

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C) .No. 24531 of 2009 (J)

PETITIONER:

SANESH.T.V
LPSA, MCBMALPS
BALLAKADAPPURAM, KASARAGOD.

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL

RESPONDENTS:

1. THE ASST.EDUCATIONAL OFFICER
HOSDURG, KASARAGOD.
2. THE MANAGER, MCBMALPS,
BALLAKADAPPURAM, KASARAGOD DISTRICT.
3. THE HEADMISTRESS, MCBMALPS,
BALLAKADAPPURAM, KASARAGOD DISTRICT.
4. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY THE 2ND
RESPONDENT
- EXT.P2: TRUE COPY OF THE COMMUNICATION NO.E/3019/09 DATED
10.7.2009 ISSUED BY THE 1ST RESPONDENT
- EXT.P2 (a) : TRUE COPY OF THE AUDIT OBJECTION PERTAINING TO THE
APPOINTMENT OF THE PETITIONER
- EXT.P3: TRUE COPY OF THE GOVERNMENT ORDER AS G.O.(P)No.56/2011
DATED 26.2.2011

RESPONDENTS' EXHIBITS:

NIL

/TRUE COPY/

VPS

PS TO JUDGE

C.K. ABDUL REHIM, J.

W.P.(C)No.24531 of 2009

Dated this the 12th day of February, 2015

JUDGMENT

The petitioner was appointed as Lower Primary School Assistant (LPSA) in the 2nd respondent's school with effect from 20/06/2007, against a vacancy which arose consequent to resignation of a regular LPSA, with effect from 20/06/2007. Appointment of the petitioner was not approved by the Educational Officer for the reason that no protected teacher was appointed in the school. Appeal filed against the rejection of approval was also dismissed. Subsequently a protected teacher was appointed in the school with effect from 10/11/2008. On that basis the 1st respondent had approved the appointment of the petitioner, with effect from 10/11/2008, and the petitioner was continuing as such. While so, the 1st respondent had issued Ext.P2 notice to

the 3rd respondent requesting to recover salary drawn by the petitioner for the period from 10/11/2008 to 31/03/2009, on the premise that the approval granted for the said period was not regular. Ext.P2 letter was issued based on an Audit Report. The extract of the audit objection was also enclosed along with Ext.P2. The objection was that the approval from 10/11/2008 till the starting of the next academic year was not regular, in view of G.O.(P) No.104/2008/G.Edn., dated 10/06/2008, in which the Government have clarified that if the period of appointment commences after beginning of the reopening day and it extends over to the next academic year, the period upto the 1st vacation shall be approved only on daily wage basis. In such case, the appointment can be approved on a regular basis only with effect from commencement of the next academic year, is the instruction. Therefore it is pointed out that, with respect to the petitioner, the approval granted from 10/11/2008 till 31/03/2009 was irregular. It is challenging Ext.P2 and P2(a), this Writ Petition is filed.

2. It is pointed out that G.O.(P) No.104/08/G.Edn. dated 10/06/2008 was interfered through a Division Bench decision of this court in **Unni Narayanan v. State of Kerala [2009 (2) KLT 604]**. Referring to Rule 7A of Chapter XIV A KER, this court observed that, the provision refers only to duration of the vacancy and not the duration of the appointment. If the appointment is made to a vacancy having duration of one academic year or more, such appointment is liable to approved on a regular basis, because provision of the G.O cannot override Rule 7A, is the findings.

3. Even though the hon'ble Supreme Court had reversed the findings contained in **Unni Narayanan's** case (supra), in **State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755 (SC)]**, what was dealt with by the apex court is only with respect to the effect of Rule 51A of Chapter XIV A KER, based on the above said G.O. The apex court clarified that, teachers who have been appointed in midst of an academic year has to be dealt with on the basis of subsequent clarification issued

through G.O.(P)No.56/11/G.Edn., dated 26/02/2011 (Ext.P3), to the effect that the Manager can appoint teachers against vacancies occurring due to death, retirement, promotion, resignation etc. provided they are established vacancies and approval can be granted subject to conditions under Rule 49 of Chapter XIV A KER.

4. In a later decision of this court in **Nair Service Society v. State of Kerala [2013(4) KLT 921]** it was clarified that a regular appointment cannot be governed by the proviso to Rule 51A and the direction issued by the hon'ble apex Court in **Sneha Cheriyan's** case that the Manager can appoint teachers in regular established vacancies subject to Rule 49, stands by itself, and it does not call for any harmonisation with the direction that the teachers who have been appointed in the midst of the academic year and not completed the requisite minimum continuous service before vacation will not be entitled to get vacation salary.

5. In view of the legal position remaining settled as above, the objection raised in Exts.P2 and P2(a) cannot

be sustained.

Under the above mentioned circumstances the writ petition is allowed and Exts.P2 and P2(a) are hereby quashed.

**Sd/- C.K. ABDUL REHIM
JUDGE**

MJL