

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 5535 of 2012 (N)

PETITIONER(S):

**ASHA.P.M AGED 31 YEARS
W/O.SUJAVUDHEEN R.M.
UPPER PRIMARY SCHOOL ASSISTANT HIGH SCHOOL
THIRUVALAYANNUR, KALLOOR-VADAKKEKAD, THRISSUR DISTRICT
RESIDING AT SUJA MANZIL, KARKKAD SHCOOL ROAD
GURUVAYOOR.P.O., PIN-680101.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVT.
GENERAL EDUCATION DEPARTMENT
SECRETARIAT, TRIVANDRUM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION
JAGATHY, TRIVANDRUM-14.**
- 3. THE DEUPTY DIRECTOR OF EDUCATION
AYYANTHOLE, THRISSUR DISTRICT-680003.**
- 4. THE DISTRICT EDUCATRIONAL OFFICER
CHAVAKKAD, THRISSWUR DISTIRICT-680506.**
- 5. THE MANAGER
HIGH SCHOOL THIRUVALAYANNUR
KALLOOR VADAKKEKAD THRISSUR DISTRICT-679562.**

**R5 BY ADV. SRI.K.B.GANGESH
R4 BY ADV. GOVERNMENT PLEADER, SRI. RAJESH T.R.
R1 -R 4 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1 TRUE COPY OF THE ORDER OF APPOINTMENT DATED 14-6-07.
- EXT.P2 TRUE COPY OF THE ORDER OF APPOINTMENT DATED 17-7-06.
- EXT.P3 TRUE COPY OF THE ORDER OF APPOINTMENT DATED 4-11-06.
- EXT.P4 TRUE COPY OF THE ORDER DATED 3-12-2011.
- EXT.P5 TRUE COPY OF THE ORDER DATED 1-10-2011 G.O. (P) NO. 199/2011/G.EDN. ISSUED BY THE 1ST RESPONDENT.
- EXT.P6 TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
- EXT.P7 TRUE COPY OF THE LETTER SENT BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 5535 of 2012

Dated this the 29th day of July, 2015

JUDGMENT

The petitioner, was appointed as UPSA in the 5th respondent school on 04.06.2007, in anticipation of the sanction of an additional post. She worked in leave vacancies from 17.07.2006 to 04.08.2006 and thereafter from 01.11.2006 to 20.12.2006. It was thereafter she was appointed on regular basis in the anticipated additional post with effect from 04.06.2007. When the latter appointment was sent for approval, the 4th respondent denied approval to the appointment for the reason that by GO(P) No.317/05/G.Edn, dated 17.08.2005, there was a ban on appointments and therefore, on the lifting of the ban, the appointments could be effected only if the manager executed a bond undertaking to appoint protected teachers in vacancies that arose subsequent to the lifting of the ban by GO(P) No.10/10/G.Edn. dated 12.01.2010. Although the petitioner preferred appeals and revision petitions before the higher authorities, the same did not meet with any success and eventually, by Ext.P4 order, the Government directed the petitioner to approach the District Educational Officer for implementing the teachers package. Pursuant to Ext.P4 order, while the petitioner and the manager of the school approached the DEO for granting

approval to the appointment of the petitioner, no action was forthcoming from the DEO and it is under these circumstances that the petitioner preferred the writ petition for quashing Ext.P4 order and seeking a direction to the 4th respondent to approve the appointment of the petitioner with effect from 04.06.2007.

2. A counter affidavit has been filed on behalf of the 1st respondent, wherein it is mentioned that six additional posts were created in the academic year 2007-2008, but the appointment to any of these posts was not approved on account of the ban on appointments that was in vogue. It is stated that with the lifting of the ban in 2010, the appointments were permitted strictly on the basis of the bond executed by the manager on the reasoning that the lifting of the ban itself was conditional on the manager of the school executing a bond undertaking to appoint protected teachers in future vacancies that arose in the school. It is the stand in the counter affidavit that, inasmuch as the respondent manager has not executed the bond in terms of GO (P) No.10/10/G.Edn., the approval cannot be granted to appointments effected by the manager during the ban period. It is also stated that in subsequent years, the post to which the petitioner was appointed was abolished on account of a division fall and therefore, at any rate, even if the appointment of the petitioner was to be approved

with effect from 04.06.2007, the approval could only be for such period as the post was in existence in the school.

3. I have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent manager as also the learned Government Pleader appearing for the official respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the issue involved in this case has already engaged the attention of this Court in **Nadeera v. State of Kerala**, [2011 (3) KLT 790], wherein this Court found that the educational authority could not postpone the approval of the appointment of a teacher till a protected hand is appointed by the manager. That apart, I also note that the denial of approval in the instant case is only on the ground that the manager did not comply with one of the conditions, that was imposed by the Government in the GO (P) No.10/10/G.Edn. as a condition for lifting the ban in favour of the manager in the instant case. In my view, even if the manager has not complied with the particular condition in the Government Order, subject to which the educational authority could approve the appointments made prior to the said Government Order, it

could at best justify an action against the manager or an action of holding up approvals to subsequent appointments made in the school. The non-appointment of a protected hand, consequent to the breach of an obligation by the manager, cannot have the effect of depriving a teacher, who was already appointed to the school in an existing vacancy during the ban period, of an approval to the said appointment, especially when the appointment of the protected hand is contemplated only for the future period, subsequent to 2010. Thus, in any view of the matter, Ext.P4 order of the Government cannot be legally sustained and I quash the same. The respondents are directed to approve the appointment of the petitioner as UPSA in the school with effect from 04.06.2007 till the date of the division fall, if any. The respondents shall also ensure that the salary and other emoluments flowing from the said approval is disbursed to the petitioner expeditiously, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE