

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WA.No. 1324 of 2015 () IN WP(C).3871/2010

JUDGMENT IN WP(C) 3871/2010 of HIGH COURT OF KERALA DATED 24-03-2015

APPELLANT(S)/PETITIONER:

ANILKUMAR T., AGED 42 YEARS
S/O. THANKAPPAN, ANIL BHAVAN, PRAYAR P.O.
NOW RESIDING AT NANDANAM, KAPPIL EAST P.O., ALAPPUZHA.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND

RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM - 695 001.
3. THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPUAM - 695 001.
4. THE DEPUTYT DIRECTOR OF EDUCATION
KOLLAM - 691 001.
5. THE DISTRICT EDUCATIONAL OFFICER
KOLLAM - 691 001.

WA.No. 1324 of 2015

6. MANAGER
SVHSS, CLAPPANA, KOLLAM - 690 525.

7. DEEPTHI SIVARAJAN
UPSA, S.V.H.S.S, CLAPPANA
KOLLAM - 690 525.

SENIOR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.1324 of 2015

Dated this the 25th day of June, 2015

JUDGMENT

Antony Dominic,J.

The appellant was appointed as UPSA by Ext.P1 order dated 27.11.2006. The appointment was made by one Sidharthan who acted as the Manager of the School during the period from 19.07.2005 to 20.08.2007, when on account of the decree passed by the civil court in O.S. No.357 of 2005, he had to vacate the post. In so far as W.P.(C) 3871 of 2010 filed by the appellant complaining of the refusal of the authorities to approve his appointment is concerned, the relief was declined by the learned Single Judge on the ground that the Manager did not have the authority to make the appointment. This conclusion of the learned Single Judge is impugned before us by canvassing that the Manager was entitled to make the appointment, in view of the fact that he held the office of Manager during the period in question and his appointment was approved by the department. Moreover, the counsel also pointed out that by

Ext.R6(C) order dated 20.12.2006 passed by this Court in the previous round of litigation, this Court had directed the Manager not to leave any post unfilled. On these grounds, the counsel submitted that the learned Single Judge ought to have granted the relief sought for.

2. We are unable to accept this contention. In the judgment under appeal dealing with the contention of de facto doctrine invoked by the appellant, the learned Single Judge has after making reference to the records of the previous litigation held thus:

“In view of the dispute raised by the counsel regarding the above aspects, I called for the judges papers of W.P.(C) No.19251 of 2006 and examined them. The papers show that the case had been posted for being spoken to on 7.11.2006. Therefore, the assurance of the counsel for the then Manager, Sri.K.Sidharthan, is seen to have been given to this Court on 7.11.2006. Ext.R4(c) judgment is seen to have been pronounced on 20.12.2006. The petitioner's appointment on 27.11.2006, was made during the period from 7.11.2006 to 20.11.2006, when the assurance of the learned counsel was continuing. It is clear from the above that, the submission of the counsel that, no fresh appointments were being made was false. Therefore, I

find merit in the contention of the counsel for the sixth respondent Manager that the petitioner's appointment was devoid of bona fides. It is therefore evident that, the petitioner was appointed obviously taking advantage of the situation in which Sri.K.Sidharthan was permitted to continue to function as the Manager of the School. As already noticed above, the petitioner's appointment was also not approved by the Educational Authorities. It is also necessary to note that after Sri.A.R.Unnikrishnan resumed charge as Manager of the School, the petitioner was terminated from service on 30.06.2007 and that he has been out of service, till date. The proceedings of the Manager terminating his service have not been challenged by him. The above being the position, I am not satisfied that any interference with the impugned proceedings in this case is called for.

The counsel for the petitioner has placed reliance on the decisions regarding de facto doctrine to contend that, Sri.K.Sidharthan having been the approved Manager at the relevant point of time, his action enjoyed protection and therefore the petitioner's appointment was proper. However, in the present case, since the appointment of the petitioner was made to a vacancy that was not established, in violation of the assurance given to this Court as noted in Ext.R4(c) judgment, the petitioner is not entitled to the benefit of the dicta on which reliance is placed."

3. This therefore means that on 07.11.2006 Sri.Sidharthan,

the Manager who appointed the appellant, himself had given an undertaking before this Court that he will not make any appointment. It was in violation of that undertaking that the appointment of the appellant was made on 27.11.2006. If that be so, neither de facto doctrine nor Ext.R6(C) order dated 20.12.2006 nor his approved managership can validate appointment of the appellant. Hence the learned Single Judge was fully justified in declining the relief.

4. We do not find any reason to interfere with the judgment.

Appeal fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. to Judge

smv