

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 10185 of 2015 (W)

PETITIONER:

**AKHILESH P.K., AGED 36 YEARS
LOWER PRIMARY SCHOOL ASSISTANT
PERUMANNA A.L.P. SCHOOL, PERUMANNA P.O.
KOZHIKODE - 673 026.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001**
- 2. THE DISTRICT EDUCATIONAL OFFICER
KOZHIKODE-673 001**
- 3. THE ASSISTANT EDUCATIONAL OFFICER (RURAL)
KOZHIKODE-673 001**
- 4. THE MANAGER
PERUMANNA A.L.P. SCHOOL, PERUMANNA P.O.
KOZHIKODE-673 026**

BY GOVERNMENT PLEADER SMT. A LOWSY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 - COPY OF THE APPOINTMENT ORDER DATED 4/10/2007
- EXHIBIT P2 - COPY OF THE ORDER NO KDS/13235/08B2 DATED 5/11/2009
ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P3 - COPY OF THE ORDER NO.G.O.(RT)NO 1369/2012/G.EDN DATED
21/3/2012 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P4 - COPY OF THE REPRESENTATION DATED 7/12/2013 SUBMITTED
BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXHIBIT P5 - COPY OF THE JUDGMENT DATED 30/1/2014 IN WPC NO
3059/2014 OF THIS COURT
- EXHIBIT P6 - COPY OF THE ORDER NO GO(RT)NO 308/2015/G.EDN DATED
20/1/2015 OF THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS:-NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.10185 of 2015

Dated this the 16th day of September, 2015.

JUDGMENT

The petitioner was appointed as LPSA in the 4th respondent school with effect from 04.10.2007, in the vacancy of Smt.Leela, who opted for voluntary retirement from service with effect from 04.10.2007. However, the approval of appointment of the petitioner was granted on daily wages from 04.10.2007 to 31.03.2008 and on regular basis from 02.06.2008 as per Ext.P1. Though an appeal was preferred against Ext.P1, the same was rejected by Ext.P2. The petitioner preferred a revision against Exts.P1 and P2, which also has been rejected by Ext.P3 stating that the revision filed by the petitioner can be considered only subject to the outcome of the S.L.P. preferred by the Government before the Hon'ble Supreme Court. Again the petitioner preferred Ext.P4 representation before the Government. This Court as per

Ext.P5 judgment in WP(C) No.3059 of 2014 dated 30.01.2014, directed the 1st respondent to consider Ext.P4. However, the 1st respondent rejected the petitioner's claim for approval of appointment as per Ext.P6, which made the petitioner to approach this Court by filing the writ petition.

2. The issue is no longer *res integra*. The G.O.(P) No.104/2008/G.Edn dated 10.6.2008 was elaborately considered in ***State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755 (SC)]***. On the basis of the aforesaid decision the Government brought out a subsequent Government Order bearing number G.O.(P)No.144/2013/G.Edn dated 22.4.2013. The said Government Order cancelled the clarificatory Government Order issued on 26.2.2011, which clarified the 2008 Government Order. The effect of the aforesaid Government Orders were considered by this Court in ***Nair Service Society v. Sneha Cheriyan [2013 (4) KLT 921]***. The 2013 Government Order was set aside. The 2008 Government Order, as clarified in 2011, was upheld. The prohibition in appointing persons in the course of the academic year was held to be applicable only to leave

vacancies and the same was intended at ensuring that no multiple claimants under Rule 51A of the Kerala Education Rules are created. As for the regular vacancies no such prohibition was applicable and the Government Order of 2008, as clarified by the Government Order of 2011, was held to be applicable insofar as appointment to regular vacancies are concerned.

3. In such circumstance, the petitioner's appointment with effect from 04.10.2007, has to be considered has to be considered on the basis of the authoritative pronouncement of this Court in W.P.(C) Nos. 17893 & 21035 of 2013 dated 1.11.2013. Ext.P6, hence, shall stand set aside. The Government is directed to consider the issue afresh in accordance with the aforesaid judgment.

Writ Petition is allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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//True Copy//

P.A to Judge