

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 19709 of 2009 (G)

PETITIONER(S):

THE MANAGER, A.D.V.U.P.SCHOOL,
PERINGANDOOR, THRISSUR-680 581.

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, TRIVANDRUM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
WADAKKANCHERRY, THRISSUR DISTRICT.

3. SMT.A.NISHA, LOWER PRIMARY SCHOOL
ASSISTANT, A.D.V.U.P.SCHOOL, PERINGANDOOR
THRISSUR-680 581.

R,R3 BY SR. ADV. SRI.K.JAJU BABU
R,R3 BY ADV. SMT.M.U.VIJAYALAKSHMI
R,R3 BY ADV. SRI.T.R.SADEESAN
R,R3 BY ADV. SRI.A.HAROON RASHEED
R, BY ADV. GOVERNMENT PLEADER SHRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 19709/2009

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO:
35638/2007 DT. 27.2.2009

EXT.P2: -DO- OF THE ORDER NO: 1033/B2/08/GE OF THE GOVT.
DT.22.5.2009

EXT.P3: -DO- NO: C-6363/07 OF THE 2ND RESPONDENT DT.15.5.2009

EXT.P4: -DO- LETTER OF THE MANAGER DT.15.10.2004

EXT.P5: -DO- RELEVANT PAGE OF THE ATTENDANCE REGISTER DT. NIL

EXT.P6: -DO- LETTER OF THE MANAGER DT.10.6.2009

EXT.P7: -DO- ORDER OF THE ASSISTANT EDUCATIONAL OFFICER DT.7.7.2009

RESPONDENT'S EXTS:

EXT.R3A; -DO- OF ORDER NO:C.7343/04 DT.30.5.05 ISSUED BY THE 2ND
RESPONDENT

EXT.R3B: -DO- NO:K.DIS.C/4853/05 DT.24.6.06 ISSUED BY THE 2ND
RESPONDENT

EXT.R3C: -DO- G.O.(RT)NO:5113/07/G.EDN.DT.9.11.07 ISSUED BY THE
GOVT.

EXT.R3D: -DO- NO:C/6363/07 DT.9.7.09 ISSUED BY THE 2ND RESPONDENT

EXTR3E: -DO- APPOINTMENT ORDER DT.5.8.08 ISSUED BY THE PETITIONER TO
THE 3RD RESPONDENT

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO.19709 OF 2009

Dated this the 18th March, 2015.

JUDGMENT

The petitioner, the Manager of an aided School has filed this writ petition challenging Ext.P7 proceedings of the second respondent directing him to seek approval of appointment of the third respondent as a Lower Primary School Assistant ('LPSA' for short) on pay scale basis. According to the petitioner the third respondent was appointed as an LPSA from 15.10.2004 to 31.3.2005 on daily wage basis. The appointment was made on the basis of daily wages, in view of G.O(P) 169/04/G.Edn. Dated 15.6.2004 directing vacancies with lesser duration than an academic year to be filled up only with teachers on daily wages. However, by Ext.P2 proceedings dated 22.5.2009 approval to the appointment

was rejected. Ext.P2 order was issued on a representation submitted by the third respondent on 12.4.2007. According to the counsel for the petitioner Shri. V.A.Muhammed the petitioner's appointment order is Ext.P4 which shows that she was appointed only on daily wages. A copy of the attendance register Ext.P5 also shows that she was working on daily wages. In spite of the above, according to the counsel, the second respondent has directed the petitioner to submit necessary records seeking approval of the appointment on pay scale basis. It is contended that such action is in violation of the Govt. Order G.O(P)169/04 referred to above. Therefore, it is contended that Ext.P7 is liable to be quashed.

2. The third respondent has filed a counter affidavit producing Ext.R3(a) to R3(d) documents. According to the counsel for the third respondent the petitioner was not appointed for a short duration as contended by the petitioner. She was appointed for the period from 15.10.2004 to 1.10.2009 in a vacancy that was caused by a teacher who had

taken leave for five years. At the time of her appointment, the Kerala Education Rules had not been amended in tune with the G.O.169/2004. It is also pointed out that, the petitioner's appointment was for a long duration and therefore the said G.O has no application to her appointment. According to the third respondent, her appointment order is Ext.R3(b). Her appointment had been rejected initially by Ext.R3(d) proceedings. The said proceedings were the subject matter of challenge before this Court at her instance in WPC 35368/2007. This Court had by Ext.P1 judgment, set aside the said proceedings and directed fresh consideration of the matter. It was thereafter that Ext.P3 order was issued. Since the same was issued in contravention of the direction of this Court contained in Ext.P1 the third respondent had moved contempt case No: 489/2009 against the second respondent. Thereupon, by Ext.R3(d), the second respondent had approved the appointment of the petitioner. Subsequently, she has been appointed as a UPSA. Therefore, it is contended that the

petitioner is not entitled to any of the reliefs sought for in this writ petition.

3. A separate counter affidavit has been filed on behalf of the second respondent. The Govt. Pleader appears for respondents 1 and 2. The counter affidavit of the second respondent supports the case of the third respondent.

4. Heard. Though the case of the petitioner is that, the third respondent was appointed only to a vacancy that was lesser in duration than one academic year, the records produced before me show otherwise. The petitioner had been appointed to a vacancy that was caused by a teacher who had availed leave for a period of five years. Therefore, this was a case in which the third respondent ought to have been appointed for the entire term. It was for the said reason that the third respondent did not approve the appointment on daily wage basis. The Govt. Order relied upon by the counsel for the petitioner applies only to short term vacancies. Since the present appointment is not for a short term the said G.O has

no application. For the said reason, the order refusing approval of the third respondent's appointment was set aside by Ext.P1 judgment. Thereafter, it is seen that in spite of Ext.P3, by Ext.R3(d) the petitioner's appointment has been approved by the second respondent. I do not find any infirmity in Ext.P7. I also do not find that any prejudice has been caused to the petitioner by the issue of Ext.P7 justifying an interference with the same. Since the third respondent's appointment has already been approved and she has subsequently been appointed as a UPSA as evidenced by Ext.R3(e) I am not satisfied that any further orders are necessary in the matter.

For the above reasons this writ petition is dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy

