

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 3266 of 2015 (G)

PETITIONER(S):

**THE MANAGER,
SCHOOLS OF THE EVANGELISTIC ASSOCIATION OF THE EAST
IRINGOLE P.O., PERUMBAVOOR, ERNAKULAM - 683 548**

**BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695001**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686 661**
- 3. SIBIYA P.JOHNSON, H.S.A.(PHYSICAL SCIENCE)
M.S.V.HIGH SCHOOL, VALAKAM, MUVATTUPUZHA
ERNAKULAM DISTRICT, PIN - 683 548**

**R3 BY ADV. SRI.ALEXANDER JOSEPH
R3 BY ADV. SRI.M.V.SABU
R BY GOVERNMENT PLEADER SMT. A. LOWSY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1- TRUE COPY OF THE APPOINTMENT ORDER GIVEN TO THE 3RD
RESPONDENT DATED 14.6.2012**
- EXT.P2- TRUE COPY OF THE LETTER NO. B2/374/2013 DATED 11.9.2013
GIVEN BY THE 2ND RESPONDENT**
- EXT.P3- TRUE COPY OF HTE LETTER GIVEN BY THE GOVERNMENT DATED
15.10.2014**
- EXT.P4- TRUE COPY OF THE LETTER NO.B2/2386/2013 DATED 6.1.2015
GIVEN BY THE 2ND RESPONDENT**

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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Dated this the 27th day of October, 2015

J U D G M E N T

The petitioner, the Manager of an aided school is aggrieved with Ext.P3 order, which has found the 3rd respondent's appointment in the school to be illegal and ordered salary to be disbursed to the 3rd respondent and consequential recovery be made from the Manager, the petitioner herein.

2. The brief facts to be noticed are that the vacancy arose by reason of maternity leave availed of by an H.S.A (Physical Science) between 11.06.2012 to 07.12.2012. The 3rd respondent was appointed on daily wage basis. The appointment was made on a daily wage basis only since the vacancy was for a period of less than six months and there could

be no regular appointment to the said vacancy as per the Kerala Education Rules (K.E.R).

3. The Manager sought for approval of Ext.P1 appointment, which was rejected by Ext.P2 on the ground that there is a Rule 43 claimant, who ought to have been appointed. When there is no substantive vacancy, there is no question of Rule 43 claimant being appointed. But however, Ext.P2 had to be challenged, which the Manager did not attempt. The 3rd respondent is said to have challenged Ext.P2, which resulted in Ext.P3 order.

4. It is to be seen that Ext.P2 was not challenged as provided under Rule 8 of Chapter XIVA of K.E.R. The petitioner merely moved the Deputy Director, upon which the Government passed Ext.P3 order directing the salary to be paid and recovery to be made from the Manager. A Division Bench of this Court considering the scope of sub-rule (4) of Rule 7 of Chapter III of

K.E.R found that the recovery can be effected only in the instances specifically referred to in the said Rule in **W.A No. 989 of 2011 (State of Kerala v. The Manager, AUP School, Guruvayoor)**, that there could be no recovery made under sub-rule (4) of Rule 7 of Chapter III of Kerala Education Rules, 1959 for reason of the same not being a case enumerated thereunder. True, the Division Bench held that, only in the contingencies mentioned thereunder could a recovery be effected. The 3rd respondent, who claims to have been illegally appointed by the Manager does not fall under any of the categories enumerated under sub-rule (4) of Rule 7 of Chapter III of K.E.R.

5. In such circumstance, Ext.P3 has to be set aside. However, considering the fact that the petitioner was appointed on daily wage basis as is permissible under K.E.R, it is only proper that the 3rd respondent be granted an opportunity to file an appeal. The 3rd respondent shall move such appeal within a

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period of ten days from the date of receipt of the certified copy of this judgment, in which event the appeal would be considered as filed within time and considered in accordance with law.

The writ petition would stand allowed, setting aside Ext.P3 order, but however with the above reservation.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/ 27/10 /2015

// true copy //

P.A to Judge.