

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

RSA.No. 435 of 2011 ()

**AGAINST THE JUDGMENT IN AS 250/2009 of SUB COURT, PERUMBAVOOR
DATED 26-11-2010**

**AGAINST THE JUDGMENT IN OS 192/2007 of MUNSIFF COURT, PERUMBAVOOR
DATED 31-10-2009**

APPELLANT(S)/APPELLANT/DEFENDANT:

**MANAGER,
MAR AUGEN HIGH SCHOOL, KODANAD, PERUMBAVOOR.**

**BY ADVS.SRI.G.RAJAGOPAL
SMT.S.LEELALAKSHMI**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**JUBY.V.P., AGED ABOUT 39 YEARS,
W/O.SABU MATHEW, TEACHER, VALANKOTTU HOUSE
PEZHACKAPPILLY, MUVATTUPUZHA PRESENTLY RESIDING
AT PANDIKKUDY HOUSE, MUDAKKUZHA P.O., MUDAKKUZHA KARA
VENGOOR WEST VILLAGE, PIN-683 546.**

**R1 BY ADV. SRI.NIDHI BALACHANDRAN
R1 BY ADV. SRI.T.A.GEORGE JOSEPH
R1 BY ADV. SRI.ANIL R.NATH**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

R.AV

K. ABRAHAM MATHEW, J.

R.S.A.No.435 of 2011

Dated this the 8th day of September, 2015

J U D G M E N T

Appellant is the Manager of Mar Augen High School, which is aided by the Government. He was the sole defendant in O.S.No.192 of 2007 on the file of Munsiff's Court, Perumbavoor. The respondent was the plaintiff. On 04.09.2001, she was appointed a High school Assistant (Physical Science) for the period from 04.09.2001 to 23.08.2002 in the leave vacancy of Smt.Deepa Varghese. As such, she worked from 04.09.2001 to 23.08.2002. But the Government refused to approve her appointment. Later, as another vacancy arose her appointment was approved for the period from 04.12.2001 to 23.08.2002. She was not paid salary for the period from 04.09.2001 to 03.12.2001. She filed the suit for recovery of her salary for the said period. The trial court as well as the appellate court (AS No 255 of 2009) found that she is entitled to get the amount claimed in the suit. The decree is challenged in this appeal.

2. Heard.

3. The substantial question of law that arises for consideration is whether the manager of an aided school has the liability to pay salary to the teachers.

4. The submission of the learned counsel for the appellant is that the appointment of the defendant was subject to the approval of the Government and the salary is paid by the Government and not by the management and the refusal of the Government to approve the plaintiff's appointment does not make the management liable to pay the salary for the said period.

5. Ext.A1 is the appointment order issued to the plaintiff. It is specifically mentioned in it that the appointment is subject to the provisions to the Kerala Education Act and the rules thereunder and such other rules are orders issued from time to time by Government or other competent authority. The plaintiff was given notice that her appointment was subject to approval by the Government which was the only authority liable to pay her salary as held in **V.K.Vasudevan Namboodiri Vs. V.K.Sarojini Amma (1967 KLT 653)**. She took the risk of working as a teacher with the full knowledge that there

is a chance of her appointment not being approved by the Government. So when the Government refused to approve her appointment for a certain period, she cannot claim salary from the management, which was not at all liable to pay salary to the teachers. Unfortunately, the courts below did not take notice of this fact. Both courts wrongly held that the appellant is liable to pay the salary for the period during which she worked as a teacher without approval of the Government. So the decree passed by the courts below is liable to be set aside.

In the result, this appeal is allowed. O.S.No.192 of 2007 on the file of the Munsiff court, Perumbavoor is dismissed. No costs.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge