

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(C).No. 24991 of 2014 (Y)

PETITIONERS:

1. ELIZA V., AGED 48 YEARS
WIFE OF JAYACHANDRAN
UPPER PRIMARY SCHOOL SCHOOL ASSISTANT
NSM GIRLS HIGH SCHOOL
KOTTIYAM RESIDING AT JNJ COTTAGE, VLLIMON (W) P.O
KOLLAM 691 511
2. RITA JOLLY R., AGED 48 YEARS
WIFE OF JOHNSON CYRIL, HIGH SCHOOL ASSISTANT
VIMALA HRIDAYA HIGHER SECONDARY SCHOOL FOR GIRLS
PATTATHANAM, KOLLAM, RESIDING AT FORTUNES
KILIKOLLOOR P.O, KOLLAM 4

BY ADVS. SMT. KAMBILY (PREMKUMAR)
SRI. P. T. DINESH

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT
THIRUVANANTHAPURAM 695 001
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM 695 001
3. THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM 691 511
4. THE DISTRICT EDUCATION OFFICER, KOLLAM 691 500
5. THE CORPORATE MANAGER,
OFFICE OF THE CORPORATE MANAGER OF CATHOLIC SCHOOLS
BISHOPS HOUSE, KOLLAM 691 007

R1 TO R4 BY SR. GOVERNMENT PLEADER SRI T.J. MICHAEL
R5 BY ADV. SRI. JOHN JOSEPH VETTIKAD
R5 BY ADV. SRI. C. JOSEPH JOHNY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.10.2015,
THE COURT ON 02-11-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER NO 1643/2008/EDN DATED 30-06-2008 ISSUED BY THE 5TH RESPONDENT ALONG WITH ORDER NO B3 5307/08/K.DIS DATED 22-11-2008 ISSUED BY RESPONDENT NO 4
- EXHIBIT P2 TRUE COPY OF THE APPOINTMENT ORDER NO 1643/2008/EDN DATED 1-6-2009 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE APPOINTMENT ORDER NO 1643/2008/EDN DATED 21-11-2009 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE ODER NO B3/4010/09/K.DIS DATED 18-2-2010 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P5 EXHIBIT P5 TRUE COPY OF THE APPOINTMENT ORDER NO 1644/2008/EDN DATED 30-06-2008 ISSUED BY RESPONDENT NO 5 ALONG WITH ORDER NO B3/5308/K DIS DATED 22-11-2008 ISSUED BY 5TH RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE APPOINTMENT ORDER NO 1644/2009/EDN DATED 1-6-2009 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P7 TRUE COPY OF THE APPOINTMENT ORDER NO 1644/2008/EDN DATED 27-11-2009 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P8 TRUE COPY OF THE ORDER NO B2/5043/09/L/DIS DATED 23-1-2010 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P9 TRUE COPY OF THE LETTER NO E.T (1) 78153/D.P1/K. DIS DATED 4-12-2009 ISSUED BY THE 2ND RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION
- EXHIBIT P10 TRUE COPY OF THE APPOINTMENT ORDER NO 1643/208/EDN DATED 1-12-2010 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P11 TRUE COPY OF THE LETTER NO B3/2592/11/K DIS DATED 18-04-2011 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P12 TRUE COPY OF THE LETTER NO B3/2535/11/K DIS DATED 29-04-2011 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P13 TRUE COPY OF THE APPOINTMENT ORDER NO 1644/2008/EDN DATED 1-06-2011 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P 14 TRUE COPY OF THE JUDGMENT DATED 10-11-2011 IN WPC NO 15461 OF 2010 OF THIS COURT
- EXHIBIT P15 TRUE COPY OF THE JUDGMENT DATED 29-01-2013 OF THIS COURT IN W.A NO 1954 OF 2012
- EXHIBIT P16 TRUE COPY OF THE LETTER NO 71017/L2/2012/G EDN DATED 3-09-2013 ISSUED BY THE DEPUTY SECRETARY FOR THE 1ST RESPONDENT
- EXHIBIT P17 TRUE COPY OF THE ORDER NO D.DIS/B3/4906/2014 DATED 15-07-2014 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P18 TRUE COPY OF THE JUDGMENT DATED 4-2-2014 OF THIS COURT IN WPC NO 3435 OF 2014

RESPONDENTS' EXHIBITS: NIL

True copy

P.S.to Judge

ANIL.K.NARENDRA, J

W.P.(C)No.24991 of 2014

Dated this the 2nd Day of November, 2015

J U D G M E N T

The 1st petitioner is working as Upper Primary School Assistant (UPSA) in NSM Girls High School, Kottiyam and the 2nd petitioner is working as High School Assistant (HSA) in Vimala Hridaya Higher Secondary School for Girls, Pattathanam, under the Corporate Manager of the Catholic Schools, Kollam, the 5th respondent herein. The petitioners have approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P16 Government order to the extent it declines approval for appointment on regular pay scale basis and a declaration that they are entitled for appointment on regular pay scale basis with effect from 30.6.2008, in view Ext.P14 judgment of this Court dated 10.11.2011 in W.P.(C)No.15461 of 2010, which was confirmed in Ext.P15 judgment dated 29.1.2013 in W.A.No.1954 of 2012.

2. A counter affidavit has been filed on behalf of the 3rd respondent contending that, the petitioners are not entitled for appointment on regular basis with effect from 30.6.2008. Since the

initial appointment of the petitioners was on daily wage basis, they are not entitled for appointment with effect from 1.6.2009, as they are over aged. The proposal made by the 5th respondent for approval of the petitioners' appointment in terms of G.O.(P) No.56/2011/G.Edn. dated 26.2.2011 was turned down in Exts.P11 communication dated 18.4.2011 and P12 communication dated 29.4.2011 of the 4th respondent since there is no direction in the said Government order to reopen settled cases and as such clarification from the Government is required. Later, as per letter No.J2/40873/11 dated 20.8.2011, the Government have clarified that Government order dated 26.2.2011 have no retrospective effect. The judgment of this Court in **Unni Narayanan v. State of Kerala (2009 (2) KLT 604)** relied on in Ext.P14 judgment has been reversed by the Apex Court in **State of Kerala v. Sneha Cheriyan (2013 (1) KLT 755)**. The 3rd respondent would contend that, as per rules the petitioners are not entitled for approval for their initial appointment on regular pay scale basis and that, they are also not entitled for reappointment with effect from 1.6.2009.

3. I heard arguments of the learned counsel for the

petitioners, the learned Senior Government Pleader appearing for respondents 1 to 4 and also the learned counsel appearing for the 5th respondent Manager.

4. The 1st petitioner was initially appointed as UPSA in CFHS, Kottiyam on 30.6.2008 against the leave vacancy of Smt. Coleen Peters, who was sanctioned Leave Without Allowances (LWA) for a period of 544 days from 26.5.2008 to 20.11.2009. Though the duration of the vacancy was more than one year, the 1st petitioner was given appointment on daily wages for the period from 30.6.2008 to 20.11.2009, vide Ext.P1 order of appointment dated 30.6.2008 issued by the 5th respondent. The said restriction was made in Ext.P1 order of appointment, in view of G.O.(P)No.1/2005/G.Edn. dated 1.1.2005 and G.O.(P) No.104/2008/G.Edn. dated 10.6.2008. While granting approval for that appointment, the District Educational Officer, Kollam, the 4th respondent herein, restricted the period of approval from 30.6.2008 to 31.3.2009 and an endorsement to that effect dated 22.11.2008 was also made on Ext.P1 order. Later, the 1st petitioner was reappointed on the reopening date as UPSA on daily wages, vide Ext.P2 order of appointment dated 1.6.2009

issued by the 5th respondent, for the period from 1.6.2009 to 20.11.2009. Still later, the 1st petitioner was reappointed as Probationary UPSA in CFHS, Kottiyam for the period from 21.11.2009 to 30.11.2010, vide Ext.P3 order of appointment dated 21.11.2009 issued by the 5th respondent, when Smt. Coleen Peters was granted extension of LWA till 30.11.2010, in continuation of the LWA already granted. While the 1st petitioner was continuing as UPSA, the 4th respondent by Ext.P4 order dated 18.2.2010 rejected approval for her appointment for the period from 1.6.2009 to 20.11.2009 for the reason that, she was over aged as on 1.6.2009, since she has completed 42 years and 8 months as on 1.1.2009 and that, she is not a Rule 51A claimant for the said post.

5. The 2nd petitioner was initially appointed as UPSA in CFHS, Kottiyam against the leave vacancy of Smt. Norohna Christina Sheeba, who was sanctioned LWA for 540 days for the period from 26.5.2008 to 20.11.2009. Though the duration of the vacancy was more than one year, the 2nd petitioner was given appointment on daily wages for the period from 30.6.2008 to 20.11.2009, vide Ext.P5 order of appointment dated 30.6.2008

issued by the 5th respondent. The said restriction was made in Ext.P5 order of appointment, in view of Government Orders referred to above dated 1.1.2005 and 10.6.2008. While granting approval for that appointment, the 4th respondent restricted the period of approval from 30.6.2008 to 31.3.2009 and an endorsement to that effect dated 22.11.2008 was also made on Ext.P5 order. Later, the 2nd petitioner was reappointed on the reopening date as UPSA on daily wages, vide Ext.P6 order of appointment dated 1.6.2009 issued by the 5th respondent, for the period from 1.6.2009 to 20.11.2009. Still later, the 2nd petitioner was reappointed as Probationary UPSA in CFHS, Kottiyam for the period from 21.11.2009 to 30.11.2012, vide Ext.P7 order of appointment dated 21.11.2009 issued by the 5th respondent, when Smt. Norohna Christina Sheeba was granted extension of LWA till 20.11.2012, in continuation of the LWA already granted. While the 2nd petitioner was continuing as UPSA, the 4th respondent by Ext.P8 order dated 23.1.2010 rejected approval for her appointment for the period from 1.6.2009 to 20.11.2009 for the reason that, she is over aged.

6. Exts.P4 and P8 orders rejecting approval for the

reappointment of the petitioners as UPSA with effect from 1.6.2009 were under challenge in the appeals filed by the 5th respondent Manager. During the pendency of those appeals, the petitioners submitted representations before the Government and as directed by the Government, the Director of Public Instruction, the 2nd respondent herein, issued Ext.P9 communication dated 4.12.2009 informing the petitioners that, their appointment for the period from 30.6.2008 to 1.3.2009 was approved on daily wages in view of clauses 5(i) and (ii) of Government Order dated 10.6.2008. Their reappointment for the period 2009-10 on daily wages can be considered only after completion of staff fixation and that, there is no provision which entitles them reappointment on daily wages as a matter of right.

7. The petitioners approached this Court in W.P.(C) No.15461 of 2010. During the pendency of that Writ Petition, this Court passed an interim order dated 30.9.2010, directing the 5th respondent to allow the petitioners to continue in service until further orders. On the basis of that interim order, the 1st petitioner was reappointed as Probationary UPSA in St.Joseph's UPS, Valliyakada, for the period from 1.12.2010 to 31.10.2011,

against Half Pay Leave vacancy from 1.12.2010 to 19.1.2011 and LWA vacancy from 20.1.2011 to 31.10.2011 of Smt. Elezabeth V.G., vide Ext.P10 order of appointment dated 1.12.2010 issued by the 5th respondent. In the meantime, the Government vide G.O.(P)No.56/11/G.Edn. dated 26.2.2011 have clarified that, approval can be granted subject to the conditions under Rule 49 of Chapter XIVA of KER for appointments to the vacancies arising due to the existing teachers' retirement, resignation, death, long leave, etc., and to the approved vacancies arising and continuing beyond 31st March due to sanctioning of additional divisions. It was also clarified that, appointments for a duration of less than 8 months in an academic year can be approved on daily wage basis and appointments of a duration of more than that are to be approved as regular (on pay scale).

8. In the light of the aforesaid clarificatory order dated 26.2.2011, the 5th respondent resubmitted the proposal for approval of the initial appointment of the petitioners with effect from 30.6.2008. However, the 4th respondent returned the said proposal vide Ext.P11 communication dated 18.4.2011 and Ext.P12 communication dated 29.4.2011, on the ground that, in

Government order dated 26.2.2011 there is no direction to reopen settled cases. Later, W.P.(C)No.15461 of 2010 was amended in order to incorporate a challenge against Exts.P11 and P12 communications. During the pendency of that Writ Petition, the 2nd petitioner was promoted as HSA and transferred to Vimala Hridaya GHSS, Kollam against the retirement vacancy of Smt. Adeline Vincent HSA (SS) with effect from 1.6.2011, vide Ext.P13 order of appointment dated 1.6.2011 issued by the 5th respondent.

9. By Ext.P14 judgment dated 10.11.2011, this Court allowed W.P.(C)No.15461 of 2010, quashing the restriction made in Exts.P1 and P5 orders of appointment that the petitioners' appointments can be approved only on daily wage basis. This Court ordered that, the grant of approval of the appointments of the petitioners on regular basis should be considered in the light of the declaration of law made by this Court in **Unni Narayanan v. State of Kerala (2009 (2) KLT 604)**, which will be subject to further orders to be passed by the Apex Court in the Special Leave Petitions pending in the said case. In Ext.P14 judgment, the Court has also quashed Exts.P4 and P8 orders of the 4th

respondent rejecting approval for the appointment of the petitioners with effect from 1.6.2009 and directed the 4th respondent to pass appropriate orders, with notice to the petitioners, once approval is granted to the first spell of appointment on regular basis.

10. Ext.P14 judgment was under challenge in W.A.No.1954 of 2012 filed by respondents 1 to 4 herein. The said Writ Appeal ended in dismissal by Ext.P15 judgment dated 29.1.2013. Paras.3 and 4 of the said judgment reads thus;

"3. Apparently, by any stretch of imagination, one cannot understand from reading the above rule that there is any restriction if the vacancy is for more than one academic year. The restriction is only to the effect that if it is below one academic year, there is no question of regular pay being paid to the appointees. Reading the Government order and the Rule, it is made very clear that in order to avoid payment on regular basis, this Government order is issued, which runs quite contra to the Rule as stated above. If the facts of this case is taken into consideration, the vacancy arose on account of leave of regular teachers as early as on 26.5.2008. The Writ Petitioners were taken on daily wage basis from 30.6.2008 to 20.11.2009 in the first spell and they were continued till date; as the regular teachers extended their leave.

4. In that view of the matter, though different orders were

given for continuation of the writ petitioners on daily wages, factually, right from 30.6.2008, till date, they are working. In that view of the matter, the learned Single Judge was justified in observing that it was beyond one academic year and there is no impediment for payment on regular basis, therefore, there was no justification to deny such claim to the writ petitioners. While observing so, the learned Single Judge also placed reliance on other two judgments of this Court, which relied upon Unni Narayanan v. State of Kerala (2009 (2) KLT 604) and the observation of the learned Single Judge is justified. We find no good ground to interfere with the said observation.”

11. Subsequent to Ext.P15 judgment, the 2nd petitioner approached the 1st respondent seeking approval of her appointment. By Ext.P16 Government letter dated 3.9.2013, she was informed that since the judgment of this Court in Unni Narayanan's case (supra) has been reversed by the Apex Court in Sneha Cheriyan's case (supra), the request for approval of her appointment on regular basis cannot be granted. However, no decision has been taken in the case of the 1st petitioner.

12. As can be seen from Ext.P14 judgment, this Court allowed W.P.(C).No.15461 of 2010 filed by the petitioners, thereby quashing the restriction made in Exts.P1 and P5 orders of appointment that the petitioners' appointments can be approved

only on daily wages. This Court has also quashed Exts.P4 and P8 orders of the 4th respondent rejecting approval for their appointment with effect from 1.6.2009 and the 4th respondent was directed to pass appropriate orders with notice to the petitioners, once approval is granted in the first spell of their appointment on regular basis. Ext.P14 judgment of this Court was after taking note of the law declared by this Court in Unni Narayanan's case (supra), which was pending in appeal before the Apex Court. Therefore, it was made clear in Ext.P14 judgment that, the grant of approval of the appointments of the petitioners on regular basis will be considered in the light of the declaration of law made by this Court in the aforesaid judgment, which will be subject to further orders to be passed by the Apex Court in the pending Special Leave Petitions.

13. Though Ext.P14 judgment was taken up in appeal by the State, the same ended in dismissal by Ext.P15 judgment and the said judgment has attained finality. In Ext.P15 judgment, after referring to the provisions under Rule 7A of Chapter XIVA of the Kerala Education Rules (hereinafter referred to as 'KER') and also clauses (i) and (ii) of Para.5 of Government Order dated

10.6.2008, the Division Bench of this Court observed that, one cannot understand from reading the above rule that there is any restriction if the vacancy is for more than one year. The Division Bench noticed that, the petitioners were taken on daily wage basis from 30.6.2008 to 20.11.2009 in the first spell and they continued thereafter, as the regular teachers extended their leave. In that view of the matter, though different orders were given for continuation of the petitioners on daily wages, factually, right from 30.6.2008 onwards they are working. In that view of the matter, the learned Single Judge was justified in observing that the appointment was beyond one academic year and there is no impediment for payment on regular basis, therefore, there is no justification to deny such claim to the petitioners.

14. It was vide G.O.(P)No.121/2005/G.Edn. dated 16.4.2005, the Government amended sub-rule (3) of Rule 7A of Chapter XIVA of KER providing that, vacancies, the duration of which is less than one academic year shall not be filled up. The restriction contained in the unamended rule was that, vacancies, the duration of which is two months or less shall not be filled up by any appointment. After referring to the 'Explanatory Note' to

the aforesaid Notification, the Apex Court in Sneha Cheriyan's case (supra) observed that, the object and purpose of the Notification dated 16.4.2005 issued by the Government in exercise of the powers conferred under Section 36 of the Kerala Education Act is to curb the unhealthy practices adopted by certain managers of aided schools by creating short-term vacancies or appointing several persons in a relatively long leave vacancies itself thereby making several Rule 51A claimants against one and the same vacancy. The object and purpose of the above-mentioned Notification is also to end the practice of creation of multiple claimants in anticipatory vacancies creating more Rule 51A claimants imposing huge financial commitment to the Government. Therefore, the Apex Court held that, sub-rule (3) to Rule 7 does not restrict the right of the managers of various schools in making the regular appointments in the established vacancies, what it does is to prevent the misuse of that provision and to prevent the aided school managers in creating short-term vacancies and appointing several persons in those vacancies so as to make them claimants under Rule 51A. Looking to the mischief or evil sought to be remedied, the Court

has to adopt a purposive construction of sub-rule (3) of Rule 7A, read with the proviso to Rule 51A of Chapter XIVA of KER.

15. In Sneha Cheriyan's case (supra) the Apex Court has specifically noticed G.O.(P)No.56/11/G.Edn. dated 26.2.2011 clarifying the earlier Government Orders dated 15.6.2004 and 10.6.2008, which provides that, approval can be granted subject to the conditions under Rule 49 Chapter XIVA of KER for the appointments to the vacancies arising due to the existing teachers' retirement, resignation, death, long leave, etc. and to the approved vacancies arising and continuing beyond 31st March due to sanctioning of additional division; and that, appointments for a duration of less than 8 months in an academic year can be approved on daily wage basis and appointments of a duration of more than that are to be approved as regular (on pay scale). The Apex Court observed in Para.25 of the judgment that, the aforesaid Government Order dated 26.2.2011 has of course no bearing on the interpretation which the Court have placed on sub-rule (3) to Rule 7A read with the proviso to Rule 51A of Chapter XIVA of KER, but may have application on facts in certain cases which have to be decided independently. Para.25 of the

judgment reads thus;

“**25.** We have referred to the above G.O., for the sake of completeness, which has of course no bearing on the interpretation which we have placed on sub-rule (3) to Rule 7A read with the proviso to Rule 51A of Chapter XIVA of the KER, but may have application on facts in certain cases which have to be decided independently.”

16. The Government Order dated 26.2.2011 noticed by the Apex Court in Sneha Cheriyan's case (supra) was later cancelled by the Government, vide G.O.(P)No.144/2013/ G.Edn. dated 22.4.2013, purportedly with the intention of furthering the directions of the Apex Court in the aforesaid judgment. The said Government order dated 22.4.2013 was set aside by a learned Single Judge of this Court in **Nair Service Society v. State of Kerala and others (2013 (4) KLT 921)** holding that, the reiteration of the conditions stipulated in Government Order dated 10.6.2008 was in fact against the stand taken by the State before the Supreme Court; that the Government Order was introduced only and solely for the purpose of remedying the mischief in making appointments to short term vacancies, thus creating multiple claims under Rule 51A. Paras.18 to 20 of the judgment reads thus;

"18. The reiteration of the conditions stipulated in Government Order dated 10.6.2008 was in fact against the stand taken by the State before the Supreme Court; that the Government Order was introduced only and solely for the purpose of remedying the mischief in making appointments to short term vacancies, thus creating multiple claims under Rule 51A. Direction Nos. (ii) and (vi) of the Supreme Court were held to be complementary to one another, which, at best, is the understanding of the officer who passed the said order; to which this Court cannot subscribe. Direction No.(ii) issued by the Supreme Court stands by itself and relates to regular established vacancies and does not call for any harmonization with direction No. (vi). After finding direction Nos. (ii) and (vi) to be complementary to one another, it was also prescribed that the admissibility of the vacation salary "as provided in Rules 49 Chapter 14A KER will be applicable only to those appointments made on regular basis as per sub rule (3) to Rule 7A read with proviso to Rule 51A Chapter XIVA KER". This is incongruous, as there cannot be any regular appointment under sub-rule (3) to Rule 7A read with proviso to Rule 51A; nor can a regular appointment be governed by the proviso to Rule 51A. Then again the order makes the conditions for vacation salary applicable to those appointed to permanent and non-permanent vacancy. To achieve this object, the Government Order read as 4th paper, being the Government Order dated 26.2.2011, noticed by the Supreme Court, also stood cancelled.

19. The State though proclaimed the Government Order to

be applicable to both leave vacancies and regular vacancies, as is revealed in Ext.P1, took a specific stand before the Supreme Court that it applies only to leave vacancies. The Government Order was sought to be sustained on the sole ground that it sought to remedy the mischief of short spell appointments, creating multiple Rule 51A claimants. A purposive construction was adopted by the Supreme Court specifically noticing the mischief that was sought to be remedied by the Government notification. The subsequent clarificatory Government Order of 2011 in tune with the submissions of the State, regarding vacancies in established posts, was also noticed and directions issued. Those directions also treated regular appointments made to vacancies in established posts as different and distinct. Hence, any vacancy in the regular establishment filled in the course of the academic year would have to be approved in the regular scales of pay with the sole rider of the entitlement of vacation salary being confined to only those teachers who have worked for more than 8 months, as provided in Rule 49 of Chapter 14A KER.

20. There cannot be any watering down of the directions issued by the Supreme Court by treating the directions issued with respect to different category of teachers as complementary to each other. The distinctiveness in appointments made to established posts and leave vacancies, is the background in which the Supreme Court issued the directions. The directions issued by the Supreme Court cannot be interpreted in such a manner as to attempt to put the clock back; in so far as applicability of Ext.P1

Government Order is concerned. In Ext.P4 order the Government does a complete volte-face from the submissions made before the Supreme Court. The Government cannot be resiling from such specific averments made before the Supreme Court and specifically noticed by the Supreme Court in its judgment.”

17. In **Bhaskaran Pillai K.K. v. State of Kerala and others (2015 (3) KHC 242)** a learned Single Judge of this Court held that, Government Order dated 26.2.2011 has been issued by the Government for rectifying the problems being created by the orders dated 15.6.2004 and 10.6.2008. The said order, in effect, clarifies, after removing the difficulties, the power of the educational authorities to grant approval of appointments made to regular vacancies. Therefore, the nature of the said order itself shows that it will have retrospective application in the pending cases of approval. Para.5 of the judgment reads thus;

“5. The contention so raised by the second respondent cannot be accepted for valid and genuine reasons. Ext.P2 order has been issued by the Government for rectifying the problems being created by the orders dated 15.6.2004 and 10.6.2008. Ext.P2 specifically says about granting approval of appointments made to regular vacancies. This order does not restrict such approval only to those appointments

made after issuing this order. This order, in effect, clarifies, after removing the difficulties, the power of the educational authorities to grant approval of appointments made to regular vacancies. Moreover, this order does not say it will have only prospective application. The nature of the order itself shows that it will have retrospective application in the pending cases of approval. If the argument of the respondents is accepted, an anomalous situation may arise. If the appointment was made by the petitioner on 26.2.2011 or on a date thereafter, Ext.P2 will have application and the appointment will be approved as a regular one from that date. Only for the reason that the appointment was made on 25.1.2011, the entire period between 25.1.2011 to 31.3.2011 is treated as a period entitling the appointee only to daily wages. This cannot be the intention of Ext.P2 Government Order. Therefore, the argument advanced, resisting the claim of the petitioner, that Ext.P2 has only prospective operation is not legally sustainable and hence it is rejected. The view that the appointment given to Smt. Babitha has to be approved as a regular one is fortified by the decision rendered by the Honourable Supreme Court in *State of Kerala v. Sneha Cheriyan* (2013 (1) KLT 755)."

18. In view of the law laid down by this Court in Bhaskaran Pillai's case (*supra*) the respondents cannot be heard to contend that the clarifications issued in Government Order dated 26.2.2011 have no retrospective application in the pending

cases of approval. In that view of the matter, the reasoning of the 4th respondent in Exts.P11 and P12 orders that, as there is no direction in Government Order dated 26.2.2011 to reopen the settled cases clarification from the Government is required, is perverse and patently illegal.

19. In Ext.P14 judgment, this Court quashed the restriction made in Exts.P1 and P5 orders of appointment that the petitioners' appointments can be approved only on daily wages and held that, the grant of approval of appointment of the petitioners on regular basis will be considered in the light of the declaration of law made by this Court in Unni Narayanan's case (supra), subject to the outcome of the Special Leave Petitions pending before the Apex Court. This Court has also quashed Exts.P4 and P8 orders of the 4th respondent rejecting approval for their appointment with effect from 1.6.2009 and the 4th respondent was directed to pass appropriate orders with notice to the petitioners, once approval is granted in the first spell of their appointment on regular basis. Ext.P14 judgment was confirmed in Ext.P15 judgment of the Division Bench. The decision in Unni Narayanan's case (supra) was reversed by the Apex Court in

Sneha Cheriyan's case (supra). However, the Apex Court held that, sub-rule (3) to Rule 7 does not restrict the right of the managers in making the regular appointments in the established vacancies; what it does is to prevent the misuse of that provision and to prevent the aided school managers in creating short-term vacancies and appointing several persons in those vacancies so as to make them claimants under Rule 51A. The Apex Court has also specifically noticed the Government Order dated 26.2.2011 clarifying the earlier Government Orders dated 15.6.2004 and 10.6.2008, and observed that said order may have application on facts in certain cases which have to be decided independently. Later, in Bhaskaran Pillai's case (supra) this Court has categorically held that, the Government Order dated 26.2.2011 will have retrospective application in the pending cases of approval.

20. In that view of the matter, this Writ Petition is disposed of setting aside Ext.P16 Government communication dated 3.9.2013 and directing the 1st respondent to reconsider the entitlement of the petitioners for approval of their initial appointment with effect from 1.6.2009 on regular basis (on pay

scale), in the light of the clarification issued in G.O.(P) No.56/11/G.Edn. dated 26.2.2011, the law laid down in Sneha Cheriyan's case (supra), Nair Service Society's case (supra), Bhaskaran Pillai's case (supra) and also the observations contained in this judgment. The 1st respondent shall take a decision on the question of approval of the appointment of the petitioners for the subsequent spells as well. A decision in this regard shall be taken, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of the judgment, with notice to the petitioners and also to the 5th respondent Manager.

21. Till such a decision is taken by the Government, the interim order passed by this Court on 25.9.2014 to maintain the status quo as on that date in the matter of appointment of the petitioners, shall continue to be in force .

No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE