

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 21557 of 2009 (L)

PETITIONER(S) :

**P.NAYEEMA, D/O.K.K.EBRAYI, AGED 23 YEARS,
ASSISTANT TEACHER, KUNNUMMAKKARA M.L.P.SCHOOL
(VIA), CHOMBALA-673 308, KOZHIKODE DISTRICT.**

**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 DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.**
- 3. THE DISTRICT EDUCATIONAL OFFICER, VATAKARA
KOZHIKODE DISTRICT.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
CHOMBALA, KOZHIKODE DISTRICT.**
- 5. THE MANAGER, KUNNUMMAKKARA M.L.P.SCHOOL,
(VIA)CHOMBALA-673 308, KOZHIKODE DISTRICT.**

R1 TO R4 BY GOVERNMENT PLEADER SRI.SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE DEATH CERTIFICATE DATED 23.01.2007.
- EXHIBIT P2: TRUE COPY OF THE REQUEST OF THE PETITIONER
DATED 20.01.2007.
- EXHIBIT P3: TRUE COPY OF THE APPLICATION OF THE PETITIONER
DATED 07.02.2007.
- EXHIBIT P4: TRUE COPY OF THE ORDER OF APPOINTMENT DATED 10.01.2008.
- EXHIBIT P5: TRUE COPY OF THE ORDER NO.K.DIS.B.267/2000 OF
THE ASST.EDL.OFFICER DATED 28.01.2008.
- EXHIBIT P6: TRUE COPY OF THE APPEAL FILED BEFORE
THE 3RD RESPONDENT DATED 07.05.2008.
- EXHIBIT P7: TRUE COPY OF THE ORDER NO.B6/7512/07 OF
THE DIST.EDUCATIONAL OFFICER DATED 24.11.2007.
- EXHIBIT P8: TRUE COPY OF THE ORDER NO.1/07 OF THE MANAGER
DATED 07.12.2007.
- EXHIBIT P9: TRUE COPY OF THE ORDER NO.K.DIS.1333/08/B6 OF
THE DIST.EDL.OFFICER DATED 07.05.2008.
- EXHIBIT P10: TRUE COPY OF THE ORDER NO.G3/61864/08/DPI/K.DIS OF
THE 2ND RESPONDENT DATED 02.09.2008.
- EXHIBIT P11: TRUE COPY OF THE REVISION PETITION FILED BY THE MANAGER
OF THE SCHOOL DATED 31.10.2008.
- EXHIBIT P12: TRUE COPY OF THE ORDER NO.17498/L1/09/G.EDN OF
THE GOVERNMENT DATED 27.03.2009.
- EXHIBIT P13: TRUE COPY OF THE ORDER NO.B.4139/2006 OF THE ASST.EDL.
OFFICER DATED 31.07.2006.
- EXHIBIT P14: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT
W.P.(C).NO.2563/2008-E DATED 24.09.2008.
- EXHIBIT P15: TRUE COPY OF THE -DO- IN W.P.(C).NO.8039/2008-F
DATED 01.06.2009.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.21557 of 2009

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Dated this the 6th day of November, 2015

JUDGMENT

The petitioner has approached this Court alleging that her father, who was a Headmaster in the 5th respondent school, died while in service on 15.1.2007. She made a formal application for employment assistance on 7.2.2007 and the 5th respondent was willing to grant appointment to the petitioner; it is alleged. However, it was delayed until 10.1.2008 owing to the dispute for the post of Headmaster. The petitioner further alleges that by that time, the petitioner was appointed, the school became uneconomic and on that ground, the approval was declined by the respondents. The petitioner points out that her claim arose in 2006-07 during which period, the school was economic and it is not due to her fault that the appointment got delayed until 2008. The grievance of the petitioner is that the Educational Officer has not furnished the list of protection

teachers to be appointed in the school till now. It is with this background, the petitioner has come up with this writ petition.

2. Arguments have been heard.

3. The issue relates to the claim of the petitioner for employment as Assistant in January, 2007. At that time, the school was not uneconomic. This is evident from Ext.P13 which is the true copy of the staff fixation order 2006-07. The appointment of the petitioner was delayed on account of the dispute for the chair of the headmaster. In fact, the petitioner had no role in that and, therefore, the petitioner cannot be adversely affected by the same.

4. The post of Headmaster was filled up w.e.f 16.1.2007 as evident from Exts.P7 and P8. Therefore, the petitioner might not be hit by the specious plea of uneconomic in 2007-08. The Educational Officer has no case that he has provided the list of protected teachers to be appointed in the place of the petitioner. In such circumstances, the manager of the school has no obligation to find out protected

hand for induction in the school. The aforesaid view is fortified by Exts.P14 and P15 judgments of this Court.

5. Moreover a Division Bench of this Court in **State of Kerala and Others** v. **S.Haseena and Another** [2013 (2) KHC 103 (DB)] has observed that education department is bound to send a list of two teachers to the concerned school in time to ensure that the manager complies with the directions envisaged under Rule 6(viii) of KER. Therefore, this Court is of the view that the petitioner is entitled to the reliefs prayed for.

In the result, the writ petition is allowed. Exts.P5, P9 and P12 are quashed. The 4th respondent is directed to approve the appointment of the petitioner covered by Ext.P4. Formal orders to this effect shall be issued within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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