

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 11866 of 2011 (G)

PETITIONER(S):

**ABSA P.T.(HSA (MATHS), PANDALLUR
HIGHER SECONDARY SCHOOL, KADAMBODE P.O.
MALAPPURAM DISTRICT), KOORIMANNIL MELEMANNIL HOUSE
KUNNUMMEL, KADAMBODE P.O., PANDIKKAD VIA
MALAPPURAM DISTRICT.**

**BY ADVS.DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.MATHEW SUNNY
SRI.ANOOP.VNAIR**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
PINCIPAL SECRETARY, GENERAL EDUCATION (A), DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-1.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
DIRECTORATE PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-33.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
CIVIL STATION, MALAPPURAM, PIN-676505.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM, PIN-676505.**
- 5. THE MANAGER, PANDALLUR HIGHER SECONDARY
SCHOOL, PANDALLUR, MALAPPURAM DISTRICT
PIN-676521.**

**RR-R5 BY ADV. SRI.K.B.GANGESH
R BY ADV. GOVERNMENT PLEADER SRI. S. JAMAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS

EXT.P1	TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER DTD. 3.10.02
EXT.P-2	COPY OF THE SECOND APPOINTMENT ORDER DTD.2.6.03 ISSUED BY THE 5TH RESPONDENT.
EXT.P3	COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DTD. 22.4.03
EXT.P4	COPY OF THE MEMORANDUM OF APPEAL FILED BY THE 5TH RESPONDENT BEFORE THE 3RD RESPONDENT DATED 20.05.03
EXT.P5	COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT AS ORDER NO. B2/14910/03/K DIS DTD. 26.2.04
EXT.P6	COPY OF THE APPLICATION FOR APPROVAL OF APPOINTMENT SUBMITTED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT DTD. 2.6.03
EXT.P7	COPY OF THE ORDER NO. B3-5418/03 DTD. XI-03 ISSUED BY THE 4TH RESPONDENT.
EXT.P8	COPY OF THE MEMORANDUM OF APPEAL FILED BY THE 5TH RESPONDENT BEFORE THE 3RD RESPONDENT DTD. 3.2.04
EXT.P9	COPY OF THE ORDER NO. K DIS. B2/3428/04 DTD. 29.4.05 ISSUED BY THE 3RD RESPONDENT.
EXT.P10	COPY OF THE MEMORANDUM OF APPEAL FILED BY THE 5TH RESPONDENT BEFORE THE 2ND RESPONDENT DTD. 25.7.05
EXT.P11	COPY OF THE MEMORANDUM OF APPEAL FILED BY THE 5TH RESPONDENT BEFORE THE 2ND RESPONDENT DTD. 28.7.05
EXT.P12	COPY OF THE ORDER NO. EM4/82830/05/DPI/ K DIS DTD. 2.3.06 ISSUED BY THE 2ND RESPONDENT.
EXT.P13	COPY FO THE REVISION PETITION FILED BY THE 5TH RESPONDENT BEFORE THE FIRST RESPONDENT DTD. 17.2.05
EXT.P14	COPY OF THE ORDER NO. 34191/A2/05/GL.EDN. DTD. 9.9.05 ISSUED BY THE FIRST RESPONDENT TO THE 5TH RESPONDENT.
EXT.P15	COPY OF THE ORDER NO. EM(2)/46570/09/DPI/ K DIS DTD. 18.2.10 PASSED BY THE 2ND RESPONDENT.

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- EXT.P16 COPY OF THE REVISION PETITION FILED BY THE PETITIONER
BEFORE THE FIRST RESPONDENT DTD. 4.11.10
- EXT.P17 COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT AS
ORDER NO. 13155/A2/2011/G.EDN. DTD. 19.3.11
- EXT.P18 COPY OF THE ORDER G.O(RT) NO.1205/07/G.EDN. DTD. 17.3.07
ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS:

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.11866 of 2011 - G

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Dated this the 03rd day of December, 2015

J U D G M E N T

The petitioner is aggrieved with the refusal to approve her appointment, made in a leave vacancy between 03.10.2002 to 10.09.2006. The petitioner was originally appointed as an H.S.A (Maths) by Ext.P1 in a leave vacancy extending between 03.10.2002 to 10.09.2006, when a senior H.S.A (Maths) proceeded on leave.

2. Though Ext.P1 appointment was sent for approval, there was difficulty in granting approval on regular scale of pay, insofar as the petitioner not being entitled to it, in the academic year 2002-03, for reason of the petitioner having less than eight months service. The Manager then re-appointed her from 02.06.2003 to 10.09.2006. The specific contention raised by the petitioner is that she is entitled to daily wages from 03.10.2002

to 31.03.2003 and scale of pay from 02.06.2003 to 10.09.2006.

3. The petitioner's prayer for approval was rejected as per Ext.P3. There are two grounds raised for the rejection, one that vacancy ought to have been filled up by a protected hand as contemplated under G.O(P) No.178/02/G.Edn. dated 18.06.2000 and the other that there was a H.S.A(Maths) accommodated in the vacancy of H.S.A (English) as per G.O(MS) No.11/02/G.Edn. dated 07.01.2002. The question with respect to the appointment of protected hands is covered by the decision in **State of Kerala v. Nadeera [2013 (2) KLT 88]**, wherein a Division Bench of this Court had found that the appointment of a protected hand could be proceeded with only if the departmental authorities proffer a list of such protected hands to the Manger of the school. However, I need not detain myself on the said ground since the other ground for rejection has to be upheld.

4. G.O(M.S) 11/02/G.Edn. dated 07.01.2002 was an executive order issued by the Government making English a core

subject so as to improve the quality of education in English. However considering the fact that the teachers appointed in the other core subjects were till then teaching English, It was also ordered that the implementation of the said Government Order shall be in a phased manner and in the case of retrenchment of teachers in a core subject they shall be protected by adjusting them in H.S.A (English) vacant post.

5. Here, the staff fixation order of the school for the year 2002-03 indicates three excess hands in General Science, Maths and Social Science, who were accommodated in the H.S.A (English) vacancies. Hence a H.S.A (Maths) was protected as H.S.A (English) and when a vacancy arose in the subject of Maths the said person should have been accommodated and there could have been no appointment made from out side.

6. The petitioner has a contention that in the appeal filed by the Manager and the petitioner, none were heard. However, at this distance of time, this Court is of the opinion; a

remand on the ground of violation of principles of natural justice would be an unnecessary exercise especially in the context of the finding of this Court that the petitioner would not have been entitled for such appointment.

The writ petition would stand dismissed. No Costs.

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

SB/04/12/2015

// true copy //

P.A to Judge.