

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).NO. 25386 OF 2012 (W)

PETITIONER:

K.NASEER, AGED 32 YEARS,
SON OF MOIDEEN, LOWER PRIMARY SCHOOL ASSISTANT,
NOORUL ISLAM SABHA LOWER PRIMARY SCHOOL,
PALOTTUPALLY, MATTANNUR, KANNUR DISTRICT. 670 702.

BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
2. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR DISTRICT. 670 001.
3. THE ASSISTANT EDUCATIONAL OFFICER,
MATTANNUR, KANNUR DISTRICT. 670 702.
4. THE MANAGER,
NOORUL ISLAM SABHA LOWER PRIMARY SCHOOL,
PALOTTUPALLY, MATTANNUR, KANNUR DISTRICT. 670 702.
5. THE HEADMASTER,
NOORUL ISLAM SABHA LOWER PRIAMRY SCHOOL,
PALOTTUPALLY, MATTANNUR, KANNUR DISTRICT. 670 702.

R1 -R 3 BY ADV. GOVERNMENT PLEADER, SRI. T.J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1. TRUE COPY OF THE ORDER NO. K.DIS.F/5016/2004 OF THE 3RD RESPONDENT DATED 3.11.2004.
- EXHIBIT P2. TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 29.9.2004.
- EXHIBIT P3. TRUE COPY OF APPOINTMENT ORDER OF THE PETITIONER DATED 01.06.2005.
- EXHIBIT P4. TRUE COPY OF THE ORDER NO.53080/P3/08/G.EDN/ OF THE GOVERNMENT DATED 30.5.2011.
- EXHIBIT P5. TRUE COPY OF THE REVIEW PETITION SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER DATED 15.7.2011.
- EXHIBIT P6. TRUE COPY OF THE ORDER NO.36050/P3/11/G.EDN DATED 3.11.2011 OF THE GOVERNMENT.
- EXHIBIT P7. TRUE COPY OF THE ORDER NO.G/168/2010 OF THE ASSISTANT EDUCATIONAL OFFICER DATED 30.11.2011.
- EXHIBIT P8. TRUE COPY OF THE REVIEW PETITION FILED BEFORE THE HONOURABLE MINISTER FOR EDUCATION DATED 24.4.2012.
- EXHIBIT P9. TRUE COPY OF THE ORDER NO.27902/P3/2012/G.EDN. DATED 31.7.2012 OF THE GOVERNMENT.
- EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 28.10.2011 IN W.P.(C) NO. 29659/09(B) BEFORE THE HON'BLE HIGH COURT.
- EXHIBIT P11 TRUE COPY OF THE COMMUNICATION OF THE ASSISTANT EDUCATIONAL OFFICER DATED 6.3.2014.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No. 25386 of 2012

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Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioner is a Lower Primary School Assistant (LPSA) working in Noorul Islam Sabha Lower Primary school, Palottupally. Initially, she was appointed against a leave vacancy from 24.09.2004 to 23.09.2005. But, her approval was declined by the 3rd respondent by Ext.P1, on the reason that the leave of the teacher, against whose vacancy the said appointment was made, was not approved by the 1st respondent. Later, she was appointed against the same leave vacancy from 23.09.2004 to 30.04.2005 and it was approved by the 3rd respondent by Ext.P2. Thereafter, the petitioner was appointed against the regular vacancy from 01.06.2005. But the same was approved only from 01.02.2006 on the reason that the Manager failed to appoint a protected teacher as per G.O.(P) No.46/06/2011 dated

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12.01.2006. The legality, correctness and propriety of the reason by which she was denied permanent appointment from 01.06.2005 is challenged in this Writ Petition.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. Smt. Jensia, the learned counsel for the petitioner advanced arguments challenging the impugned Orders Exts.P4, P6, P7 and P9. According to the learned counsel the issue involved in this Writ Petition is covered by the decisions in **Nadeera T.S. and Another v. State of Kerala and Others** [2011(3) KLT 790] and approved by the Division Bench of this Court in **State of Kerala and Others v. Haseena and Another** [2013(2) KHC 103].

4. Going by the decisions cited by the learned counsel for the petitioner it is seen that in **Nadeera T.S. and Another v. State of Kerala and Others** [2011(3) KLT 790], a Single Judge of this Court held that the denial or postponement of approval on the reason that a non-

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protected teacher was appointed in compliance with the G.O.(P) No. 46/06/2011 dated 12.01.2006 is illegal and when the Manager exercises his power to make appointment in terms of staff fixation order of a qualified teacher, the postponement of approval on the plea that the same can be done only from the date of appointment of a protected teacher is not justified. In ***State of Kerala and Others v. Haseena and Another*** [2013(2) KHC 103 (DB)], the Division Bench of this Court also affirmed this proposition in the Appeal filed by the Government. Thus, I find that this decision is squarely applicable to the instant case.

5. In Ext.P4 order passed by the Government, it is stated that since the school is a newly established school, G.O.(P) No. 46/2006/GI dated 01.02.2006 is binding on this school and as per this Government Order the appointment of a teacher can be approved from the date on which, a protected teacher is appointed in the newly established school and in compliance with the said order, the

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appointment of the petitioner as permanent teacher can be approved from 25.10.2006, the date on which, one 'Seenath' was appointed as a protected teacher.

6. Further, in Ext.P7 order passed by the 3rd respondent, it is seen that the Headmaster is directed to recover the salary paid to the petitioner for the period from 01.02.2006 to 24.06.2006 i.e., from date of permanent appointment to the date of appointment of protected teacher. Even though, the petitioner has filed a revision challenging Ext.P4, the Government declined the jurisdiction, on the reason that the petitioner raised fresh contentions in the Revision. When applying the preposition laid down in the above decision to the instant case, I find that Exts.P4, P6, P7 and P9 have no legs to stand, and they are liable to be set aside as illegal, arbitrary, unreasonable and I do so. Further, I find that no amount is liable to be recovered from the petitioner under Exhibits referred above.

7. Consequently, the 3rd respondent is directed to

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pass order afresh, considering the claim of approval from 24.09.2004 with benefits, within a period of four months after affording an opportunity of being heard to the petitioner.

This Writ Petition is allowed.

Sd/-

**K. HARILAL,
JUDGE**

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//True copy//

P.A. To Judge