

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

W.P.(C).No.1301 of 2010 (K)

PETITIONER(S):-

1. V.VIJAYA KUMAR, S/O.VASUDEVAN NAIR, AGED 43 YEARS,
MANAGER, L.P.G. SCHOOL,
P.O.NADUVATTOM, PALLIPPAD, (VIA) HARIPAD,
ALAPPUZHA DISTRICT.
2. SMITHA KAIMAL,
LOWER PRIMARY SCHOOL ASSISTANT,
L.P.G.SCHOOL, P.O.NADUVATTOM, PALLIPPAD, (VIA) HARIPAD,
ALAPPUZHA DISTRICT.

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 (P) DEPARTMENT,
GOVERNMENT SECRETARIAT ANNEX, TRIVANDRUM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.
3. THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA DISTRICT.
4. THE DISTRICT EDUCATIONAL OFFICER, ALAPPUZHA.
5. THE ASSISTANT EDUCATIONAL OFFICER,
HARIPPAD, ALAPPUZHA DISTRICT.

R1 TO R5 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE ORDER NO.D/4021/2006 OF THE ASSISTANT EDUCATIONAL OFFICER DATED 23.11.2006.
- EXT.P2 TRUE COPY OF THE ORDER NO.B2-25440/06/D.DIS. OF THE DEPUTY DIRECTOR DATED 24.02.2007.
- EXT.P3 TRUE COPY OF THE ORDER NO.B5/7120/06/K.DIS. OF THE DISTRICT EDUCATIONAL OFFICER DATED 10.04.2007.
- EXT.P4 TRUE COPY OF THE ORDER NO.F3/51898/07/DPI/K.DIS. OF THE 2ND RESPONDENT DATED 8.5.2008.
- EXT.P5 TRUE COPY OF THE ORDER NO.50059/H2/08/G.EDN. OF THE GOVERNMENT DATED 13.07.2009.
- EXT.P6 TRUE COPY OF THE ORDER NO.56902/H2/09/G.EDN. OF THE GOVERNMENT DATED 29.10.2009.
- EXT.P7 TRUE COPY OF THE G.O.(P) NO.259/2006/G.EDN. OF THE GOVERNMENT DATED 12.10.2006.
- EXT.P8 TRUE COPY OF THE G.O.(MS).NO.107/98/G.EDN. OF THE GOVERNMENT DATED 04.04.1998.
- EXT.P9 TRUE COPY OF THE CIRCULAR NO.4545/J2/2007/G.EDN. OF THE GOVERNMENT DATED 17.05.2007.
- EXT.P10 TRUE COPY OF THE ORDER NO.49229/L3/06/GE OF THE GOVERNMENT DATED 25.5.2007.
- EXT.P11 TRUE COPY OF THE DECISION REPORTED IN 2009 (2) KLT 604 DATED 6.4.2009.
- EXT.P12 TRUE COPY OF THE G.O.(RT) NO.4035/10/G/EDN. DATED 15.09.2010 OF THE GOVERNMENT.
- EXT.P13 TRUE COPY OF THE ORDER NO.F3/46272/12/DPI/K.DIS. DATED 3.12.2012 OF THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXT.P14 TRUE COPY OF THE ORDER NO.D-3271/2012/K.DIS. DATED 23.1.2013 OF THE ASSISTANT EDUCATIONAL OFFICER.
- EXT.P15 TRUE COPY OF THE APPOINTMENT ORDER DATED 3.10.2006 OF THE 2ND PETITIONER AND THE APPROVAL THEREOF DATED 23.12.2011.

RESPONDENT'S EXHIBITS:-

NIL.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.1301 of 2010-K

Dated this the 03rd day of September, 2015

JUDGMENT

The petitioners are respectively the Manager and the Lower Primary School Assistant [for short "LPSA"], whose rejection of approval of appointment is under challenge in the above writ petition.

2. The 2nd petitioner was admittedly appointed as a LPSA on 03.10.2006 against a retirement vacancy of one Smt.Valsamma George, who retired on 31.03.2006. The application for approval of appointment was delayed beyond the period of 15 days provided under the Kerala Education Rules, 1959 [for short "KER"] and the same stood rejected for the reason of the delay as also for the reason that as per G.O.(P) No.169/2004/G.Edn. dated 15.06.2004 the vacancy arising after the commencement of the academic year can only be filled up by daily wage teachers. The rejection was made by the Assistant Educational Officer [for short "AEO"] as per Exhibit P1, which shows the further reason of the school having no approved Manager. The said ground no longer exists, since admittedly

there was a dispute with respect to the management; which has since then been resolved. Hence, the grounds on which the rejection was made has to be deemed to be on the ground of delay as also on the ground of no regular appointment being permitted as per the afore-cited Government Order.

3. On the question of delay, the Manager approached the Deputy Director of Education [for short "DDE"], who condoned the same by Exhibit P2. It was found that the delay was occasioned only by reason of a medical condition of the Manager, which was substantiated by a medical certificate. However, in the appeal filed at Exhibit P3 against the rejection order, the District Educational Officer [for short "DEO"] found that no order of condonation of delay is submitted along with the appeal and, hence, rejected the appeal. A revision before the Additional Director of Public Instruction [for short "Addl.DPI"] was rejected for the reason that the school is an uneconomic one and that the issue of change of management has not been settled. A further revision to the Government, which was decided by Exhibit P5, found yet another reason to reject the revision, being the need for a permanent vacancy to be filled up by a protected hand. The

same was affirmed again in Exhibit P6, which order is passed on a representation filed by the Manager. Hence, obviously different grounds are raised at each stage of the statutory remedy availed by the Manager.

4. The question of delay no longer survives, since the competent authority, being DDE, by Exhibit P2 condoned the same. It is not clear as to why the delay condonation was not produced in the appeal, since Exhibit P2 is passed on 24.02.2007, after which the appeal was disposed of by Exhibit P3 on 10.04.2007. In any event, the ground of delay no longer survives as the competent authority has found that the Manager has a satisfactory explanation for the delay.

5. With respect to the question of the school being an uneconomic one and the prescription of appointing a protected teacher; the Government Order, with respect to uneconomic schools, has come into effect by Exhibit P7 dated 12.10.2006, after the appointment of the 2nd petitioner herein.

6. The learned Government Pleader would also raise a contention that by Rule 6(viii) of Chapter V KER, new schools having entered into an agreement with the Government are liable

to appoint protected teachers to the regular vacancies arising thereunder. The learned Government Pleader also submits that even prior to the introduction of the present clause (viii) in 2010, the earlier clause (viii) also stipulated such appointment of a protected teacher.

7. It is to be specifically noticed that the authorities did not raise such ground in any of the orders passed; nor did the Government plead such a ground in its counter affidavit. In any event, even if the school is liable to have appointed a protected hand, the issue with respect to such appointment was considered elaborately in ***State of Kerala v. Nadeera* [2013 (2) KLT 88]**, wherein it was clearly found that the Circulars of 2002 and 2006 mandated that list of protected teachers be forwarded by the AEO concerned to the DDE, which lists should be made available to the Managers and in such circumstance, the Managers would have no choice or option but to appoint such protected teachers. Even the schools which are presumed to be new establishments, who had executed such agreements, would not have any information as to the protected teachers; which information would be only available with the Educational Authorities under the KER. It was

categorically held that, it was mandatory on the part of the Department to maintain such list and the management could be found fault with only if such lists were forwarded to such managements and there is an appointment made in violation of the stipulation in the Circulars. Needless to say, no such averment is available in the counter affidavit of the respondent, especially since the plea itself is raised only at the time of hearing. Hence, the ground raised by the Government Pleader with respect to Rule 6 of Chapter V of KER does not fall for consideration. Need for appointing a protected hand as projected in Exhibit P7, as was noticed earlier, came into effect after the appointment of the 2nd petitioner and specifically in Exhibit P9 it is stipulated that any appointment made prior to 12.10.2006, even in uneconomic schools, are entitled to be approved.

8. What remains is the contention in Exhibit P1 with respect to G.O.(P) No.169/2004/G.Edn. dated 15.06.2004. The appointment made of the 2nd petitioner being to a regular vacancy, there is no prohibition in making a permanent appointment in view of the decision of the Hon'ble Supreme Court in ***State of Kerala v. Sneha Cheriyan*** [2013 (1) KLT 755 (SC)] and the subsequent

decision of this Court in ***Nair Service Society v. State of Kerala*** [2013 (4) KLT 921]. The appointment having been made on 03.10.2006 and there being only six months duration in the said academic year, would, at best, disentitle the 2nd petitioner from the vacation salary for that academic year.

In the above circumstances, the writ petition is allowed, setting aside Exhibits P1, P3, P4, P5 and P6 and directing the AEO to issue approval of appointment to the 2nd petitioner as on 03.10.2006. Parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]