

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 24199 of 2008 (E)

PETITIONER(S):

- 1. THE MANAGER,
POTHYIL L.P.SCHOOL PALLIPPURAM, MARAMPALLY
ALUVA 683 107**
 - 2. DIMPLE P.VARGHESE
LOWER PRIMARY SCHOOL ASSISTANT
POTHYIL L.P.SCHOOL PALLIPPURAM, MARAMPALLY
ALUVA 683 107**
 - 3. THAMBURU ROCKY
LOWER PRIMARY SCHOOL ASSISTANT
POTHYIL L.P.SCHOOL PALLIPPURAM, MARAMPALLY
ALUVA 683 107**
- BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMSA**

RESPONDENT(S):

- 1. THE STATE OF KERALA REPRESENTED BY ITS
SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM -14**
- 3. THE DISTRICT EDUCATIONAL OFFICER
KOTHAMANGALAM, ERNAKULAM DISTRICT**
- 4. THE ASSISTANT EDUCATIONAL OFFICER
PERUMBAVOOR, ERNAKULAM DISTRICT**

R,R1 BY ADV. GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P-1: TRUE COPY OF THE ORDER NO.DIS.C/1765/06 OF THE 4TH RESPONDENT (2006-2007).

EXHIBIT P-1(a) TRUE COPY OF THE ORDER NO.D.DIS.C/2599/07 OF -DO- (2007-2008)

EXHIBIT P-2 TRUE COPY OF THE APPEAL FILED BEFORE THE DY.DIRECTOR OF EDUCATION.

EXHIBIT P-2(a) TRUE COPY OF THE -DO- -DO-

EXHIBIT P-3 TRUE COPY OF THE ORDER NO.20804/06/B4/D.DIS. OF THE DEPUTY DIRECTOR.

EXHIBIT P-3(a) TRUE COPY OF THE ORDER NO.B4/22656/07/K.DIS. OF THE DEPUTY DIRECTOR.

EXHIBIT P-4 TRUE COPY OF THE REVISION PETITION FILED BEFORE THE 2ND RESPONDENT.

EXHIBIT P-4(a) TRUE COPY OF THE -DO- -DO-

EXHIBIT P-5 TRUE COPY OF THE ORDER NO.RA2/39211/2007/DPI OF THE 2ND RESPONDENT.

EXHIBIT P-6 TRUE COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT

EXHIBIT P-7 TRUE COPY OF THE G.O.(P) NO.317/2005/G. EDN. OF THE GOVERNMENT

EXHIBIT P-8 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P. (C) NO.30657/2005 -Y

EXHIBIT P-9 TRUE COPY OF THE G.O.(RT.) NO.886/2008/G. EDN. OF THE GOVERNMENT

EXHIBIT P-10 TRUE COPY OF THE APPOINTMNET ORDER (2ND PET.)

EXHIBIT P-10(a) TRUE COPY OF THE -DO- (3RD PET.)

EXHIBIT P-11 TRUE COPY OF THE ORDER NO.C/1768/06/L. DIS. OF THE ASST. EDL. OFFICER.

EXHIBIT P-11(a) TRUE COPY OF THE ORDER NO.C/1772/06/L.DIS. OF THE -DO-

EXHIBIT P-12 TRUE COPY OF THE APPEAL FILED BEFORE THE DIST.EDL. OFFICER BY THE MANAGER.

EXHIBIT P-12(a) TRUE COPY OF THE -DO- -Do-

EXHIBIT P-13 TRUE COPY OF THE ORDER NO.B5/6691/2006/K.DIS. OF THE DIST.EDL. OFFICER

EXHIBIT P-13(a) TRUE COPY OF THE ORDER NO.B5/6692/06/K.DIS. OF THE DIST.EDL. OFFICER

EXHIBIT P-14 TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT BY THE MANAGER

EXHIBIT P-14(a) TRUE COPY OF THE -DO- -DO-

EXHIBIT P15 TRUE COPY OF THE ORDER NO.F5/30189/2007 DPI/K.DIS. OF THE 2ND RESPONDENT

EXHIBIT P15(a) TRUE COPY OF THE ORDER NBO.F5/30185/2007/DPI/K.DIS. OF THE -DO-

EXHIBIT P-16 TRUE COPY OF THE REVISION FILED BEFORE THE GOVT.

EXHIBIT P16(a) TRUE COPY OF THE -DO- -DO-

EXHIBIT P-17 TRUE COPY OF THE ORDER NO.28155/L3/08/G.EDN. OF THE GOVERNMENT

EXHIBIT P17(a) TRUE COPY OF THE ORDER NO.28154/L3/08/G.EDN. OF THE GOVERNMENT

RESPONDENT'S EXHIBITS

EXHIBIT R1(a) TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.273/07

EXHIBIT R1(b) TRUE COPY OF G.O.(P) NO.70/79/G.EDN. DATED 2.05.1979

EXHIBIT R1(c) TRUE COPY OF FORM 27

EXHIBIT R1(d) TRUE COPY OF THE AMENDMENT DATED 25.05.2010 OF RULE 6(VIII) CHAPTER V

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PA TO JUDGE

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K.SURENDRA MOHAN, J.

W.P.(C) No.24199 of 2008

Dated this the 12th day of March, 2015

JUDGMENT

The first petitioner is the Manager of the Pothiyil Lower Primary School. The second and third petitioners are Lower Primary School Assistants (LPSA for short) appointed by the first petitioner. The second petitioner was appointed as per Exhibit P10 on 5.06.2006 while the third petitioner was appointed as per Exhibit P10(a) on 6.6.2006. However, the appointments of the second and third petitioners were not approved by the 4th respondent. The petitioners challenged the orders of the 4th respondent rejecting approval of their appointments before the third respondent. However by Exhibits P13 and P13(a), the appeals were rejected. The petitioners unsuccessfully challenged the said orders before the second respondent also. Thereafter, they approached the first respondent. However by Exhibits P17 and P17(a), the first respondent has also rejected their appointments.

The petitioners have therefore approached this court.

2. According to the counsel for the petitioners, the reason for rejection of approval as evident from the impugned orders is that, at the time of appointment of petitioners 2 and 3, there was a ban against sanction of new posts and fresh appointments. The said ban was imposed by G.O.(P) No.317/2005/G.Edn. dated 17.08.2005. However, subsequently, by G.O.(P) No.10/10/G.Edn. dated 12.01.2010, the ban was lifted. The appointments made in violation of the order banning fresh appointments have been directed to be approved, subject to the conditions stipulated by the said Government Order. The petitioners limit their reliefs in the present writ petition to the benefits that are ordered to be granted as per the Government Order dated 12.1.2010.

3. A detailed counter affidavit has been filed. According to the counter affidavit, the appointments of petitioners 2 and 3 having been made in violation of the order banning fresh appointments were illegal and not

liable to be approved. Therefore it is contended that, the impugned orders are perfectly justified.

4. Heard. It is true that the appointments of petitioners 2 and 3 were made during the period over which an order banning fresh appointments was in force. Therefore, the stand adopted by the respondent that, such appointments were illegal and not liable to be approved, cannot be found fault with. However, later on as evident from the Government Order dated 12.1.2010, the Government appears to have taken a lenient view of the matter and has directed regularisation of such illegal appointments subject to the terms of the said Government Order. Therefore, the petitioners are entitled to the benefits thereof. In the above circumstances, it is sufficient that, the respondents are directed to consider the question of granting approval to the appointments of petitioners 2 and 3 afresh and to decide whether their appointments should be approved, in the light of and subject to the terms of G.O.(P) No.10/10/G.Edn dated 12.1.2010.

This writ petition is therefore disposed of directing the first respondent to consider the question of granting approval to the petitioners 2 and 3 afresh, in the light of the provisions of and subject to the terms of G.O.(P) No.10/10/G.Edn. dated 12.1.2010. Appropriate orders in this regard shall be passed, as expeditiously as possible and at any rate within a period of two months of the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioners also.

**K.SURENDRA MOHAN,
JUDGE**

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