

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

W.P.(C).No.20395 of 2015 (Y)

PETITIONER(S):-

A.V.NAJUMUNNEESA, W/O.MUHAMMAD, AGED 52 YEARS,
ARABIC TEACHER, THENUR AIDED JUNIOR BASIC SCHOOL,
PARALI P.O., PALAKKAD DISTRICT,
RESIDING AT ARAKKAL HOUSE,
PARALI P.O, PALAKKAD DISTRICT, PIN-678 612

BY ADVS.SRI.P.RAMACHANDRAN
SRI.K.T.SHYAMKUMAR.

RESPONDENT(S):-

1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 1.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM - 1.
3. THE ASSISTANT EDUCATIONAL OFFICER,
PARALI P.O, PALAKKAD DISTRICT, PIN-678 612.
4. THE MANAGER,
THENUR AIDED JUNIOR BASIC SCHOOL, PARALI P.O.,
PALAKKAD DISTRICT, PIN-678 612.

R1 TO R3 BY GOVERNMENT PLEADER SMT. A. LOWSY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.20395 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 - TRUE COPY OF THE ORDER BEARING NO.1587/2011/D
DT.28.09.2013 BY THE 3RD RESPONDENT.
- EXT.P2 - TRUE COPY OF THE ORDER NO.G1/72463/2013/DPI/K.DIS
DT.03.12.2013.
- EXT.P3 - TRUE COPY OF THE REVISION PETITION SENT BY THE
REVISION PETITIONER BY THE PETITIONER TO THE
FIRST RESPONDENT ON 07.05.2015.
- EXT.P4 - TRUE COPY OF THE JUDGMENT DATED 20.02.2015 IN
WPC.5388/2015 BY THIS HONOURABLE COURT.
- EXT.P5 - TRUE COPY OF THE ORDER DATED 26.05.2015 BEARING
NO.G.O(ORD)NO.2029/15/G EDN.
- EXT.P6 - TRUE COPY OF THE CIRCULAR NO.13402/J2/12/G.EDN.
DATED 10.04.2012.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.20395 of 2015-Y

Dated this the 17th day of November, 2015

JUDGMENT

The petitioner is aggrieved with the rejection of her appointment on 01.06.2011 as an Arabic teacher. Undisputedly the petitioner was appointed in a leave vacancy and approved, between 16.06.1981 and 28.08.1981. By virtue of the said appointment, the petitioner had a claim for appointment to a vacancy arising in the school, to which she is qualified under Rule 51A of Chapter XIV-A of Kerala Education Rules, 1959. It so happened that a vacancy arose only after 30 years; on 31.03.2011, when the petitioner was appointed by the Manager with effect from 01.06.2011.

2. The petitioner's appointment was not approved for the reason that the Manager who appointed her, was not approved. The appeal and the revision filed also failed. The petitioner assails, the original rejection of the Assistant Educational Officer by Exhibit P1, the rejection of appeal by the Additional Director of Public Instruction by Exhibit P2 and the order in revision at Exhibit P5.

3. A reading of the orders impugned would indicate that the rejection has been made only for reason of there being no approved Manager and pointing out the management dispute pending before the Civil Court. Exhibit P5 order in revision also specifically speaks of the Manager, who had appointed the petitioner, having been found to be not entitled to continue as Manager by the Civil Court; against which an appeal is pending before this Court.

4. Essentially it is to be noticed that the management dispute does not at all affect the claim of the petitioner, since she claims under Rule 51-A of Chapter XIV-A of KER. Whoever be the Manager, the statutory claim raised by the petitioner has to be conceded to and the petitioner's claim to the vacancy which arose on retirement on 31.03.2011, remains unassailed by any other third party. In such circumstance, considering the need for the appointment based on the requirement of sanctioned staff strength of that year, the Assistant Educational Officer has to consider the matter afresh. It is made clear that the management dispute shall not stand in the way of the AEO considering the claim of the

petitioner. The AEO shall look into the staff fixation and after hearing the Manager and the writ petitioner, decide the issue within a period of three months from the date of receipt of a certified copy of this judgment. The petitioner shall be allowed to continue and shall be governed by the orders passed by the AEO. Exhibits P1, P2 and P5 are set aside.

The writ petition is allowed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]