

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. 695 of 2009 (G)

PETITIONER(S):

1. HAJI.K.E.YOUSUF SAHIB,S/O.ISMAIL,
AGED 63 YEARS, CORRESPONDENT, ORPHANAGE AIDED LOWER
PRIMARY SCHOOL, VALLAPPUZHA, SHORNUR-679336.

2. C.P.SMITHA, LOWER PRIMARY SCHOOL
ASSISTANT, ORPHANAGE AIDED LOWER PRIMARY SCHOOL
VALLAPPUZHA, SHORNUR-679336.

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

RESPONDENT(S):

1. THE STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM-14.

3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.

4. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPPALAM, PALAKKAD DISTRICT.

5. THE ASSISTANT EDUCATIONAL OFFICER,
SHORNUR, PALAKKAD DISTRICT.

R, BY ADV. GOVERNMENT PLEADER SHRI.ABHIJETT LESSIL

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

APPENDIX IN WPC 695/2009

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER APPOINTMENT OF THE 2ND PETITIONER
DT.31.1.2005

EXT.P2: -DO- DT.1.6.2005

EXT.P3: -DO- NO:D.DIS.B/1811/05 OF THE AEO DT.24.8.2005

EXT.P4: -DO- NO:D.DIS.B/2478/05 OF -DO- DT.29.8.2005

EXT.P5: -DO- NO:D.DIS.50192/05/RA3/EPI OF THE 2ND RESPONDENT
DT.23.3.2006

EXT.P6: -DO- B3/20565/06 OF THE 3RD RESPONDENT DT.27.5.2008

EXT.P7: -DO- K.DIS.B4/7240/2005 OF THE 4TH RESPONDENT DT.1.2.2006

EXT.P8: -DO- NO:B4/7239/2005/K.DIS.OF -DO- DT.2.2.2006

EXT.P9: -DO- AGREEMENT DT.31.5.2007

EXT.P10: -DO- ORDER NO:K.DIS.G1/39006/07/DPI OF THE 2ND RESPONDENT
DT.2.7.2007

EXT.P11: -DO- REVISION FILED BY THE MANAGER DT.7.8.2007

EXT.P12: -DO- OF THE ORDER No1D.DIS.B/1953/06 OF 5TH RESPONDENT
DT.10.10.2006

EXT.P13: -DO- D.DIS.B/1702/07 OF -DO- DT.16.10.2007

EXT.P14: -DO- D.DIS.B/1578/08 OF -DO- DT.9.9.2008

EXT.P15: -DO- ORDER NO:B5/2342/07/D.DIS. OF 2ND RESPONDENT
DT.9.7.2007

EXT.P16:-DO- B5/30677/07/.DIS OF -DO- DT.12.2.2008

EXT.P17: -DO- RA(3)/23885/08/DPI/K.DIS. OF THE 2ND RESPONDENT
DT.4.4.2008

EXT.P18: -DO- RA(3)18185/08/DPI/K.DIS. OF -DO- DT.18.3.2008

EXT.P19: -DO- ORDERNO:56493/B3/08/GE OF THE GOVT. DT.25.11.2008

EXT.P20: -DO- G.O(P)NO:317/05/G.EDN. OF THE GOVT. DT.17.8.2005

EXT.P21: -DO- OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC
NO:30657/2005 DT.4.1.2006

EXT.P22: -DO- OF THE G.O(RT)NO:886/2008/G.EDN. OF THE GOVT.
DT.16.2.2008

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 695 OF 2009

Dated this the 18th March, 2015.

JUDGMENT

The first petitioner is the Manager and the second petitioner is a Lower Primary School Assistant ('LPSA' for short) working in the School of Orphanage A.L.P.School, Vallappuzha. They have filed this writ petition aggrieved by the action of the respondents in rejecting the approval of appointment of the second petitioner. The second petitioner was appointed as per Ext.P1 initially for the period from 31.1.2005 to 31.3.2005. Thereafter, as per Ext.P2 she was appointed from 1.6.2005 onwards. Both the appointments Exts.P1 and P2 were rejected by Exts.P3 and P4 issued by the fifth respondent. The reason stated for rejecting the appointment is that, the second petitioner was appointed to the 16th post whereas there were only 15 sanctioned posts in the School.

According to the petitioners, as per Ext.P5 proceedings dated 23.3.2006, the second respondent had sanctioned a 16th division to the School and a consequential post. Therefore, the second petitioner's appointment ought to have been approved. The first petitioner had preferred an appeal to the fourth respondent, which was also rejected by Ext.P7 dated 1.2.2006. The first petitioner again appealed to the second respondent by Ext.P10 order dated 2.7.2007. The appeal was also rejected.

2. As per Ext.P10, two subsequent appointments made to the School of the first petitioner have been approved. However, the second petitioner's appointment has been rejected. The reason for rejection of the second petitioner's appointment is that, the petitioner had not accommodated a protected teacher in the School in terms of the mandate of G.O (P) 46/06 dated 1.2.2006. Therefore, the Manager was directed to appoint one protected teacher. Though the first petitioner had preferred a revision to the Government Ext.P11,

by Ext.P19 the same has been rejected without going into the merits of the issue raised by merely stating that there was a ban order against fresh appointments imposed by the Government order dated 17.8.2012. The petitioners have filed this writ petition challenging the said proceedings.

3. According to Adv.V.A.Muhammed who appears for the petitioners the second petitioner's appointment was made on 31.1.2005 whereas the obligation to appoint a protected teacher was imposed by a Govt. Order dated 1.2.2006. An appointment has to be considered in accordance with the rules that were in force on the date of the appointment, it is contended. It is also pointed out by the learned counsel for the petitioners that, a 16th division had been subsequently sanctioned to the School by Ext.P5 proceedings of the second respondent for the academic year 2004-05. By Ext.P6 a protected teacher had been deployed to the petitioner's school and had been duly accommodated satisfying the objections raised in Ext.P10 also. Apart from the above, the first

petitioner has executed Ext.P9 bond expressing his willingness to accommodate protected teachers who may be allotted to the school in future. It is pointed out further that the second respondent has granted approval to two subsequent appointments whereas the second petitioner's appointment has been rejected. Therefore, it is contended that the impugned proceedings are liable to be set aside.

4. A counter affidavit has been filed on behalf of the fourth respondent. According to the fourth respondent, it was the protected teacher who had to be accommodated to the 16th post that was sanctioned to the school of the first petitioner. Therefore, appointment of the second petitioner was irregular. It was for the said reason that the said appointment was not approved.

5. Heard. It is worth noticing that the second petitioner was appointed as per Ext.P1 initially on 31.1.2005 and thereafter by Ext.P2 on 1.6.2005. Both the appointments were initially rejected by Exts.P3 and P4 for the reason that there

was no sanctioned post in the school. There were only 15 sanctioned posts where as the appointment was made only to the 16th post. The said situation does not survive for the reason that, the school has been sanctioned a 16th division by Ext.P5 proceedings of the second respondent dated 23.3.2006. It is true that Ext.P5 was not in existence at the time of issuance of Exts.P3 and P4 but Ext.P5 was necessary to be taken note of while issuing Ext.P10. The first petitioner's appeal to the fourth respondent was rejected by Ext.P7 and therefore, the petitioner had submitted a further appeal to the second respondent. It was the said appeal that was rejected by Ext.P10. In Ext.P10, the objection raised is that the first petitioner had not accommodated a protected teacher in the School in accordance with the terms of the G.O dated 1.2.2006.

6. In the first place it is worth noticing that the G.O relied upon by the second respondent is dated 1.2.2006. Whereas, the second petitioner had been appointed on

31.1.2005, during the previous year. Therefore, the first petitioner cannot be blamed for not having complied with the provisions of the said G.O. The second respondent has also granted approval to the appointment of the two other persons, which were appointed after the second petitioner. Even assuming that the first petitioner ought to have accommodated a protected teacher in the school, Ext.P6 shows that a protected teacher who was posted to the said school has been accommodated therein. The resultant situation is that, the first reason stated for rejection of the second petitioner's appointment viz., that the 16th division was not available does not survive in the light of Ext.P5. The first petitioner has already accommodated a protected teacher as evident from Ext.P6. He has also executed Ext.P9 bond conveying his willingness to accommodate protected teachers in the future. The ban order referred to in Ext.P19 is dated 17.8.2005 and can have application only to the year subsequent to the appointment of the second petitioner.

However, the above change in circumstances has not been adverted to or considered by the first respondent while issuing Ext.P19. Therefore, Ext.P19 is unsustainable. The same is accordingly set aside.

This writ petition is therefore disposed of directing the first respondent to consider Ext.P11 revision submitted by the first petitioner afresh in the light of Exts.P5, P6 and P9 and the observations made hereinabove, after affording an opportunity of being heard to the petitioners as well as other interested persons and to pass fresh orders thereon accordance with law, 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

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