

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 14815 of 2015 (B)

PETITIONER(S)/PETITIONER:

**BETTY JOHN, AGED 37 YEARS
H.S.A.(MALAYALAM)
ST. STEPHEN'S HIGHER SECONDARY SCHOOL
KEERAMPARA P.O., KOTHAMANGALAM-686681.**

**BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM-695001.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
ERNAKULAM.**
- 4. THE DISTRICT EDUCATIONAL OFFICER
KOTHAMANGALAM-686691.**
- 5. THE MANAGER
ST. STEPHEN'S EDUCATIONAL AGENCY, CHELAD, KEERAMPARA
KOTHAMANGALAM-686681.**

R BY GOVERNMENT PLEADER SMT. A. LOWSY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF ORDER DATD 10-07-2006 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P2- TRUE COPY OF ORDER NO. B3-3962/06/D.DIS. DATED 8-11-2008 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P3- TRUE COPY OF ORDER DATED 1-6-2007 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.

EXHIBIT P4- TRUE COPY OF G.O.(P)NO. 10/10/G.EDN. DATED 12-01-10 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P4(A)- TRUE COPY OF STAFF FIXATION ORDER DATED 8-11-2010 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P5- TRUE COPY OF G.O.(P)NO. 56/11/G.EDN. DATED 26-02-2011 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P6- TRUE COPY OF ORDER NO. B4/10207/11/K.DIS. DATED 13-02-12 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P7- TRUE COPY OF ORDER NO. EC2/64136/11/K.DIS. DATED 25-3-13 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8- TRUE COPY OF JUDGMENT DATED 4-2-15 IN WPC NO. 3572/2012 OF THIS HON'BLE COURT.

EXHIBIT P9- TRUE COPY OF REVISION PETITION DATED 29-7-14 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT.

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.14815 of 2015 - B

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Dated this the 27th day of October, 2015

J U D G M E N T

The petitioner was appointed as an H.S.A (Malayalam) on 10.07.2006 as per Ext.P1. The staff fixation order at Ext.P2 dated 15.01.2009 provided for the post of H.S.A(Malayalam), but no sanction was granted for reason of a ban on appointment. Then a vacancy arose in H.S.A (Malayalam) in the same school on retirement and the petitioner was shifted to such vacancy which was also approved.

2. By Ext.P4 Government Order dated 12.01.2010, the ban was lifted and the appointment made during such period were also directed to be approved. The petitioner's appointment as per Ext.P1 was also to be approved. On the lifting of the ban for granting approval to the teachers, who were appointed during the ban period, it was also stipulated in Ext.P3

that an agreement had to be executed by the Manager to accommodate protected teachers for the next arising vacancies. The Assistant Educational Officers were directed to verify the student strength and sanction posts as per the requirement under Kerala Education Rules. Ext.P4(a) is the staff fixation order sanctioning the H.S.A (English) post from 2006-07 to 2009-10.

3. Admittedly, the Manger had executed an agreement as directed in Ext.P4. Subsequently approval was granted as per endorsement in Ext.P1, which however was only w.e.f. 10.07.2006 to 31.03.2007 on a daily wage basis and on 01.06.2007 from regular basis, which was for the reason that appointment was made to a vacancy after the commencement of the academic year.

4. In fact Government Order No.56 of 2011, directed any appointment made, having 8 months duration to be approved regularly. However, the educational authorities were of the opinion that the Government Order does not have a

retrospective effect and hence the earlier period can only be approved as on daily wages.

5. The issue is no longer res integra, since the same has been considered by this Court in **Nair Service Society v. State of Kerala v. [2013 (4) KLT 921]**. The said decision proceeded on the basis of the decision of the Hon'ble Supreme Court in **State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755 (SC)]** that, if the appointment is made to a regular post, even if it is in the midst of an academic year, the same has to be regularised as a regular appointment and not on daily wage basis.

6. In such circumstance, the petitioner's appointment has to be approved from the date of his initial appointment especially since there was a substantive vacancy arising as on that date. The approval granted in Ext.P1 shall stand modified to the extend that the petitioner is regularly appointed from 10.07.2008 itself. The written orders shall be passed in

accordance with the directions herein above within a period of one month from the date of receipt of the certified copy of this judgment and the salary disbursed within a period of two months thereafter.

The writ petition is allowed.

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

SB/ 28 /10 /2015

The date "10.07.2008" occurring in paragraph 6 of the judgment dated 27/10/2015 in W.P.(C) No.14815/2015(B) is corrected as "10.07.2006" as per order dated 02/12/2015 in I.A No.17286/2015 in W.P.(C) No.14815/2015 (B).

Sd/-
Registrar (Judicial)