

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 21551 of 2007 (N)

PETITIONER :

K.ANIYAN, AGED 64 YEARS,
S/O.NARAYANI AMMA, MANAGER, SANKARA U.P.SCHOOL
ALANGAD, P.O.MUTTITHADI - 680 319., THRISSUR DISTRICT.

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

RESPONDENTS :

1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.
2. THE DISTRICT EDUCATIONAL OFFICER,
THRISSUR DISTRICT.
3. THE ASSISTANT EDUCATIONAL OFFICER,
CHERPU, THRISSUR DISTRICT.
4. SMT.LATHA K.C.,
UPPER PRIMARY SCHOOL ASSISTANT, SANKARA U.P.SCHOOL
ALANGAD, P.O.MUTTITHADI - 680 319, THRISSUR DISTRICT.

R1-R3 BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER
R4 BY ADV. SRI.K.A.MANZOOR ALI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21551 of 2007 (N)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE G.O.(MS.)NO.145/80/G.EDN. OF THE GOVERNMENT

EXT.P2 : COPY OF THE G.O.(P)NO.178/2002/G.EDN.OF THE GOVERNMENT

EXT.P3 : COPY OF THE ORDER NO.C-1908/05/K.DIS. OF THE ASST.EDL.OFFICER

EXT.P4 : COPY OF THE ORDER NO.B1-1307/2006/K.DIS.OF THE DIST.EDL.OFFICER

EXT.P5 : COPY OF THE G.O.(P)NO.46/2006/G.EDN.OF THE GOVERNMENT

EXT.P6 : COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT

EXT.P7 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C)NO.23374/2006

EXT.P8 : COPY OF THE G.O.(RT.)NO.1517/07/G.EDN.OF THE GOVERNMENT

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.21551 of 2007

Dated this the 9th day of January, 2015

J U D G M E N T

The petitioner, Manager of an aided school by name Sankara U.P School, Alangad, has filed this writ petition challenging Ext.P8 order of the 1st respondent by which a revision preferred by him has been rejected. The petitioner's school was upgraded to an Upper Primary School during 1979-80. On 01.04.2005, a vacancy of an Upper Primary School Assistant arose in the School. On 01.06.2005, the petitioner appointed one Smt.Latha K.C. to the said vacancy. However, approval of the said appointment was rejected by the 3rd respondent on 12.01.2006 as per Ext.P3 proceedings. The petitioner preferred an appeal before the 2nd respondent against Ext.P3. However, by Ext.P4 dated 24.05.2006, the 2nd respondent rejected the appeal of the petitioner. It was against Ext.P4 that the petitioner preferred a revision to the 1st respondent. The said revision has also been rejected by Ext.P8.

2. The ground on which the petitioner's appeal as well as the revision has been rejected is common. It is stated by respondents 1 to 3 that, the petitioner's School being a newly upgraded one, the petitioner ought to have appointed a protected teacher to the vacancy that arose. However, instead of doing that, the petitioner had appointed a fresh candidate. The case of the petitioner all along was

that, no list of protected teachers had been furnished to the petitioner for the purpose of making such appointment. The contention has been rejected holding that, the petitioner could not be permitted to appoint a fresh teacher for the sole reason that a list of protected teachers had not been made available to him by respondents 1 to 3.

3. According to Adv.Sri.V.A.Muhammed who appears for the petitioner, the question is covered in favour of the petitioner by the consistent pronouncements of this Court in various cases, where similar issues had arisen for consideration. The said judgments are relied upon by the counsel. I have heard the learned counsel appearing for the petitioner as well as the learned Government Pleader.

4. It has been held by this Court in judgment dated 24.09.2008 in W.P.(C).No.2563/2008 as follows :

“4. If list of protected hands has not been made available as required, the Manager cannot be faulted for not appointing the protected hands. Going by para 7 of the counter affidavit two protected hands mentioned in that paragraph have since been absorbed. In view of both these reasons, I see no justification in declining the approval of the petitioner.”

The said case involved the appointment of a part time Menial in a School. On the above reasoning, this Court quashed the impugned orders in the said case.

5. A similar view has been taken by this Court in the judgment dated 09.07.2010 in W.P.(C).No.18986/09 where the question involved related to the appointment of a Peon in a newly established school. This Court has considered the issue in the following words :

“The Manager of an aided school in a district (Malappuram District) cannot have personal knowledge of all protected hands in that district or education sub districts who are required to be absorbed in terms of rule (viii) of Chapter V of the Kerala Education Rules. Necessarily therefore such information should be made available to the Managers of newly opened schools by the concerned District Education Officers. In the instant case, though the Government have stated in Ext.P11 order that two protected hands are available in Malappuram District for absorption, the Government have not disclosed the names of the two protected hands or the point of time at which they became protected hands. The official respondents have also not chosen to file a counter affidavit explaining the availability of such protected hands in the education district, at the point of time, when Exts.P1, P2 and P3 orders were issued. In such circumstances, I am of the considered opinion that the Manager cannot be found fault with for having appointed persons from the open market. The District Education Officer, Tirur and the Deputy Director of Education, Malappuram, should be deemed to be aware of the fact that fifth respondent has been permitted to open a new school in Tirur education sub district. If that be so, it was their duty to supply information regarding protected non-teaching staff in the education district to the Manager. That having admittedly not been done, I am of the considered opinion that the reasons given by the original/appellate/revisional

authorities and the Government for declining to approve the appointments of the petitioners cannot be sustained.”

The above view was reiterated by this Court in judgment dated 20.08.2011 in W.P.(C).No.21646/10. Paragraph 7 of the judgment reads as follows :

“7. Learned Government Pleader by relying upon the averments in paragraph 5 of the counter affidavit filed by the 5th respondent submitted that the Manager has not cared to get the list of protected teachers. The very same question was considered by this Court in Ext.P10 judgment. In paragraph 3 therein, it was held as follows :

“3. However, it is seen that, it was the specific case of the Manager that, as required under G.O.(MS)No.178/2002 dated 28.06.2002, the Deputy Director should have made available the District wise and the category wise list of protected hands, on the basis of length of service. It has been contended that, because of the failure on the part of the educational authorities in furnishing the list as required above, the Manager could not comply with the obligation. Therefore, the Manager cannot be faulted.””

6. In view of the above pronouncements consistently rendered by this Court, the impugned proceedings cannot be sustained. It is not in dispute that, the petitioner was not supplied with the list of protected teachers available in Thrissur District at the time of appointment of the 4th respondent. Therefore, the petitioner cannot be found fault with for not having appointed a protected teacher in the place of the 4th

respondent. The petitioner cannot be expected to have knowledge of the details of the protected teachers available for such appointment, in the District.

In view of the above, this writ petition is allowed. Exts.P3, P4 and P8 are set aside. The 3rd respondent is directed to approve the appointment of the 4th respondent forthwith. The 4th respondent shall be entitled to all consequential benefits upon such appointment. The monetary benefits due to the 4th respondent shall be paid as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV