

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WP(C).No. 12939 of 2014 (N)

PETITIONER(S):

**SHEENA ABRAHAM
UPPER PRIMARY SCHOOL ASSISTANT (UPSA)
A.U.P.S. VAZHIKKADAVU, VAZHIKKADAVU P.O.
MALAPPURAM-679333.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695001.**
- 3. DEPUTY DIRECTOR OF EDUCATION
MALAPPURAM-679001.**
- 4. ASSISTANT EDUCATIONAL OFFICER
NILAMBUR-679329, MALAPPURAM DISTRICT.**
- 5. THE MANAGER
A.U.P.S. VAZHIKKADAVU, VAZHIKKADAVU P.O.
MALAPPURAM-679333.**

R3-R4 BY ADV. GOVERNMENT PLEADER SRI. P.S. SAJEEV

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

WP(C).No. 12939 of 2014 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE PROVISIONAL APPOINTMENT ORDER
DATED 17.6.2002.**

EXHIBIT-P2: TRUE COPY OF THE ORDER DATED 2.6.2004.

EXHIBIT-P3: TRUE COPY OF THE GENERAL ORDER.

**EXHIBIT-P4: TRUE COPY OF THE RELEVANT PART OF THE ENDORSEMENT
OF THE SERVICE BOOK OF THE PETITIONER.**

**EXHIBIT-P5: TRUE COPY OF THE REPRESENTATION DATED 13.5.2009
SUBMITTED BY THE PETITIONER.**

**EXHIBIT-P6: TRUE COPY OF THE REPRESENTATION FILED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.**

**EXHIBIT-P7: TRUE COPY OF THE JUDGMENT DATED 28.7.2011 IN W.P(C)
NO.20616/2011.**

EXHIBIT-P8: TRUE COPY OF G.O.(RT) NO.3724/2013 DATED 6.9.2013.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.12939 of 2014 - N

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Dated this the 10th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P8 order. The petitioner was appointed as a U.P School Assistant in a regular vacancy from 02.06.2004. The petitioner also had a Rule 51A claim under the Kerala Education Rules. However, the petitioner's appointment was not approved, since according to the Department, the Manager of the school, being a new school had a duty to appoint a protected hand.

2. This Court by Ext.P7 directed re-consideration of the issue. The Government reiterated the said stand in Ext.P8. By virtue of a Government Order of 2006, the appointment was approved w.e.f. 01.02.2006. However the approval for the prior period was declined for the reason that the Manager has not appointed the protected teacher and the vacancy in which the

petitioner was appointed, ought to have been filled up with a protected teacher. The Government also found against the contention of the petitioner that without a list being forwarded by the Department, the Manager could not have made such an appointment.

3. The issue is no longer res integra and is covered by a Division Bench decision of this Court reported in **State of Kerala v. Nadeera [2013(2) KLT 88]**. The Division Bench categorically found that the Manager cannot be expected to go after the Department to get a list of protected teachers and the Manager is also not expected to know the details of protected teachers in the District, for making appointments to the vacancies arising in the school. Admittedly no list has been forwarded by the Department to the Manager of the present school. It is also to be noticed that in the year 2007, in the present school, a protected hand was appointed and that in fact further buttress the contention of the petitioner for approval.

4. In such circumstance, Ext.P8 is set aside and the AEO, the 4th respondent herein is directed to consider the approval of the petitioner and approve the same in accordance with the aforecited judgment. The orders shall be passed within a period of two months from the date of receipt of the certified copy of this judgment and arrears of salary disbursed expeditiously thereafter, at any rate within three months.

The writ petition would stand allowed.

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

SB

// true copy //

P.A to Judge.