

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 21302 of 2009 (G)

PETITIONER(S):

**THE CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY, ARCH DIOCESE OF TRICHUR,
TRICHUR.**

**BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM**

RESPONDENT(S):

- 1. STATE OF KERALA, REP. BY SECRETARY,
CENTRAL EDUCATION (E) DEPARTMENT, GOVERNMENT
SECRETARIAT, TRIVANDRUM.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
TRICHUR.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
TRICHUR.**
- 4. THE DIRECTOR OF PUBLIC INSTRUCTION,
TRIVANDRUM.**
- 5. E.C.JOSE, HEADMASTER,
ST.SEBASTIANS HIGH SCHOOL, MANNAMANGALAM, TRICHUR.**

**R,R1-4 BY ADV. GOVERNMENT PLEADER
R,R5 BY ADV. SRI.JIJI THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: TRUE COPY OF THE ORDER DATED 6.8.1985 APPOINTING THE 5TH RESPONDENT AS H.S.A.
- EXT. P2: TRUE COPY OF THE APPOINTMENT ORDER DAATED 2.8.2004 APPOINTING THE 5TH RESPONDENT AS H.M.
- EXT. P3: TRUE COPY OF THE ORDER DATED 16.10.2004 ISSUED BY THE D.E.O.
- EXT. P4: TRUE COPY OF THE ORDER DATED 15.4.2005 OF THE DEPUTY DIRECTOR OF EDUCATION.
- EXT. P5: TRUE COPY OF THE CIRCULAR DATED 3.4.2006 ISSUED BY THE D.P.I
- EXT. P6; TRUE COPY OF THE LETTER DATED 26.4.2006 SENT BY THE CORPORATE MANAGER TO THE D.E.O.
- EXT. P7: TRUE COPY OF THE LETTER DATED 18.8.2006 SENT BY THE D.E.O. TO THE PETITIONER.
- EXT. P8: TRUE COPY OF THE REPLY DATED 26.10.2006 SENT BY THE CORPORATE MANAGER TO THE D.E.O.
- EXT. P9: TRUE COPY OF THE ORDER DATED 20.10.2006 PASSED BY THE D.E.O.
- EXT. P10: TRUE COPY OF THE APPEAL DATED 20.11.2006 FILED BY THE PETITIONER BEFORE THE DY. DIRECTOR OF EDUCATION.
- EXT.P11 COPY OF THE ORDER DATED 22.2.07 OF THE DY.DIRECTOR OF EDUCATION.
- EXT.P12 COPY OF THE APPEAL DATED 16.4.07 FILED BY THE PETITIONER BEFORE THE D.P.I
- EXT. P13: TRUE COPY OF THE ORDER DATED 11.9.2007 PASSED BY THE D.P.I
- EXT. P14: TRUE COPY OF THE APPEAL DATED 8.10.2007 FILED BY THE PETITIONER AGAINST EXT. P13 ORDER BEFORE THE SECRETARY TO GOVT. GEN. EDN. DEPT.
- EXT. P15: TRUE COPY OF THE GOVERNMENT LETTER DATED 16.2.2009 SENT TO THE PETITIONER.

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- EXT. P16: TRUE COPY OF THE REPLY DATED 15.4.2009 SENT BY THE PETITIONER TO EXT. P15 LETTER.
- EXT. P17: TRUE COPY OF THE ORDER DATED 10.6.2009 ISSUED BY THE SECRETARY TO GOVT. REJECTING EXT. P14 APPEAL.
- EXT. P18: TRUE COPY OF THE APPOINTMENT ORDER DATED 23.7.2005 APPOINTING 5TH RESPONDENT AS H.M. IN A PERMANENT VACANCY.
- EXT. P19: TRUE COPY OF THE ORDER DATED 1.6.2009 APPROVING THE APPOINTMENT OF REENA ANTO P AS H.M. BY THE D.E.O.
- EXT. P20: TRUE COPY OF THE ORDER DATED 9.6.2009 OF THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS DECLARING THE PETITIONER'S CORPORATE EDUCATIONAL AGENCY AS MINORITY EDUCATIONAL INSTITUTION.
- EXT.P21 COPY OF THE APPROVAL OF APPOINTMENT OF KUTTIKKAT ANTONY BABU AS H.M

RESPONDENTS' EXHIBITIONS: NIL

/TRUE COPY/

PA. TO JUDGE

SB

K. VINOD CHANDRAN, J.

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Dated this the 15th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the appointment of the 5th respondent as a Head Master in a leave vacancy between 02.08.2004 and 08.10.2004 has not been approved for the reason that the petitioner's institution is not a minority institution and there is no declaration to that end. The petitioner however contends that there is no declaration contemplated under the K.E.R as has been held by the Hon'ble Supreme Court in **Ammad v. Emjay High School [1998 (2) KLT 828]** and the only requirement is that the institution should be one established and administered by a minority community.

2. The petitioner is a Corporate Educational Agency; Arch Diocese, Thrissur, admittedly, a minority institution

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established and administrated by the minority community. The 5th respondent was appointed as an H.S.A on 06.08.1985, in one of the schools under the Corporate Educational Agency and had been continued till the date of his temporary appointment as an H.S.A, in a leave vacancy. The request for approval was declined by the D.E.O by Ext.P3 on the ground that the appointment is for a period of less than one academic year. Reliance was placed on G.O No.169/04.G.Edn. dated 15.06.2004.

3. The same stood approved by Ext.P4 order in appeal by the Deputy Director. However, the Government brought out Ext.P5 Circular dated 03.04.06 which specifically noticed that the G.O(P) No.169/2004 shall not apply to the appointment and promotion to the post of Head Master . A reading of G.O(P) No. 169 of 2004 also indicates that the daily wage appointment contemplated in the said G.O was only to ensure that no multiple claims under Rule 51A are occasioned. In the circumstance of Ext.P5 Circular, the petitioner again moved a .proposal for

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reconsidering the temporary appointment of the 5th respondent as a Head Master. However at that point, the same was declined for reason of the service book of the incumbent and the seniority list, among other documents, having not been submitted.

4. The petitioner moved an appeal specifically contending that the seniority list would not be a relevant consideration, especially since the petitioner is covered under Article 30(1) of the Constitution of India. The said contention was rejected by Ext.P11 on the ground that there is no declaration produced that the institution is a minority institution. The findings at Ext.P11 regarding the absence of the declaration was upheld in Ext.P13 and Ext.P17.

5. The issue is squarely covered by the decision of the Hon'ble Supreme Court above referred, which declared that there is no provision in the Kerala Education Act or the K.E.R, which enables the Government to declare the school as a minority school. A minority school would continue to be so

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whether Government declared if as such or not, was the specific finding. The declaration made by the Government, in that case, was found to be a mere recognition of the fact and was held to be not the foundation on which the minority status could be claimed.

6. In the present case, the other appointments in the petitioner's educational institution, is seen to have been approved on the basis of the petitioner being a minority institution. That alone would be required to find that the petitioner is a minority institution, accepted as such by the authorities under the K.E.R and no separate declaration would be required to that end. On such approval is produced at Ext.P21. The learned Counsel also relies on Ext.P20, though a subsequent document, to the orders passed herein, by which the National Commission for the minority institutions declared the petitioner to be a minority institution.

7. Taking all the circumstances into consideration, it is

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only proper that Exts.P11, P12, P13, P16 and P17 orders are set aside. I do so. The approval of the 5th respondent as a Head Master between 02.08.2004 to 08.10.2004 shall be allowed and the salary disbursement in accordance with law, shall be made within a period of three months from the date of receipt of a certified copy of this judgment. The consequences of such approval would necessarily follow as and when taken up by the Management or Teacher before the authority under the K.E.R.

The writ petition would stand allowed. No costs.

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

SB

// true copy //

P.A to Judge.