

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 14959 of 2009 (L)

PETITIONER:

**V.S.KRISHNAKUMARI,
RESIDING AT CHERAPARAMBIL HOUSE, METHALA P.O.,
KODUNGALLUR, THRISSUR DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.C.A.ANOOP**

RESPONDENTS:

- 1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GENERAL EDUCATION (B) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT EDUCATIONAL OFFICER
VALAPPAD, CHAVAKKAD TALUK, THRISSUR DISTRICT.**
- 3. THE MANAGER, EDAMUTTAM UPPER PRIMARY SCHOOL
EDAMUTTAM P.O., CHAVAKKAD TALUK
THRISSUR DISTRICT.**

BY GOVERNMENT PLEADER SRI. T.R. RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 - COPY OF THE ORDER OF APPOINTMENT ISSUED BY THE
THIRD RESPONDENT DATED 28.02.2003.
- EXHIBIT P2 - COPY OF THE PROCEEDINGS OF THE SECOND RESPONDENT
DATED 31.03.2003.
- EXHIBIT P3 - COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT
DATED 15.05.2001.
- EXHIBIT P4 - COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT
DATED 19.03.2003.
- EXHIBIT P5 - COPY OF THE JUDGMENT IN WP(C) NO.15012 OF 2003 ON THE
FILE OF THIS COURT DATED 06.11.2006.
- EXHIBIT P6 - COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT
DATED 23.03.2009.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.14959 of 2009

Dated this the 15th day of September, 2015.

JUDGMENT

The petitioner was appointed a Part Time Sanskrit Teacher in the 3rd respondent School on 28.02.2003 as per Ext.P1. By Ext.P2, the Assistant Educational Officer refused to grant approval to the said appointment, despite noticing the fact that the appointment was to a regular post, from which the earlier incumbent retired on 31.03.2002. The reason for rejection was that, Sri.T.R.Suriyakumar, the person who appointed the petitioner, was not an approved Manager.

2. The petitioner challenged the order in WP(C) No.15012 of 2003, which was disposed of by Ext.P5. In Ext.P5, it was specifically noticed that the dispute on the question of management shall not stand in the way of appointment of a teacher. The appointment was directed to be looked into and if the same was against the regular vacancy, the appointment was

directed to be approved. Despite such clear directions in Ext.P5, again on the ground of no approved Manager having been appointed, approval was rejected. Even in Ext.P6 order, it was found that the person, who was subsequently appointed as Manager and whose appointment was approved with effect from 22.12.2004, had appointed the petitioner herein from 01.06.2004. Hence, though there were two Managers, there is no rival claimant to the post too, which fell due on 31.03.2002, and in which the petitioner was appointed. The subsequent Manager, appointed and duly approved, also had appointed the petitioner to the post.

2. In such circumstances, there is no reason why the approval of appointment as on 01.06.2004 alone should be allowed to stand. Evidently, the appointment on 01.06.2004 was a re-appointment of the Manager, who was duly approved in the Manager's post. Definitely the Manager could not have appointed the petitioner retrospectively from 28.02.2003, since as on that date, the said person was not the Manager.

In such circumstances, despite the dispute in Management,

the petitioner is found to have been properly appointed to a regular vacancy on 28.02.2003 in a retirement vacancy. The petitioner's approval would be made from 28.02.2003 as a Part Time Sanskrit Teacher. Ext.P6 shall be set aside. Orders, in accordance with the above direction shall be issued within two months from the date of receipt of a certified copy of this judgment and the salary and another benefits shall be disbursed within two months thereafter.

The writ petition is allowed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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