

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

WA.No. 771 of 2015 IN WP(C).30818/2014

AGAINST THE ORDER IN WP(C) 30818/2014 of HIGH COURT OF KERALA DATED 13-03-2015

APPELLANT/6TH RESPONDENT:

T.C.SHAMSUDHEEN
AHMA MAHAL, MANNIKAKKAVU ROAD, THANA P.O.
KANNUR 670 012.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 5:

1. NOUSHAR P.K.
FULLTIME LANGUAGE TEACHER, (ARABIC)
MOWANCHERY U.P.SCHOOL, P.O.MOWANCHERY
KANNUR DISTRICT - 670 613.
2. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
3. DIRECTOR OF PUBLIC INSTRUCTION
JAGATHY, THIRUVANANTHAPURAM - 695 014.
4. DISTRICT EDUCATIONAL OFFICER
KANNUR, P.O. KANNUR.
5. ASSISTANT EDUCATIONAL OFFICER
KANNUR NORTH, P.O.KANNUR-670 002.
6. SM.T.PATHUKUTTY HAJUMMA
MANAGER, MOWANCHERY U.P.SCHOOL, P.O.MOWANCHERY
KANNUR DISTRICT-670 613.

R6 BY ADV. SRI.V.R.KESAVA KAIMAL
R BY GOVERNMENT PLEADER SRI.M.A.FAYAZ
R BY SRI.P.M.PAREETH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 15-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.771 of 2015

Dated this the 15th day of June, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by 6th respondent in W.P.(C)No.30818/14 challenging the interim order dated 13th March 2015 passed by the learned Single Judge to the extent it orders that the appointment of the first respondent as Arabic Teacher in the Mowancherry U.P. School be provisionally approved and to pay salary from the current month.

2. We heard the counsel for the appellant, the learned counsel for the first respondent and the Government Pleader appearing for respondents 2 to 5 and the counsel appearing for the 6th respondent.

3. The first respondent is the teacher appointed by the 6th respondent acting in the capacity as the manager of the school in question. According to the appellant, the 6th respondent did not have any authority to make such an appointment acting as an individual manager for the reason that the school is already vested in a corporate management. Therefore, according to the appellant, the appointment being ex-facie invalid, approval

even on a provisional basis, should not have been ordered by the learned Single Judge, at least until the main controversy is resolved in the writ petition.

4. Although this contention of the counsel for the appellant was resisted by the counsel for the first respondent and also counsel for the 6th respondent, from the materials on record we notice that admittedly the first respondent was appointed by the 6th respondent purportedly acting as the manager of the school. Though it is true that ordinarily management dispute among rival claimants cannot result in the withholding of a request for approval of appointment, in so far as this case is concerned, we cannot be guided by that principle for the reason that dispute between the parties is whether very appointment could have been made by an individual manager when the managership should be vested in a corporate management. Even apart from that, what we find from the pleadings is that the main prayer in the writ petition was for approval of the appointment of the first respondent. When such a prayer is sought in the writ petition as the main prayer, the learned Single Judge could not have ordered approval of the

appointment, even on a provisional basis, by way of an interim order. In our view, the appropriate course in the circumstances was to have heard the writ petition itself.

5. In such circumstances, we are unable to sustain the interim order dated 13th March 2015 directing approval of appointment of the first respondent be given on a provisional basis. The order will stand set aside and the appeal is allowed with liberty to the parties concerned to move for an early hearing of the writ petition itself.

Writ appeal is disposed of.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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