

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

W.P.(C).No.27940 of 2013 (N)

PETITIONER(S):-

CHALIL SAITH ABDU RAHIMAN KUNHI SEETHI THANGAL,
S/O.LATE SAIDALIKOYA THANGAL, AGED 75 YEARS,
MANAGER, ADUKKATH MAM UP SCHOOL,
ADUKKATH P.O., KUTTIADI-VIA.,
KOZHIKODE DISTRICT, PIN-673508.

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.C.P.SIVADASAN NAIR.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695 001.
2. DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM, PIN-695 014.
3. SUMATHI K.C., AGED 37 YEARS, D/O.KUNHIKANNAN K.C.,
TEACHER, ADUKKATHU MLP SCHOOL
RESIDING AT KUZHICHALIL, ADUKKATH P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN-673508.
4. DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE, PIN-673 020.
5. ASSISTANT EDUCATIONAL OFFICER,
KUNNUMMAL, VATTOLI P.O., KOZHIKODE, PIN-673510.

R1, R2, R4 & R5 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE.
R3 BY ADVS. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-10-2015, ALONG WITH W.P.(C).NO.1334 OF 2014-N, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: COPY OF THE ORDER NO.G3/88973/2012/DPI/K.DIS.
DATED 6.2.2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.P2: COPY OF THE REPRESENTATION DATED 3.10.2013 FILED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P3: COPY OF THE ORDER NO.C/3708/12 DATED 18.1.2013 ISSUED BY
THE 5TH RESPONDENT.
- EXT.P4: COPY OF THE JUDGMENT DATED 24.5.2013 IN
WPC.NO.13121/2013 OF THIS HON'BLE COURT.
- EXT.P5: COPY OF THE NOTICE NO.B3/11443/2013 DATED 6.7.2013
ISSUED BY THE 4TH RESPONDENT.
- EXT.P6: COPY OF THE NOTICE NO.B3/11443/2013 DATED 12.8.2013
ISSUED BY THE 4TH RESPONDENT.
- EXT.P7: COPY OF THE REVISION PETITION DATED 25.7.2013 SUBMITTED
BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P8: COPY OF THE CORRIGENDUM DATED 26.9.2013 FILED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS/ANNEXURES:-

- ANNEXURE R5(a) PHOTO COPY OF THE ORDER DATED 06.03.2013.
- ANNEXURE R5(b) PHOTO COPY OF THE G.O.(RT).2439/2013/G.EDN.
DATED 14.06.2013.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.27940 of 2013-N & 1334 of 2014-N

Dated this the 29th day of October, 2015

JUDGMENT

Both the writ petitions are with respect to the appointment of the Headmaster/Headmistress in MAM UP School, which comes under the Corporate Agency, of which the 1st respondent in W.P.(C).No.1334 of 2014 is the Manager, who is the petitioner in W.P.(C).No.27940 of 2013.

2. W.P.(C).No.1334 of 2014 is filed by a teacher in Adukkath MLP School, under the very same Corporate Agency, claiming transfer and appointment as Headmistress in the MAM UP School. Vacancy of Headmaster/Headmistress in MAM UP School arose on 01.06.2011 on retirement of the incumbent in the post. Admittedly the petitioner was not qualified on 01.06.2011. Hence, on 01.06.2011, one Abdulla Zalman was appointed as temporary Headmaster. The said Abdulla Zalman is admittedly not test qualified.

3. Subsequently, the petitioner is said to have obtained test qualification and became eligible for appointment as Headmistress. The petitioner, hence, approached the

Assistant Educational Officer [for brevity "AEO"], who directed the Manager to appoint the petitioner as Headmistress of MAM U.P. School, as per order No.D.2274/12 dated 14.06.2012. The petitioner also approached this Court for implementation of the said order. This Court, by Exhibit P1, directed the petitioner to approach the Deputy Director of Education [for brevity "DDE"] for taking action under Rule 7 of Chapter III of the Kerala Education Rules, 1959 [for brevity "KER"]. The petitioner approached the DDE as directed in Exhibit P1, who issued Exhibit P3 order, again directing appointment of the petitioner as Headmistress of the MAM UP School. The petitioner in W.P.(C).1334 of 2014 seeks implementation of the said order.

4. In W.P.(C).No.27940 of 2013, the Manager contends that he has filed a revision from the above order, as produced at Exhibits P7 and P8. It is also stated that there is a request for amalgamation of the two schools, at Exhibit P2, which is under consideration of the Government.

5. The Government has filed a statement, in which it is indicated that the Lower Primary School and Upper Primary School were two different schools and the present Manager has

purchased the same as different schools. In the academic year 2011-12, the building of the LP School got damaged in heavy rains and became unfit for occupation. In such circumstance the LP School was shifted to the building of an Orphanage Committee. A request was submitted by the Manager to permit the shifting of the LP School to the first floor of the Upper Primary School section and to grant permission to demolish the old building of the Lower Primary School to facilitate the construction of the school ground. The said request has been allowed by Annexure R5(b). With respect to the application for amalgamation of the schools, the Government in its statement specifically states that there is no such provision in the Kerala Education Act, 1958 and the Rules. The appointment of Sri.Abdulla Zalman as Headmaster of the UP School is categorically stated to be irregular. It is also stated that the proposal to amalgamate the school is only to get over Exhibits P3 and P6 orders.

6. Looking at the totality of the circumstances, the petitioner in W.P.(C).No.1334 of 2014, who is a teacher qualified to be promoted as Headmistress, is seen to have been kept out

of a higher post illegally. In such circumstance, the petitioner shall be immediately appointed as Headmistress, at any rate, within a period of one month from the date of production of a certified copy of this judgment. On the appointment of the petitioner in W.P.(C).No.1334 of 2014 as Headmistress, she definitely shall be entitled to the wages from the date of her eligibility and the same shall be paid by the Government and shall be recovered under Rule 7(4) of Chapter III KER from the Manager; subject, however, to the proceedings in revision before the Government. If the Manager does not comply with the directions aforesaid within the time granted, the DDE is directed to take further action against the Manager under Rule 7 of Chapter III KER.

W.P.(C).No.1334 of 2014 is allowed and W.P.(C). No.27940 of 2013 dismissed. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]