

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

W.P.(C).No.25739 of 2007 (L)

PETITIONER(S):-

JEESON THOMAS,
TEACHER, PHYSICAL EDUCATION, BETHANY ASRAM HIGH SCHOOL,
CHERUKULANJI, RANNY,
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.VIJU ABRAHAM.
SRI.JOY C. PAUL.
SRI.DOMINIC JOHNSON.

RESPONDENT(S):-

1. GOVERNMENT OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT OF KERALA,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.
3. MANAGER,
BETHANY ASRAM HIGH SCHOOL, CHERUKULANJI, RANNY,
PATHANAMTHITTA DISTRICT.

R1 & R2 BY GOVERNMENT PLEADER SMT.A.LOWSY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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- | | |
|---------|---|
| EXT.P1 | TRUE COPY OF ORDER OF APPOINTMENT ISSUED BY THE 4TH RESPONDENT DATED 16.11.2004. |
| EXT.P2 | TRUE COPY OF ORDER NO.B4/13087/05 L.DIS. DATED 13.9.2005 OF THE DEPUTY DIRECTOR OF EDUCATION, PATHANAMTHITTA. |
| EXT.P3 | TRUE COPY OF APPEAL MEMORANDUM FILED BEFORE D.P.I. AND COPY GIVEN TO THE 2ND RESPONDENT DATED 13.10.2005 BY THE PETITIONER. |
| EXT.P4 | TRUE COPY OF ORDER DATED 4.78.2006 OF THE DIRECTOR OF PUBLIC INSTRUCTIONS. |
| EXT.P5 | TRUE COPY OF REVISION PETITION DATED 19.08.2006 FILED BY PETITIONER BEFORE THE 1ST RESPONDENT GOVERNMENT. |
| EXT.P6 | TRUE COPY OF ARGUMENT NOTES SUBMITTED BY THE PETITIONER AT THE TIME OF HEARING CONDUCTED BY GOVERNMENT ON 6.2.2007. |
| EXT.P7 | TRUE COPY OF G.O.(Rt).NO.1238/07/G.EDN. DATED 19.3.2007. |
| EXT.P8 | TRUE COPY OF G.O.(MS) NO.145/80/EDN. DT.11.9.80. |
| EXT.P9 | TRUE COPY OF G.O.(MS) NO.123/91 DT.5.8.91. |
| EXT.P10 | TRUE COPY OF THE SAID ORDER DATED 1.2.06. |
| EXT.P11 | TRUE COPY OF THE RELIEVING ORDER. |
| EXT.P12 | TRUE COOY OF THE JOINING REPORT. |
| EXT.P13 | TRUE COPY OF THE REPRESENTATION DT. 7-8-09. |

RESPONDENTS' EXHIBITS:-

NIL.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.25739 of 2007-L

Dated this the 04th day of November, 2015

JUDGMENT

The petitioner was appointed as a Physical Education Teacher [a Specialist Teacher as per the Kerala Education Rules, 1959 (for brevity “KER”)], in a leave vacancy between 16.11.2004 and 07.09.2009, as per Exhibit P1. The approval, however, was declined and an appeal filed also was unsuccessful, as is indicated in Exhibit P2. Manager filed a revision before the Director of Public Instruction, which also was rejected by Exhibit P4. A second revision filed by the Manager before the Government also suffered the same fate, by Exhibit P7. The aforesaid orders are challenged herein.

2. The petitioner, a Specialist Teacher, was appointed in a leave vacancy and, as is indicated in Exhibit P7, the rejection of approval was for reason of a protected teacher having not been appointed in the school as per G.O.(Ms) No.123/91/G.Edn. dated 05.08.1991. A reading of the Government Order would indicate that the protected teachers had to be appointed from the list supplied by the Educational authorities.

3. With respect to later Government Orders, being G.O.(Ms).No.347/98/G.Edn. dated 01.09.1998 and G.O.(P). No.178/02/G.Edn. dated 28.06.2002; the issue stands decided, by the decision of a Division Bench of this Court in ***State of Kerala v. Nadeera [2013 (2) KLT 88]***, in which it was held that when there is a restriction in appointments on the ground of executive instruction regarding the appointment of protected teachers, necessarily a list of protected teachers should be forwarded to the Manager for making such appointments. If there is no such list forwarded, it was categorically held that the Manager had no duty to pursue the matter before the DEO. To satisfy the need and requirement of a teacher, then appointments could be made from the open market. Though the aforesaid decision was with respect to later Government Orders, referred to above, the principle squarely apply even in this case.

4. In the above circumstance, Exhibit P7 is set aside and the Government is directed to consider the revision afresh, based on the principles laid down in the aforesaid case. The

petitioner shall produce a certified copy of this judgment before the Government, who shall consider the same in accordance with law within a period of four months from the date of production of the judgment.

The writ petition is disposed of as above.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]