Ext.P7.

4. Further contention raised by the petitioner is on the basis of Ext.P8 report of the Assistant Educational Officer. The petitioner contends that the Assistant Educational Officer had certified that the students were in fact taken to the Medical

Centre for medical examination. It is not clear as to how the Assistant Educational Officer in the year 2003 could confirm any incident, which occurred in the year 1996-1997. Further, the report at Ext.P8 only shows that the Manager produced some Certificates, based on which the report was sent. Ext.P8 also hence cannot be relied upon. The judgment cited by the petitioner is not applicable, since the Manager has not challenged the orders passed on Higher Level Verification.

The writ petition hence would stand dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

//True Copy//

P.A. to Judge.

sp/16/10/15