

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 18453 of 2013 (F)

PETITIONER(S):

- 1. M.S. SAJI,
LOWER PRIMARY SCHOOL ASSISTANT
MMM LOWER PRIMARY SCHOOL, EAST KALKULAM P.O
KARAPPURAM, MALAPPURAM DISTRICT**
- 2. DHANYA JOHN
LOWER PRIMARY SCHOOL ASSISTANT
MMM LOWER PRIMARY SCHOOL, EAST KALKULAM P.O
KARAPPURAM, MALAPPURAM DISTRICT**
- 3. RETHI K.M,
LOWER PRIMARY SCHOOL ASSISTANT
MMM LOWER PRIMARY SCHOOL, EAST KALKULAM P.O
KARAPPURAM, MALAPPURAM DISTRICT**
- 4. RAKHI P,
LOWER PRIMARY SCHOOL ASSISTANT
MMM LOWER PRIMARY SCHOOL, EAST KALKULAM P.O
KARAPPURAM, MALAPPURAM DISTRICT**
- 5. REEJA VARGHESE
LOWER PRIMARY SCHOOL ASSISTANT
MKMM LOWER PRIMARY SCHOOL, VELUMPIUMPADAM P.O
BHOODANAM COLONY, WAYANAD DISTRICT 673579**
- 6. SAJNA A
LOWER PRIMARY SCHOOL ASSISTANT
MKMM LOWER PRIMARY SCHOOL, VELUMPIUMPADAM P.O
BHOODANAM COLONY, WAYANAD DISTRICT 673579**
- 7. LIJISHA K.P
LOWER PRIMARY SCHOOL ASSISTANT
MKMM LOWER PRIMARY SCHOOL, VELUMPIUMPADAM P.O
BHOODANAM COLONY, WAYANAD DISTRICT 673579**
- 8. SONIA JACOB,
LOWER PRIMARY SCHOOL ASSISTANT
MKMM LOWER PRIMARY SCHOOL, VELUMPIUMPADAM P.O
BHOODANAM COLONY, WAYANAD DISTRICT 673579**

**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 DISTRICT EDUCATIONAL OFFICER,
WANDOOR, MALAPPURAM DISTRICT 679328
4. THE ASSISTANT EDUCATIONAL OFFICER,
NILAMBUR, MALAPPURAM DISTRICT 679320
5. THE MANAGER,
MMM LOWER PRIMARY SCHOOL AND MKMM LOWER PRIMARY SCHOOL
EAST KALKULAM P.O, KARAPPURAM
MALAPPURAM DISTRICT 679331

R1-R4 BY ADV. GOVERNMENT PLEADER, SMT. LOWSY A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

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|--------------------|--|
| EXHIBIT P1 | TRUE COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER DATED 03-10-2006 |
| EXHIBIT P2 | TRUE COPY OF THE ORDER DATED 08-01-2007 OF THE ASSISTANT EDUCATIONAL OFFICER (1ST PETITIONER) |
| EXHIBIT P3 | TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DATED 02-02-2007 (1ST PETITIONER) |
| EXHIBIT P4 | TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 27-07-2011 |
| EXHIBIT P5 | TRUE COPY OF THE ORDER OF APPOINTMENT OF THE 2ND PETITIONER DATED 03-10-2006 |
| EXHIBIT P6 | TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 08-01-2007 (2ND PETITIONER) |
| EXHIBIT P7 | TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 05-02-2007 (2ND PETITIONER) |
| EXHIBIT P8 | TRUE COPY OF THE G.O (RT) NO 210/2012/G. EDN DATED 12-01-2012 OF THE GOVERNMENT |
| EXHIBIT P9 | TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED 11-01-2012 (2ND PETITIONER) |
| EXHIBIT P10 | TRUE COPY OF THE PPOINTMENT ORDER OF THE 3RD PETITIONER DATED 05-06-2007 |
| EXHIBIT P11 | TRUE COPY OF THE 4TH RESPONDENT DATED 23-01-2008 (3RD PETITIONER) |
| EXHIBIT P12 | TRUE COPY OF THE APPOINTMENT ORDER OF THE 4TH PETITIONER DATED 16-07-2007 |
| EXHIBIT P13 | TRUE COPY OF THE ORDER OF THE 4TH REPSONDENT DATED 13-01-2008 (4TH PETITIONER) |
| EXHIBIT P14 | TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DATED 15-03-2008 (4TH PETITIONER) |
| EXHIBIT P15 | TRUE COPY OF THE APPOINTMENT ORDER OF THE 5TH PETITIONER DATED 12-11-2009 |
| EXHIBIT P16 | TRUE COPY OF THE ORDER OF THER 4TH RESPONDENT DATED 30-09-2010 (5TH PETITIONER) |
| EXHIBIT P17 | TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 01-03-2011 (5TH PETITIONER) |

EXHIBIT P18 TRUE COPY OF THE APPOINTMENT ORDER OF THE 6TH PETITIONER
DATED 13-11-2009

EXHIBIT P19 TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED
30-09-2010 (6TH PETITIONER)

EXHIBIT P19(A) TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED
30-09-2010 (6TH PETITIONER)

EXHIBIT P20 TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED
31-03-2011(6TH PETITIONER)

EXHIBIT P21 TRUE COPY OF THE APPOINTMENT ORDER OF THE 7TH PETITIONER
DATED 01-06-2010

EXHIBIT P22 TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED
30-09-2010 (7TH PETITIONER)

EXHIBIT P23 TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED
01-03-2011 (7TH PETITIONER)

EXHIBIT P24 TRUE COPY OF THE APPOINTMENT ORDER OF THE 8TH PETITIONER
DATED 01-06-2010

EXHIBIT P25 TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED '
30-09-2010

EXHIBIT P25(A) TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT DATED '
30-09-2010 (8TH PETITIONER)

EXHIBIT P26 TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED
01-03-2011 (8TH PETITIONER)

EXHIBIT P27 TRUE COPY OF THE BOND EXECUTED BY THE MANAGER DATED
27-07-2010

EXHIBIT P28 TRUE COPY OF THE DECISION REPORTED IN 2013(2) KHC 103 DATED
19.02.2013.

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 18453 of 2013

Dated this the 30th day of July, 2015

JUDGMENT

The petitioners, who were appointed against additional anticipated divisional vacancies in the school under the management of the 5th respondent, approached this Court aggrieved by the denial of approval to their appointments, on the ground that the manager of the school had not executed a bond undertaking to appoint protected teachers in the school as required by GO(P) No.10/10/G.Edn. dated 12.01.2010. By Ext.P8 order of the Government, the Assistant Educational Officer was directed to approve the appointments of the petitioners, if otherwise eligible and to report the action to the Government before 31.01.2012. The said order was passed by the Government after taking note of the fact that the 5th respondent manager had already executed a bond, and had also deployed a protected teacher provided by the Deputy Director of Education, who had since joined the school. The facts in the writ petition would disclose that pursuant to Ext.P8 order of the Government, directing approval of the appointment of the petitioners except petitioners 1 and 2, the 4th respondent passed Exts.P1, P5, P10, P12, P15, P18, P21 and P24 orders approving the appointment of the petitioners from 01.06.2011 onwards, although they had been appointed on various dates before that. The

challenge in the writ petition against the aforementioned orders of the 4th respondent is to the extent it denies approval for the period from the date of joining of the petitioners in their posts till 01.06.2011.

2. A counter affidavit has been filed on behalf of the 4th respondent, wherein at paragraph 3, it is stated that the petitioners had been granted approval to their appointment, on daily wages till the end of the academic year and on regular basis with effect from 01.06.2011 onwards, in the light of GO.(Rt.) No.210/12/G.Edn., dated 12.01.2012. It is further stated that as per the GO(P) No.199/11/G.Edn. Dated 01.10.2011, it was clarified that in all cases of appointments, approval can be given with effect from 01.06.2011, and the prior service before the current year would be reckoned in line with the proposed amendment of the Kerala Education Rules. It is this stand of the respondent that forms the basis of the orders passed by the 4th respondent, that are impugned in the writ petition.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the issue involved in the writ petition is now covered in favour of the petitioners by the decision of this Court in **Nadeera v. State of Kerala**, [2011 (3) KLT 790] and **Nair Service Society v. State of Kerala** [2013 (4) KLT 921], wherein this Court found that if the appointment of the petitioners was to a vacancy, that endured for more than one year, and continued in the following academic year, then the appointee to the said vacancy could be paid salary on the regular scale, as opposed to daily wages. Taking note of the said decisions, therefore, I allow the writ petition with a direction to the 4th respondent to approve the appointment of the petitioners in the school with effect from the dates of their appointment in the school. The 4th respondent shall do the needful and pass consequential orders and disburse the salary and other emoluments flowing from the said approval to the petitioners, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE