

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No.7832 of 2014 (D)

PETITIONERS:

1. **PREETHA.P,HIGH SCHOOL ASSISTANT (MATHS),
SREE NARAYANA TRUST HIGHER SECONDARY SCHOOL,
KANNUR (NOW WORKING AS HIGH SCHOOL ASSISTANT (MATHS) IN
SREE NARAYANA TRUST HIGHER SECONDARY SCHOOL,KOLLAM).**
2. **JEESHNA GOVIND,HIGH SCHOOL ASSISTANT (MALAYALAM),
SREE NARAYANA TRUST HIGHER SECONDARY SCHOOL,KANNUR.**

BY ADV.SRI.POOVAMULLE PARAMBIL ABDULKAREEM

RESPONDENTS:

1. **STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
2. **THE DIRECTOR OF PUBLIC INSTRUCTION,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 001.**
3. **THE DEPUTY DIRECTOR OF EDUCATION,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR-670 001.**
4. **THE DISTRICT EDUCATIONAL OFFICER,
KANNUR-670 001.**
5. **THE MANAGER,
SN TRUST SCHOOLS,KOLLAM-691 001.**

**R1-R4 BY SENIOR GOVT. PLEADER SRI.S.JAMAL
R5 BY ADV.SRI.A.N.RAJAN BABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1-TRUE COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER
DATED 27.7.2006 ISSUED BY THE 5TH RESPONDENT.**

**EXT.P2-TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER
DATED 27.7.2006 ISSUED BY THE 5TH RESPONDENT.**

**EXT.P3-TRUE COPY OF THE PROCEEDINGS DATED 30.1.2007 ISSUED BY THE
4TH RESPONDENT.**

**EXT.P4-TRUE COPY OF THE PROCEEDINGS DATED 30.1.2007 ISSUED BY THE
4TH RESPONDENT.**

**EXT.P5-TRUE COPY OF THE PROCEEDINGS DATED 23.8.2005 PASSED BY THE
3RD RESPONDENT.**

**EXT.P6-TRUE COPY OF THE JUDGMENT DATED 3.2.2011 IN W.P[C] NO.30613/2008
OF THIS HON'BLE COURT.**

**EXT.P7-TRUE COPY OF THE PROCEEDINGS DATED 28.10.2006 ISSUED BY THE
4TH RESPONDENT.**

**EXT.P8-TRUE COPY OF THE REJECTION ORDER DATED 23.2.2007 BY THE 4TH
RESPONDENT.**

**EXT.P9-TRUE COPY OF THE REJECTION ORDER DATED 27.4.2007 BY THE 4TH
RESPONDENT.**

**EXT.P10-TRUE COPY OF THE PROCEEDINGS DATED 24.9.2007 ISSUED BY THE
2ND RESPONDENT.**

**EXT.P11-TRUE COPY OF THE PROCEEDINGS DATED 20.6.2008 ISSUED BY THE
2ND RESPONDENT.**

**EXT.P12-TRUE COPY OF THE PROCEEDINGS DATED 30.3.2011 ISSUED BY THE
4TH RESPONDENT.**

EXT.P13-TRUE COPY OF THE GO (P) NO.10/10 DATED 12.1.2010.

EXT.P14-TRUE COPY OF THE GO (P) NO.46/2006 DATED 1.2.2006.

**EXT.P15-TRUE COPY OF THE REVISION PETITION DATED 29.10.2012 SUBMITTED
BY THE 2ND PETITIONER.**

**EXT.P16-TRUE COPY OF THE ORDER DATED 30.10.2013 ISSUED BY THE 1ST
RESPONDENT.**

WP(C).No.7832 of 2014 (D)

**EXT.P17-TRUE COPY OF THE GO (RT.) NO.2877/2013 DATED 11.7.2013 PASSED BY
THE 1ST RESPONDENT.**

EXT.P18-TRUE COPY OF THE DECISION REPORTED IN 1993 (2) KLT SN 27.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.MUHAMED MUSTAQUE, J.

W.P.(C).No. 7832 of 2014

Dated this the 9th day of February, 2015

J U D G M E N T

The 1st petitioner is working as High School Assistant (Maths) in SN Trust Higher Secondary School, Kollam. The 2nd petitioner is working as High School Assistant (Malayalam) in SNT Higher Secondary School, Tottada, Kannur . The petitioners were initially appointed in SNT HSS, Thottada as HSA (Maths) and HSA (Malayalam) respectively with effect from 27.7.2006 in additional posts created during 2006-2007. The petitioners' approval of appointment was rejected as per Exts.P3 and P4 stating that the posts, in which the petitioners were appointed are to be filled up by appointing protected teachers since the school is newly opened/upgraded. Accordingly the petitioners have approached this Court.

2. A counter affidavit has been filed on behalf of the 3rd respondent. It is submitted that the initial appointments of the petitioners were at SN Trust Higher Secondary School, Kannur. It is submitted that the SN Trust School Kollam is a newly opened

school. It is submitted that the relaxation of appointment of protected teacher is only applicable to the schools started between 1979 and 1990. Since the 5th respondent Higher Secondary School started functioning after 1990, the Manager is bound to appoint protected teachers. It is also submitted that there is a ban of appointment and this was lifted subsequently. However, by lifting the order of ban, it was clarified that the existing provision of appointment of protected teacher in newly opened schools will continue.

3. The petitioners rely on Paragraphs 8 and 9 of the judgment of this Court in **Moosakutty v. DEO Wandoor** [2009 (3) KLT 863]. The petitioners submit that no list of protected teachers was made available before the Manager and the Manager had discharged his obligation by appointing a protected teacher. Ext.P5 is the order of appointment given to a protected teacher. Therefore, there is no reason to deny the approval of appointments of the petitioners. It is submitted that the petitioners appointment

was regularised from 1.6.2011 onwards.

4. In the light of of **Moosakutty's case** (supra), I am of the view that the petitioners are entitled to succeed. The impugned orders are set aside. Consequently there shall be a direction to the 4th respondent to approve the appointment of the petitioners with effect from 27.7.2006 to 31.5.2011.

The writ petition is disposed of as above.

sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/