

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 7137 of 2013 (N)

PETITIONER(S):

**SHYJU ABRAHAM, AGED 31 YEARS,
S/O K.TABRAHAM, LOWER DIVISION CLERK
MARYGIRI HIGH SCHOOL, MARANCHATTY, P.O.KOOMBARA
VIA KODARANJHI, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.P.J.MATHEW
SRI.AJITH GEORGE**

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 001.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE-673 001.**
- 4. DISRICT EDUCATIONAL OFFICER,
THAMARASSERY, KOZHIKODE DISTRICT, PIN:673 573.**
- 5. THE CORPORATE MANAGER,
CORPORATE EDUCTIONAL AGENCY, DIOCESE OF THAMARASSERY
THAMARASSERY P.O., KOZHIKODE DISTRICT, PIN:673 573.**

R1 - 4 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE PHOTOCOPY OF THE APPOINTMENT ORDER DATED 25.5.2010
ISSUED BY THE 5TH RESPONDENT.**
- EXHIBIT P2: TRUE PHOTO COPY OF THE ORDER DATED 19.2.2011 ISSUED BY THE
4TH RESPONDENT.**
- EXHIBIT P3: TRUE PHOTO COPY OF THE ORDER DATED 9.6.2011 OF THE 3RD
RESPONDENT.**
- EXHIBIT P4: TRUE PHOTO COPY OF THE ORDER OF THE 2ND RESPONDENT
DATED 14.11.2011.**
- EXHIBIT P5: TRUE PHOTO COPY OF THE ORDER OF THE 1ST RESPONDENT DATED
8.5.2012.**
- EXHIBIT P6: PHOTOCOPY OF THE JUDGMENT DATED 22/2/2013 IN
WPC.23433/2011 (I)**
- EXHIBIT P7: PHOTOCOPY OF THE LETTER DATED 25/7/2005 ISSUED BY THE R1**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J

WPC No.7137 of 2013

Dated this the 18th day of March, 2015

JUDGMENT

The petitioner is aggrieved by the non-approval of his appointment as L.D.Clerk from 25.5.2010 to 30.9.2011 under the 5th respondent.

2. The petitioner is working as L.D.Clerk in Marygiri High School, Maranchatty under the 5th respondent. He entered service as Peon in Sacred Heart High School, Thiruvampady and later, promoted as L.D.Clerk in a retirement vacancy with effect from 25.5.2010. However, the approval was granted to the petitioner's appointment with effect from 1.10.2011 for the reason that the Manager had not appointed a protected hand. The petitioner alleges that in fact the Manager had set apart a post of Language Teacher (Hindi) and had reported to the Deputy Director. However, no allotment was made as no protected hand was available. No list of protected hand

was forwarded to the Manager for appointment. It is with this background, the petitioner has come up before this Court.

The first respondent has filed a counter affidavit contending as follows:

The proposal for approval of appointment of Sri.Shyju Abraham as L.D.Clerk was rejected by the District Educational Officer, Thamarassery by Order No.B4/3033/10 dated 19.2.2011 for the reason that the Manager had not appointed one protected teacher in the school as Marygiri High School is a newly opened school and the Manager of such schools is bound to appoint one protected teacher permanently in the school vide G.O.(P) 46/06/G.Edn.dated 1.2.2006. The Deputy Director of Education, Kozhikode also upheld the decision of 4th respondent vide Order No.B1/5446/2011/K.Dis.dated 9.6.2011. The appeal filed by the Manager, Corporate Educational Agency was also rejected and upheld the decision of third and 4th respondents. The revision petition filed by the Manager before the Government was

also dismissed vide letter No.29156/N1/12/G.Edn.dated 8.5.2012.

It is stated that the Corporate Manager, Diocese of Thamarassery set apart a vacancy of part time HSA (Hindi) in the school for appointing a protected teacher. But no protected teacher was available in that category at that time in Kozhikode District. As per G.O.(P) No.46/06/G.Edn. dated 1.2.2006, it was clearly stated that the Manager of newly opened/corporate schools are bound to appoint at least one protected teacher in the school. At the time of rejecting the approval of appointment of the petitioner, there was no protected teacher working in the Marygiri High School, Maranchatty. As the school comes under the category of newly opened schools, as per G.O.(P)46/06/G.Edn. dated 1.2.2006, the Manager must appoint at least one protected teacher. But the vacancy set apart for appointing protected teacher in Marygiri High School, Maranchatty during the year 2010-2011 and 2011-2012 was that of HSA (Hindi) Part time for which no protected teacher was available at that period

and hence, the condition mentioned in Government order dated 1.2.2006 was not fulfilled by the Manager.

It is stated that according to Rule 6(VIII) chapter V of KER in every newly opened/upgraded school after 1979-1980, the Management shall fill up one vacancy by appointing one protected teacher permanently. There was no protected teacher in Marygiri High School, Maranchatty when the petitioner was appointed as L.D.Clerk. The promotion appointment of the petitioner cannot be approved without filling one vacancy by appointing protected teacher. Hence, action of the department officers in rejecting the appointment of the petitioner from 25.5.2010 is very much in conformity with Government directions.

The petitioner's appointment was approved as L.D.Clerk with effect from 1.10.2011 onwards after the Government has clarified that consequent on the issuance of G.O.(P) No.199/11/G.Edn. dated 1.10.2011, the orders such as G.O.(P) 178/02/G.Edn. dated 28.6.2002, G.O.(P) 46/06/G.Edn. dated 1.2.2006 and G.O.(MS)259/06/G.Edn.

dated 12.10.2006 etc. have relevance only up to 1.10.2011.

3. Arguments have been heard.

4. It is the definite case of the petitioner that even though one vacancy that arose in the school was set apart by the Manager to accommodate protected hand and the matter was informed to the Deputy Director of Education, no allotment of protected teachers was made by the department.

5. The petitioner further points out that the 4th respondent permitted the 5th respondent to appoint the teachers on daily wage basis to ensure that the student's interest is safeguarded. The obligation of the Manager under Rule 6(viii) was over once he has set apart a vacancy for appointing a protected hand and informed the matter to the DEO/Deputy Director of Education. The Deputy Director of Education has not published any list of protected hand to be deployed in the newly opened schools. The petitioner has produced Ext.P6 judgment of this Court which covers a similar issue where it was

observed that unlike in the case of protected teachers, there is no stipulation in G.O.(MS) No.175/70/Edn. dated 15.4.1970 or in any of the Government orders to the effect that the Manager should fill up vacancies of non-teaching staff by appointing a protected non teaching staff available in the concerned Educational District/ Revenue district. More over, as per G.O. (P) No.178/2002/G.Edn.dated 28.6.2002, the first respondent clarified that the G.O.(P) No.178/2002/ G.Edn.dated 28.6.2002 is applicable only in the case of teachers. Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to succeed.

In the result, this writ petition is allowed. Exts.P2 to P5 are quashed.

It is hereby declared that the petitioner is entitled to get approval of his appointment as L.D.Clerk from 25.5.2010 to 30.9.2011. The respondents are directed to approve the appointment of the petitioner for the aforesaid period and to disburse all the consequential

service benefits including salary and allowance within a period of one month from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE