

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 24117 of 2015 (L)

PETITIONER(S):

- 1. PRAJEESH A. , LOWER PRIMARY SCHOOL ASSISTANT
PARAMMAL ALPBS, AZHINHILAM
AZHINHILAM PO, MALAPPURAM DISTRICT**
- 2. THE MANAGER, PARAMMAL ALPBS, AZHINHILAM
AZHINHILAM PO, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
TRIVANDRUM – 65 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, TRIVANDRUM 695 014**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
MALAPPURAM 676 505**
- 4. THE DISTRICT EDUCATIONAL OFFICER
MALAPPURAM 676 505**
- 5. THE ASSISTANT EDUCATIONAL OFFICER
KONDOTTY 673 638**

R BY GOVERNMENT PLEADER SMT. A LOWSY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER DATED 19.8.09 ISSUED BY THE 2ND PETITIONER.
- EXT.P2 COPY OF THE ORDER NO.LDIS.C/5641/2009 DATED 11.1.10 ISSUED BY THE 5TH RESPONDENT.
- EXT.P3 COPY OF THE ORDER NO.K.DIS.B1/1704/2010 DATED 21.10.10 ISSUED BY THE 3RD RESPONDENT.
- EXT.P4 COPY OF THE ORDER NO.B3/32104/2010 DATED 30/5/11 ISSUED BY THE 3RD RESPONDENT.
- EXT.P5 COPY OF THE REVISION PETITION DATED 17.1.11 FILED BY THE 2ND PETITIONER.
- EXT.P6 COPY OF THE APPEAL DATED 10/6/11 FILED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P7 COPY OF THE ORDER NO.G2/57034/11/DPI/K.DIS DATED 8.5.12 ISSUED BY THE 2ND RESPONDENT.
- EXT.P8 COPY OF THE ORDR NO.41107/B1/2012/G.EDN. DEPT., DATED 19.6.13 ISSUED BY THE 1ST RESPONDENT.
- EXT.P9 COPY OF THE JUDGMENT DATED 8.1.15 OF THIS HON'BLE COURT IN W.P(C)NO.18063/13.
- EXT.P10 COPY OF ARGUMENT NOTES SUBMITTED BY THE PETITIONER TO THE GOVERNMENT AT THE TIME OF HEARING ON 31.3.15.
- EXT.P11 COPY OF GO(RT)NO.1525/2015/G.EDN. DATED 24.4.15 ISSUED BY THE GOVERNMENT.

RESPONDENTS EXHIBITS:

// TRUE COPY //

PA TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.24117 of 2015 - L

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Dated this the 15th day of September, 2015

J U D G M E N T

The 1st petitioner's grievance arises from her approval being not granted on the date, on which she has been appointed to the regular post, which arose in the midst of the academic year and the protection of 1:40 ratio not being applied in the case of the petitioner for the next academic year.

2. The brief facts to be noticed are that, the 1st petitioner was appointed as an L.P.S.A on 01.06.2009, in a leave vacancy. The same can only be on a daily wage basis. However, on 10.08.2009 due to a resignation, a regular vacancy arose, to which the 1st petitioner was shifted. The 2nd petitioner, the Manager of the school applied for approval of the 1st petitioner's appointment from 10.08.2009.

3. The same was declined on the basis of a

Government Order numbered as G.O(P) No.104/08.G.Edn. dated 10.06.2008. The very same issue came up for consideration before the Hon'ble Supreme Court in **State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755]** and on the interpretation placed on the said Government Order, this Court had set aside a subsequent Government Order of 2013 in **Nair Service Society v. State of Kerala [2013(4) KLT 921]**.

4. In such circumstance, the 1st petitioner having been appointed to a regular vacancy on 10.08.2009, the petitioner's appointment necessarily has to be approved, though in the midst of the academic year, subject however to the condition that for the said academic year, the petitioner would not be entitled to claim salary under Rule 49 Chapter XIVA of K.E.R. The 1st petitioner, on such approval being granted would also be entitled to the protection as per 1:40 ratio, if the 1st petitioner is otherwise eligible.

5. In such circumstance, ExtsP2, P3, P7 and P11 are set

aside to facilitate passing of such orders. The approval shall be granted as directed herein above, on the strength of the binding precedents and the protection also shall be considered at any rate, within a period of two months from the date of receipt of the certified copy of this judgment.

The writ petition is allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB

// true copy //

P.A to Judge.