

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. 14868 of 2015 (G)

PETITIONER(S):

**NISHA VARGHESE
HSA (MATHS), ST.STEPHEN'S HIGHER SECONDARY SCHOOL
KEERAMPARA P.O., KOTHAMANGALAM-686 681.**

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

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTURE
THIRUVANANTHAPURAM-695 001.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
ERNAKULAM-682 031.**
- 4. THE DISTRICT EDUCATIONAL OFFICER
KOTHAMANGALAM-686 691.**
- 5. THE MANAGER
ST.STEPHEN'S EDUCATIONAL AGENCY, CHELAD, KEERAMPARA
KOTHAMANGALAM-686 681.**

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

- EXT. P1 : COPY OF ORDER DTD.7.7.08 ISSUED BY THE 4TH RESPONDENT.
- EXT.P2 : COPY OF ORDER NO.B3-4503/08/D.DIS. DTD.15.1.09 ISSUED BY THE 4TH RESPONDENT.
- EXT.P3 : COPY OF GO(P)NO.10/10/G.EDN. DTD.12.1.10 ISSUED BY THE 1ST RESPONDENT.
- EXT.P4 : COPY OF STAFF FIXATION ORDER DTD.8.11.2010 ISSUED BY THE 4TH RESPONDENT.
- EXT.P5 : COPY OF GO(P)NO.56/11/G.EDN. DTD.26.2.2011 ISSUED BY THE 1ST RESPONDENT.
- EXT.P6 : COPY OF ORDER NO.B4/10329/11/K.DIS. DTD.3.2.2012 ISSUED BY THE 3RD RESPONDENT.
- EXT.P7 : COPY OF ORDER NO.EC2/64084/12/K.DIS. DTD.17.4.13 ISSUED BY THE 2ND RESPONDENT.
- EXT.P8 : COPY OF ORDER DTD.27.11.2013 ISSUED BY THE 1ST RESPONDENT.
- EXT.P9 : COPY OF JUDGMENT DTD.4.2.2015 IN WPC NO.3572/2012 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.14868 of 2015 - G

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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 (Maths) on 07.07.2008 as per Ext.P1. The staff fixation order at Ext.P2 dated 15.01.2009 provided for the post of H.S.A(Maths), but no sanction was granted for reason of a ban on appointments. By Ext.P3 Government Order dated 12.01.2010, the ban was lifted and the appointment made during such period were also directed 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 is the staff fixation order sanctioning the H.S.A (Maths) post in 2008-09 and 2009-2010.

2. Admittedly, the Manger had executed an agreement as directed in Ext.P3. Subsequently approval was granted as per endorsement in Ext.P1, which however was only w.e.f. 07.07.2008 to 31.03.2009 on a daily wage basis and on 01.06.2009 from regular basis, which was for the reason that appointment was made to a vacancy after the commencement of the academic year.

3. 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.

4. 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.

5. 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 07.07.2008 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

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P.A to Judge.