

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

W.P.(C).No.25186 of 2015 (W)

PETITIONER(S):-

1. JAGADEESH. A., S/O. APPUKUTTAN,
CHEMPARATHI PLAVILA VEEDU, INCHIVILA,
PARASSALA P.O., THIRUVANANTHAPURAM-695502
(UPPER PRIMARY SCHOOL ASSISTANT,
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA).
2. TONY D.H., D/O. DHARMARAJ MOSES,
SARANI BHAVAN, ELLUVILA P.O., ELLUVILA,
THIRUVANANTHAPURAM (UPPER PRIMARY SCHOOL ASSISTANT,
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA-695502).
3. RANY V.N., AMARAVILA, VARUTHATTU VEEDU, VENNIYOOR,
NELLIVILA P.O., THIRUVANANTHAPURAM
(UPPER PRIMARY SCHOOL ASSISTANT,
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA-695502).
4. DIVYA J.DEV, THATTANVILA VEEDU, KARUMANOOR, PRASSALA P.O.,
THIRUVANANTHAPURAM (UPPER PRIMARY SCHOOL ASSISTANT,
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA-695502).
5. SHERLY R.T., BETHEL MADIRAM, KONNANOORKONAM,
KARAKONAM P.O., THIRUVANANTHAPURAM,
(UPPER PRIMARY SCHOOL ASSISTANT,
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA-695502).
6. ASWATHY S.S.,
KALLYANI SANKARA NILAYAM, MULLOOR P.O., VIZHINJAM,
THIRUVANANTHAPURAM (UPPER PRIMARY SCHOOL ASSISTANT,
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA-695502).

BY ADV. SRI.S.SUBHASH CHAND.

RESPONDENT(S):-

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. DIRECTOR OF PUBLIC INSTRUCTION,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695001.
3. DEPUTY DIRECTOR (EDUCATION),
OFFICE OF THE DEPUTY DIRECTOR (EDUCATION),
THIRUVANANTHAPURAM-695001.
4. DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
NEYYATTINKARA, THIRUVANANTHAPURAM-695501.
5. THE ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
PARASSALA, THIRUVANANTHAPURAM-695502.
6. THE MANAGER
EVAN'S UPPER PRIMARY SCHOOL, PARASSALA-695502.

R1 TO R5 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE.

R6 BY ADVS. SRI.B.RAGUNATHAN

SRI.M.SALIM

SRI.P.KARTHIKEYAN

SRI.R.SRINATH

SRI.V.M.JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1- TRUE COPY OF THE APPOINTMENT ORDER DATED 1-6-2010 OF THE PETITIONER NO.1.
- EXHIBIT P2- TRUE COPY OF THE APPOINTMENT ORDER DATED 1-6-2010 OF THE PETITIONER NO.2.
- EXHIBIT P3- TRUE COPY OF THE APPOINTMENT ORDER DATED 1-6-2009 OF THE PETITIONER NO.3.
- EXHIBIT P4- TRUE COPY OF THE APPOINTMENT ORDER DATED 22-6-2009 OF THE PETITIONER NO.4.
- EXHIBIT P5- TRUE COPY OF THE APPOINTMENT ORDER DATED 1-6-2010 OF THE PETITIONER NO.5.
- EXHIBIT P6- TRUE COPY OF THE APPOINTMENT ORDER DATED 1-6-2010 OF THE PETITIONER NO.6.
- EXHIBIT P7- TRUE COPY OF THE JUDGMENT DATED 17-8-2012 OF THE HON'BLE COURT IN WPC NO. 19433 OF 2012(D).
- EXHIBIT P8- TRUE COPY OF THE ORDER DATED 10-12-2012 PASSED BY RESPONDENT NO.1.
- EXHIBIT P9- TRUE COPY OF THE ORDER DATED 1-3-2013 ISSUED BY RESPONDENT NO.2.
- EXHIBIT P10- TRUE COPY OF JUDGMENT DATED 13-8-2014 IN WPC NO.7965 OF 2013.
- EXHIBIT P11- TRUE COPY OF REVISIONAL ORDER BEARING GO(RT)NO.1428/2015/G.EDN. DATED 16-4-2015 ISSUED BY RESPONDENT NO.1.
- EXHIBIT P12- TRUE COPY OF THE ORDER DATED 4-7-2015 ISSUED BY RESPONDENT NO.5.
- EXHIBIT P12(a) TRUE COPY OF THE APPOINTMENT ORDEER DATED 23.9.2015 ISSUED BY RESPONDENT NO.6.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.25186 of 2015-W

Dated this the 08th day of December, 2015.

JUDGMENT

The petitioners are said to have been appointed as Upper Primary School Assistants [for brevity “UPSA”] in the 6th respondent-school in the academic year 2010-11. The petitioners' approval was directed to be considered as per Exhibit P8 order of the Government in pursuance to the judgment at Exhibit P7. Exhibit P8 specifically directed that the petitioners' appointment would be considered for approval as per the seniority and available vacancies for the academic year 2010-11. However, the matter could not be proceeded with, since there was an issue of appointment declined to Rule 51B claimant. Further, there was also a super-check, which detected 39 bogus admission of students. Eventually, the Government in compliance with Exhibit P10 judgment, passed Exhibit P11 order, the operative portion of which is extracted hereunder:

“13. In the circumstances the DPI is hereby directed to take appropriate action through the AEO concerned for directing the Manager in appointing the Rule 51B claimant

against an established vacancy that has been ordered to be set apart and to seek approval of the said appointment. The approval of the subsequent appointment effected by the Manager can be taken up case to case basis depending on merits, after re-fixation of staff strength of 2010-11 excluding 39 bogus pupils”.

The petitioners rely on Exhibit P12 staff fixation order and contends that there are enough posts for the petitioners to be accommodated.

2. The learned Government Pleader, however, would submit that it has been instructed that the Rule 51B claimant had to be adjusted in the available vacancies first, before the petitioners are considered for approval. Further, it is also submitted that there were certain UPSAs promoted as HSAs in leave vacancies who have been reverted back in the academic year 2015-16 and their accommodation also to be considered in precedence to the retention of the petitioners in the said academic year.

3. Admittedly the petitioners' appointments were in the academic year 2010-11 and would depend upon the staff fixation of 2010-11. In the further years, definitely it would have

to be considered whether the petitioners could be retained or not. However, as of now the 5th respondent is directed to consider the approval of appointment of the petitioners in accordance with the staff fixation order of the year 2010-11. Each of the petitioners shall be heard, and the Manager also, before orders are passed. The hearing shall be conducted within a period of one month from the date of receipt of a certified copy of this judgment and orders passed within two months from the date of hearing. The Manager shall produce the seniority list of the school before the Educational authority.

The writ petition is disposed of with the above directions, making it clear that this Court has not made any observations on the merits of the claim raised by the petitioners. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]