

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 6039 of 2012 (D)

PETITIONER(S) :

- 1. P. SHEEMA**
AGED 24 YEARS, W/O. K.M.ANILKUMAR
LOWER PRIMARY SCHOOL ASSISTANT
AIDED MAPPILA UPPER PRIMARY SCHOOL,
VADAKKANGARA, MALAPPURAM DISTRICT.
 - 2. T.K. MUHAMMED SHAMIL**
UPPER PRIMARY SCHOOL ASSISTANT
C.H.MUHAMMED KOYA MEMORIAL UPPER PRIMARY SCHOOL
P.O. MUTHUPARAMBU, MUNDAKKULAM,
MALAPPURAM DISTRICT.
- BY ADVS. SRI.V.A.MUHAMMED**
SRI. K.E. HAMSA

RESPONDENT(S) :

- 1. THE STATE OF KERALA**
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS**
JAGATHY, THIRUVANANTHAPURAM-695014.
- 3. THE ASSISTANT EDUCATIONAL OFFICER**
MANJERI, MALAPPURAM DISTRICT-676121.
- 4. THE ASSISTANT EDUCATIONAL OFFICER**
KIZHISSERRY, MALAPPURAM DISTRICT-676122.
- 5. THE MANAGER**
AIDED MAPPILA UPPER PRIMARY SCHOOL, VADAKKANGARA
MANJERI EDUCATIONAL SUB DISTRICT
MALAPPURAM DISTRICT-676121.

6. THE MANAGER

**C.H.MUHAMMED KOYA MEMORIAL UPPER PRIMARY SCHOOL
MUNDAKKULAM, P.O. MUTHUPARAMBA
MALAPPURAM DISTRICT-676638.**

**R1 TO R4 BY GOVT. PLEADER SMT. SUNITHA VINOD
R6 BY ADVS. SRI.P.K.MOHAMED JAMEEL
SRI.ABDUL SHUKOOR MUNDAMBRA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-02-2015,
ALONG WITH WP(C) NO. 4643/2012 & CONNECTED CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ORDER NO. G2/90189/2010/K.DIS OF THE 2ND RESPONDENT DATED 01-10-2011.

EXHIBIT P2: TRUE COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER DATED 08-03-2010 AND THE APPROVAL THEREOF BY THE ASSISTANT EDUCATIONAL OFFICER, MANJERI DATED 23-12-2011.

EXHIBIT P3: TRUE COPY OF THE ORDER NO. G2/73333/2010/DPI/K.DIS DATED 10-05-2011 OF THE 2ND RESPONDENT.

EXHIBIT P4: TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER DATED 09-02-2009 AND THE APPROVAL THEREOF BY THE ASSISTANT EDUCATIONAL OFFICER, KIZHISSERI DATED 06-12-2011.

EXHIBIT P5: TRUE COPY OF THE DECISION REPORTED IN 1993(2) K.L.T. SHORT NOTES 27 CASE NO . 28 DATED 02-08-1993.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.4643, 6039, 27071, 29672 &
29764/2012, 337 & 15219/2013

Dated this the 18th day of February, 2015

JUDGMENT

In these writ petitions, a common issue is espoused at the instance of the teachers appointed in various vacancies in the aided schools prior to the G.O.(P) No.10/10 dated 12.1.2010. The appointment was during the ban imposed by the Government. These appointments were ordered to be regularised by lifting the ban as per G.O.(P) No. 10/10/G.Edn. dated 12.1.2010 on condition that the Manager of the School concerned shall execute a bond to the effect that for all subsequent admissible vacancies, the protected teachers will have to be appointed. It appears that the Manager failed to execute a bond. Accordingly, the petitioners' appointments were not approved and they were

not paid salary. Thus, the petitioners have approached this Court.

2. In some of the cases, counter affidavits have been filed. It is stated in the counter that unless and until the Manager comply with the mandate of G.O.(P) No. 10/10/G.Edn. dated 12.1.2010, the petitioners are not entitled for approval. It is submitted that the petitioners approval is only by fulfilling the condition in G.O.(P) No. 10/10/G.Edn. dated 12.1.2010 by the Manager executing a bond to the effect that he shall appoint protected teachers in all future vacancies. Some of the petitioners are also now included in the teachers package.

3. Learned counsel for the petitioners by relying on the judgment of this Court in W.P.(C) No.1637/2009 submits that treating the Manager has executed the bond, the competent authority shall be directed to approve the appointment.

4. However, the learned Government Pleader distinguished this case with reference to the facts involved in

W.P.(C) No.1637/2009. It is submitted by the learned Government Pleader in the above case that there was a direction by this Court by interim order to direct the Manager to execute a bond and on account of non-compliance, this Court by treating that the Manager has executed the bond directed the authority to approve the appointment. Therefore, it is submitted that, that judgment is not applicable to the issues involved in the case.

5. These petitioners were appointed prior to G.O.(P) No. 10/10/G.Edn. dated 12.1.2010. The Government Order putting condition for directing the Manager to execute the bond is in respect of all future vacancies. If the Manager willfully omits to execute a bond, that cannot deprive the petitioners to continue in the service. Therefore, treating that the Manager has executed the bond and his obligation for appointing protected teachers is in force, the approving authority shall approve the appointment of the petitioners with effect from the

date of the appointment and disburse the salary to them. Needful shall be done by the respondents to approve the appointment and disburse the arrears of salary within a period of three months from the date of receipt of a copy of this judgment.

These writ petitions are disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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