

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C).No. 18104 of 2012 (K)

PETITIONER(S):

A.HANNATH AGED 32 YEARS
HIGH SCHOOL ASSISTANT (HINDI)
LAJNATHUL MUHAMMADIYA HIGHER SECONDARY SCHOOL
ALAPPUZHA (RESIDING AT KARAKKAD HOUSE
NORTH OF VETAKARAN JUNCTION, VALIYAKULAM WARD
ALAPPUZHA DISTRICT-688012).

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

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM-695014.
3. THE DEPUTY DIRECTOR OF EDUCATION
ALAPPUZHA, ALAPPUZHA DISTRICT-688001.
4. THE DISTRICT EDUCATIONAL OFFICER
ALAPPUZHA DISTRICT-688001.
5. THE MANAGER
LAJNATHUL MUHAMMADIYA HIGHER SECONDARY SCHOOL
ALAPPUZHA-688001.

R3 BY ADV. GOVERNMENT PLEADER SMT M J RAJASREE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1. TRUE COPY OF THE APPOINTMENT ORDER DATED 15.09.2003 AND APPROVAL THEREOF DATED 2.6.2006.

EXHIBIT-P2. TRUE COPY OF THE G.O.(RT.) NO.3776/2006/G.EDN.DATED 24.8.2006 OF THE GOVERNMENT.

EXHIBIT-P3. TRUE COPY OF THE G.O.(P) NO.178/02/G.EDN.DATED 28.6.2002 OF THE GOVERNMENT.

EXHIBIT-P4. TRUE COPY OF THE DECISION REPORTED IN I.L.R.2011 (3) KER.890 DATED 4.8.2011.

EXHIBIT-P5. TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT ON 26.8.2011.

EXHIBIT-P6.TRUE COPY OF THE LETTER NO.12460/E1/2012/G.EDN.DATED 17.3.2012 OF THE GOVERNMENT.

EXHIBIT P7: TRUE COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT DATED 7.8.2015

RESPONDENTS' EXHIBITS :NIL

K. VINOD CHANDRAN, J

W.P(C) No. 18104 of 2012

Dated this the 15th day of December, 2015

J U D G M E N T

The petitioner was appointed as H.S.A (Hindi) in the 5th respondent School from 15.09.2003. While approving the petitioner's appointment by Ext.P1 the approval was granted only from 01.02.2006 based on G.O(P) No.46/2006/G.Edn dated 01.02.2006. In the counter affidavit dated 30.11.2015, the Government has stated that during 2003-2004, the academic year in which the petitioner was appointed there were two H.S.A (Hindi) remaining as protected in the Revenue District. The respondent school being a new school, the school had to appoint a protected teacher to the vacancy arising in the school; is the contention.

2. Even the counter affidavit does not disclose the educational authority having given a list of protected teachers or at least the name of protected teachers to the Manager of the respondent school. In such circumstance, State of Kerala v.

Nadeera [2013 (2) KLT 89] applies squarely. The Division Bench of this Court considering the issue of appointment of protected teachers and rejection of approval on failure to do so, had specifically found that the Manager's did not have any obligation to seek for and get the list of protected teachers. The educational authority ought to have forwarded the list of protected teachers and only in such circumstance could the approval be declined if a protected teacher was not appointed.

3. Herein the counter affidavit does not disclose any such contention. The writ petition would stand allowed. Ext.P1 approval shall relate back to 15.09.2003 on which date the petitioner was appointed to a regular vacancy. Necessary orders shall be passed and the salary disbursed within a period of four months from the date of receipt of a certified copy of this judgment.

Writ petition allowed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge