

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.19203 of 2015 (A)

PETITIONER(S):

1. JULIE XAVIER, AGED 32 YEARS,
UPPER PRIMARY SCHOOL ASSISTANT, A.U.P. SCHOOL,
VAZHIKKADAVU P.O., MALAPPURAM DISTRICT-679 333.
2. SMT. SATHIAKUMARI P.M.,
JUNIOR LANGUAGE TEACHER (HINDI), AUP SCHOOL,
VAZHIKKADAVU P.O., MALAPPURAM DISTRICT-679 333.
3. SRI. MUHSIN E.P.,
JUNIOR LANGUAGE TEACHER (HINDI), AUP SCHOOL
VAZHIKKADAVU P.O., MALAPPURAM DISTRICT-679 333.
4. SRI. MOHAMMED ASHRAF KALANGODAN,
UPPER PRIMARY SCHOOL ASSISTANT, AUP SCHOOL,
VAZHIKKADAVU P.O., MALAPPURAM DISTRICT-679 333.

BY ADV. SRI.P.V.CHANDRA MOHAN.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-695 001.
3. THE DISTRICT EDUCATIONAL OFFICER ,
MALAPPURAM DISTRICT-676 505.

4. ASSISTANT EDUCATIONAL OFFICER,
NILAMBUR, MALAPPURAM DISTRICT-679 329.

5. THE MANAGER,
AUP SCHOOL, VAZHIKKADAVU P.O.
MALAPPURAM DISTRICT-679 333.

R1 TO R4 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:-

- EXT.P1 : COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER WITH THE ENDORSEMENT.
- EXT.P2 : COPY OF THE APPOINTMENT ORDER OF 2ND PETITIONER.
- EXT.P3 : COPY OF THE ORDER OF 2ND RESPONDENT DTD.7.12.2007.
- EXT.P4 : A COPY OF THE APPOINTMENT ORDER OF 3RD PETITIONER DTD.22.9.2005.
- EXT.P5 : COPY OF THE ENDORSEMENT ON THE REVERSE SIDE OF EXT.P4.
- EXT.P6 : COPY OF THE ORDER OF THE GOVERNMENT DTD.11.6.2008 GRANTING APPROVAL.
- EXT.P7 : A COPY OF THE APPOINTMENT ORDER OF 4TH PETITIONER DTD.15.7.2005.
- EXT.P8 : COPY OF ENDORSEMENT ON TEH REVERSE SIDE OF EXT.P7.
- EXT.P9 : COPY OF THE ORDER OF THE GOVERNMENT DTD.27.8.2008 GRANTING APPROVAL.
- EXT.P10: GOVERNMENT ORDER DATED 20.11.2014.
- EXT.P11: COPY OF THE ORDER DTD.23.6.2008 OF THE 2ND RESPONDENT.
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RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.19203 of 2015-A

Dated this the 04th day of November, 2015

JUDGMENT

The petitioners are before this Court claiming approval of their appointments from the respective dates of appointments, evidenced at Exhibits P1, P2, P4 and P7 appointment orders. According to the petitioners, they were granted approval only after the appointment of the protected hands, on the ground that as per G.O.(P) No.46/2006/G.Edn. dated 01.02.2006 the school being a newly upgraded School was obliged to appoint protected hands when any vacancy arose.

2. In any event, even if the school is liable to have appointed a protected hand, the issue with respect to such appointment was considered elaborately in ***State of Kerala v. Nadeera [2013 (2) KLT 88]***, wherein it was clearly found that the Circulars of 2002 and 2006 mandated that list of protected hands be forwarded by the AEO concerned to the DDE, which lists should be made available to the Managers and in such

circumstance, the Managers would have no choice or option but to appoint such protected teachers. Even the schools which are presumed to be new establishments or newly upgraded, who had executed such agreements, would not have any information as to the protected teachers; which information would be only available with the Educational Authorities under the KER. It was categorically held that, it was mandatory on the part of the Department to maintain such list and the management could be found fault with only if such lists were forwarded to such managements and there is an appointment made in violation of the stipulation in the Circulars. It is to be emphasized that the Division Bench had specifically held that there should be intimation of such list of protected teachers to the Managers of the Schools; and the mere existence of the list would not persuade this Court to deviate from the facts and law as declared in **Nadeera** (supra).

3. It is also pertinent that on a similar question, where there was no protected teacher available in the sub district, a learned Single Judge of this Court in **Moosakutty v. D.E.O., Wandoor [2009 (3) KLT 863]** allowed the claim of the teacher and directed grant of approval of appointment.

In the circumstances, the petitioners are entitled to succeed and the writ petition is allowed. The petitioners shall be granted approval of their appointment with effect from their original date of appointment, as indicated in Exhibits P1, P2, P4 and P7 appointment orders. The official respondents shall disburse the salary/arrears of salary, if any, within a period of four months from the date of receipt a certified copy of this judgment.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]