

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C) .NO. 15998 OF 2015 (Y)

PETITIONER(S) :

V.A. MARIYA MANJU, AGED 37 YEARS
W/O.VARGHESE ALOSIOUS, KUNDUKULAM HOUSE
MULLASERRY
THRISSUR DISTRICT.
(HIGH SCHOOL ASSISTANT (NATURAL SCIENCE)
THIRUVALAYANNUR HIGHER SECONDARY SCHOOL
P.O.KALLUR-VADAKKEKAD, THRISSUR DISTRICT-679 562).

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM-695 001.

3. THE DISTRICT DIRECTOR OF EDUCATION
THRISSUR AT AYYANTHOLE-680 003.

4. THE DISTRICT EDUCATIONAL OFFICER
CHAVAKKAD, THRISSUR DISTRICT-680 506.

5. THE MANAGER
THIRUVALAYANNUR HIGHER SECONDARY SCHOOL
P.O.KALLUR-VADAKKEKAD, THRISSUR DISTRICT-679 562.

BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1.TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED
12/10/2006.

EXT.P2.TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DATED
14/3/2007.

EXT.P3.TRUE COPY OF THE ORDER OF THE DEPUTY DIRECTOR EDUCATION DATED
4/11/2008.

EXT.P4.TRUE COPY OF THE ORDER OF THE DEPUTY DIRECTOR EDUCATION DATED
7/11/2008

EXT.P5.TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED
14/6/2007.

EXT.P6.TRUE COPY OF THE ORDER NO.B5-64/08/K.DIS DATED 11/2/2008 OF THE
4TH RESPONDENT

EXT.P7.TRUE COPY OF THE ORDER NO.B4-5310/08/K.DIS DATED 4/10/2008 OF
THE 3RD RESPONDENT

EXT.P8.TRUE COPY OF THE ORDER NO.B5-10517/11/K.DIS DATED 22/3/2012 OF
THE 4TH RESPONDENT

EXT.P9.TRUE COPY OF THE JUDGMENT IN WPC NO.10165/2009-M DATED 7/8/2012.

EXT.P10.TRUE COPY OF THE ORDER NO.EC5/49708/2013/DPI//K.DIS DATED
28/5/2013 OF THE 2ND RESPONDENT

EXT.P11.TRUE COPY OF THE LETTER OF THE GOVERNMENT DATED 23/4/2015.

EXT.P12.TRUE COPY OF THE ORDER NO.B5-9511/10/D.DIS DATED 23/11/2010 OF
THE 4TH RESPONDENT

EXT.P13.TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN WPC NO.22987/2012.W.

EXT.P14.TRUE COPY OF THE JUDGMENT IN WPC NO.16337/2009-J DATED 9/7/2010

EXT.P15.TRUE COPY OF THE JUDGMENT IN WPC NO.20037/2009-Y DATED 8/7/2010.

EXT.P16.TRUE COPY OF THE ORDER NO.B5-9511/2010/D.DIS DATED 23/11/2010
OF THE 4TH RESPONDENT

EXT.P17.TRUE COPY OF THE ORDER NO.B5-2452/11 DATED 16/07/2011 OF THE
4TH RESPONDENT

EXT.P18.TRUE COPY OF THE ORDER NO.B5-1192/2011 DATED 29/07/2011 OF THE
4TH RESPONDENT

EXT.P19.TRUE COPY OF THE INTERIM ORDER IN IA NO.1901/2015 IN WPC
NO.22987/2012 DATED 5/3/2015.

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A. TO JUDGE

WP (C) .NO. 15998 OF 2015 (Y)

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.15998 of 2015
.....

Dated this the 28th day of July, 2015

J U D G M E N T

The petitioner was initially appointed as H.S.A. (Natural Science) in the 5th respondent School during the period from 03.10.2006 to 21.12.2006 in a leave vacancy. The said appointment was on daily wage basis. The appointment was, however, not approved by the educational authority inasmuch as there was a ban against appointment that was in force during the relevant time. Still later, the petitioner was appointed against an anticipated additional divisional vacancy of UPSA with effect from 04.06.2007. When the said appointment, as evidenced by Ext.P5, was sent for approval, the educational authorities once again rejected the request for approval, on the ground that, there was a ban in force that prevented the Manager from making any appointment in additional divisional vacancies. An appeal preferred by the petitioner before the Deputy Director of Education was also rejected by Ext.P7 order. The revision petition filed by the petitioner, thereafter, before the Government also did not meet with any success and the said revision petition was also dismissed by Ext.P11 order. In the writ petition, the petitioner

impugns Exts.P2, P4, P6, P7, P8, P10 and P11, inter alia, on the ground that the said orders, which have the effect of rejecting the approval to the appointment of the petitioner during the aforementioned two spells, are vitiated by a non-application of mind and are contrary to the spirit of the Government orders on which reliance is placed while rejecting the request for approval.

2. I have heard the learned counsel for the petitioner and 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 appointment orders of the petitioner, in the School under the management of the 5th respondent, when forwarded for approval, were denied approval by the educational authorities solely on the ground that the appointments had been made at a point of time when there was a ban in force that prevented appointments being made in the School. It is not in dispute that subsequently, the ban was lifted by G.O.10/2010 dated 12.01.2010, which permitted the educational authorities to grant approval to the appointments effected by Managers during the

ban period, subject to compliance by the Manager of certain conditions. One of the condition incorporated in G.O.10/2010 dated 12.01.2010 is that the Manager would have to execute a bond with the educational authority undertaking to appoint protected teachers in future vacancies that arose in the School. In the orders passed by the educational authorities rejecting approval to the appointment of the petitioner, the main ground stated is that, the 5th respondent Manager did not execute any bond as required in terms of G.O.10/2010 dated 12.01.2010. In this connection, I note that by Exts.P14 and P15 judgments that were passed by this Court in writ petitions preferred by teachers similarly placed as the petitioner who were appointed during the ban period, and whose appointments were not approved by the educational authorities citing the same reason namely, the non-submission of a bond by the 5th respondent Manager, this Court had found that the mere non-execution of a bond by the Manager could not be a reason for denying approval to the appointment of the petitioners in those writ petitions. In the said judgments, it was also held that the educational authorities were to consider the issue of approval of the appointment of the petitioners therein by treating the 5th respondent as having executed the bond in

terms of G.O.10/2010 dated 12.01.2010. Taking cue from the said judgment, and finding that the said cases pertained to the same school of which the 5th respondent in the instant writ petition is the Manager, I am of the view that, in the instant case also the respondent educational authorities cannot deny approval to the appointment of the petitioner solely on the ground that, the 5th respondent Manager has not executed a bond as required in G.O.10/2010 dated 12.01.2010. I am of the view that, if the 5th respondent has not executed a bond in terms of G.O.10/2010 dated 12.01.2010, then the mere non-execution of a bond will not prevent the Government from enforcing the requirement of appointing protected teachers in subsequent vacancy arising in the School, since that was a basic condition subject to which the ban order was lifted in relation to the 5th respondent Manager. Thus, leaving it open to the respondents to proceed against the the 5th respondent Manager for enforcing the conditions in G.O.10/2010 dated 12.01.2010, if so advised, I direct the respondent educational authorities to approve the appointment of the petitioner for the period from 03.10.2006 to 21.12.2006 on daily wage basis and from 04.06.2007 onwards on regular pay basis. To enable the respondents to do so, I quash

Exts.P2, P4, P6, P7, P8, P10 and P11. The respondents shall also disburse the monetary benefits due and payable to the petitioner, consequent to the approval of her appointment, within a period of three months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

