

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

W.P.(C).No.15567 of 2010 (U)

PETITIONER(S):

SHIJU.K, POOVANVILA MELA KALLUVILA VEEDU,  
THIRUPURAM, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.P.N.MOHANAN.

RESPONDENT(S):-

1. DISTRICT EDUCATIONAL OFFICER,  
NEYYATTINKARA, THIRUVANANTHAPURAM.
2. THE MANAGER, VICTORY HIGHER SECONDARY SCHOOL,  
OLATHANNI, NEYYATTINKARA,  
TRIVANDRUM.

R1 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.15567 OF 2010-U

**APPENDIX**

PETITIONER'S EXHIBITS:-  
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EXT.P1        TRUE COPY OF THE APPROVAL OF THE APPOINTMENT  
                 DATED 25.5.2009.

EXT.P2        TRUE COPY OF THE ORDER DATED 22.3.2010.

EXT.P3        TRUE COPY OF THE G.O. DATED 1.2.2006.

EXT.P4        TRTUE COPY OF THE ORDER DATED 10.3.2006.

EXT.P5        TRUE COPY OF THE COUNTER AFFIDAVIT  
                 IN W.P.(C).NO.10621/08.

EXT.P6        TRUE COPY OF THE G.O. DATED 15.6.2004.

RESPONDENT'S EXHIBITS:-  
----- NIL.

vku/-

[ true copy ]

K. Vinod Chandran, J

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W.P.(C).No.15567 of 2010-U  
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Dated this the 09<sup>th</sup> day of October, 2015

**JUDGMENT**

The petitioner is before this Court claiming approval of his appointment in a leave vacancy as Full Time Menial (for brevity “FTM”) between 11.10.2009 and 31.12.2009.

2. The appointment is evidenced by Exhibit P1, which was approved by the District Educational Officer [for brevity “DEO”], vide endorsement dated 25.05.2009 on Exhibit P1. However, by Exhibit P2, the DEO modified the said approval as one on Daily Wages, on the ground that, as per G.O.(P) No.46/2006/G.Edn. dated 01.02.2006 the school being a newly upgraded School was obliged to appoint protected hands when any vacancy arose.

3. In any event, even if the school is liable to have appointed a protected hand, the issue with respect to such appointment was considered elaborately in ***State of Kerala v. Nadeera [2013 (2) KLT 88]***, wherein it was clearly found that the Circulars of 2002 and 2006 mandated that list of protected hands

be forwarded by the AEO concerned to the DDE, which lists should be made available to the Managers and in such circumstance, the Managers would have no choice or option but to appoint such protected teachers. Even the schools which are presumed to be new establishments or newly upgraded, who had executed such agreements, would not have any information as to the protected teachers; which information would be only available with the Educational Authorities under the KER. It was categorically held that, it was mandatory on the part of the Department to maintain such list and the management could be found fault with only if such lists were forwarded to such managements and there is an appointment made in violation of the stipulation in the Circulars. It is to be emphasized that the Division Bench had specifically held that there should be intimation of such list of protected teachers to the Managers of the Schools; and the mere existence of the list would not persuade this Court to deviate from the facts and law as declared in **Nadeera** (supra).

3. It is also pertinent that on a similar question, where there was no protected teacher available in the sub district, a learned Single Judge of this Court in **Moosakutty v. D.E.O.**,

**Wandoor [2009 (3) KLT 863]** allowed the claim of the teacher and directed grant of approval of appointment.

In the circumstances, the petitioner is entitled to succeed and the writ petition is allowed, setting aside Exhibit P2 order. Exhibit P1 order of the 1<sup>st</sup> respondent, DEO, dated 25.05.2009 is restored, granting approval to the petitioner's appointment for the period from 11.02.2009 to 31.12.2009. The 1<sup>st</sup> respondent shall disburse the salary/arrears of salary, if any, within a period of two months from the date of receipt a certified copy of this judgment.

**Sd/-**  
K.Vinod Chandran  
Judge.

vku/-

[ true copy ]