

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937**

**WP(C).No. 15710 of 2012 (K)**  
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**PETITIONER :**  
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**V.FOUSIA, AGED 30 YEARS, WIFE OF YOUSUF  
HIGH SCHOOL ASSISTANT (MATHEMATICS) MUSLIM EDUCATIONAL  
SOCIETY HIGHER SECONDARY SCHOOL,  
PONNANI, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED  
SRI.K.E.HAMZA**

**RESPONDENTS :**  
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- 1. THE STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,  
JAGATHY, THIRUVANANTHAPURAM - 695 014.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,  
DOWN HILL, MALAPPURAM - 676 519.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,  
TIRUR, MALAPPURAM DISTRICT - 676 101.**
- 5. THE CORPORATE MANAGER,  
MUSLIM EDUCATIONAL SOCIETY SCHOOLS,  
KOZHIKODE - 673 001.**

**R1 TO R4 BY GOVERNMENT PLEADER  
MR. RINNY STEPHEN CHAMAPARAMBIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**bp**

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE G.O (RT) NO.2526/2008/G.EDN. DATED 3.6.2008 OF THE GOVERNMENT.
- EXHIBIT P2. TRUE COPY OF THE G.O (RT) NO.1413/2007/G.EDN. DATED 28.3.2007 OF THE GOVERNMENT.
- EXHIBIT P3. TRUE COPY OF THE ORDER NO.EM (6) 56705/06/DPI/K.DIS. DATED 1.6.2007 OF THE 2ND RESPONDENT.
- EXHIBIT P4. TRUE COPY OF THE ORDER NO.EM (6) 109313/04/DPI/K.DIS. DATED 25.10.2007 OF THE 2ND RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE ORDER NO.EM (6) 53315/07/DPI/K.DIS. DATED 12.11.2007 OF THE 2ND RESPONDENT.
- EXHIBIT P6. TRUE COPY OF THE ORDER NO.EM (6) 53385/07/DPI/K.DIS. DATED 24.11.2007 OF THE 2ND RESPONDENT.
- EXHIBIT P7. TRUE COPY OF THE ORDER NO.EM (6) 13136(10)/08/DPI/K.DIS. DATED 20.05.2008 OF THE 2ND RESPONDENT.
- EXHIBIT P8. TRUE COPY OF THE JUDGMENT IN WPC NO. 30979/2010 V OF THIS HON'BLE COURT DATED 23.06.2011.
- EXHIBIT P9. TRUE COPY OF THE GO (RT) NO.5006/2011/G.EDN. DATED 14.11.2011 OF THE GOVERNMENT.
- EXHIBIT P10. TRUE COPY OF THE G.O (P) NO.178/2002/G.EDN DATED 28.06.2002 OF THE GOVERNMENT.
- EXHIBIT P11. TRUE COPY OF THE CIRCULAR NO.7401/J2/2004/G.EDN. DATED 24.1.2005 OF THE GOVERNMENT.
- EXHIBIT P12. TRUE COPY OF THE G.O (RT) NO.3776/06/G.EDN DATED 24.08.2006 OF THE GOVERNMENT.
- EXHIBIT P13. TRUE COPY OF THE JUDGMENT IN WPC NO. 2563/2008 OF THIS HON'BLE COURT DATED 24.9.2008.
- EXHIBIT P14. TRUE COPY OF THE DECISION REPORTED IN 2011 (3) KLT 790 DATED 04.08.2011.
- EXHIBIT P15. TRUE COPY OF THE JUDGMENT IN WPC NO.564/2009 P DATD 22.9.2011 OF THIS HON'BLE COURT.
- EXHIBIT P16. TRUE COPY OF THE JUDGMENT IN OP NO. 7847/1983 DATED 07.11.1986 OF THIS HON'BLE COURT.

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**EXHIBIT P17. TRUE COPY OF THE JUDGMENT IN WA NO.770/1987 DATED 24.10.1987  
OF THIS HON'BLE COURT.**

**EXHIBIT P18. TRUE COPY OF THE DECISION REPORTED 2009(3) KLT 663 DATED  
29.6.2009.**

**EXHIBIT P19. TRUE COPY OF THE JUDGMENT IN WA NO. 183/2010 DATED 21.7.2010  
OF THIS HON'BLE COURT.**

**EXHIBIT P20. TRUE COPY OF THE ORDER IN SLP NO. 36558/2010 DATED 10.1.2011.**

**EXHIBIT P21. TRUE COPY OF THE JUDGMENT IN WPC NO.8851/2009 DATED  
23.03.2011 OF THIS HON'BLE COURT.**

**RESPONDENTS' EXHIBITS : NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**bp**

**A.M.SHAFFIQUE, J**

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**W.P.C.No.15710 of 2012**

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Dated this the 25<sup>th</sup> day of March 2015

**J U D G M E N T**

Petitioner has approached this Court dissatisfied by Ext.P9 by which the claim for approving her service with effect from 01/09/2004 has been rejected. It is not in dispute that the petitioner was appointed in the School managed by the 5<sup>th</sup> respondent on 01/09/2004. Her appointment was not approved on the ground that protected teachers were not appointed. Appeal filed before the educational authorities were rejected and revision filed before the Government was also dismissed. Subsequently a review petition seems to have been filed by the petitioner which resulted in Ext.P1 order dated 03/06/2008 by which the petitioner's appointment was approved with effect from 01/12/2006. Reference of Ext.P1 order would show that the petitioner was appointed as High School Assistant (Maths) with effect from 01/09/2004 in the MESHSS, Ponnani. When the educational authorities had rejected the appeals, review

petition was filed. Her request in the review petition was for appointment at least from 22/11/2006 since one protected teacher in H.S.A (Maths) Smt.Sheeba.K.L. deployed to a Government school was absorbed in the M.E.S.H.S.S, Irimbiliyam with effect from 21/11/2006, another school under the same management. Therefore, the only request by the petitioner in the review petition was for approval effective from 22/11/2006. The Government, having considered the same, had formed an opinion that since a protected teacher was appointed in the school of the Corporate Manager, approved the appointment of the petitioner with effect from 01/12/2006. Against Ext.P1, the petitioner had filed another representation to the Government which resulted in Ext.P9.

2. Counter affidavit has been filed by the 1<sup>st</sup> respondent supporting the stand taken by the Government. It is inter alia stated that, in the review petition, the claim of the petitioner was only for approval of her service with effect from 22/11/2006 and having considered the fact that the

Corporate Manager has already appointed a protected teacher, approval was granted with effect from 01/12/2006. The claim in respect of approval from 01/09/2004 had been rejected even earlier in terms of various orders passed by the Government and even in the appeal filed before the Government. The review was entertained only when it was pointed out that a protected teacher has been appointed. Under such circumstances, petitioner cannot claim any benefit for approval prior to 01/12/2006.

3. The learned counsel for the petitioner however relied upon the Division Bench judgment of this Court in **State of Kerala v. Nadeera** [2013(2) KLT 88] in order to contend that if the Department has not send the list of protected teachers, there is no obligation on the part of the management to appoint the protected teachers. True that such a proposition is well founded. But the manager has no case that no such list has been forwarded to them. That apart, it is clear from Ext.P1 that the review petition was entertained by the Government only under a special

circumstance and that too when materials were available to show that protected teacher has been appointed. Even in Ext.P9, it is indicated that there was a protected teacher in Malappuram District during the aforesaid period and the petitioner cannot take a stand that the manager was not informed about the list of protected teachers. As already indicated, the management does not have such a case. Petitioner will not be in a position to state as to whether the department has informed the management about the list of protected teachers or not. Under such circumstances, the judgment relied upon by the petitioner cannot be the basis for granting any relief to her.

The facts being so, I do not think that the petitioner is entitled for any relief and accordingly the writ petition is dismissed.

(sd/-)

**(A.M.SHAFFIQUE, JUDGE)**

jsr





