

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).NO. 29458 OF 2012 (F)

PETITIONER(S) :

RAFEEQ MARUNNOLI
HIGH SCHOOL ASSISTANT (ARABIC)
MIM HIGHER SECONDARY SCHOOL, P.O.PERODE, NADAPURAM
VADAKARA, KOZHIKODE DISTRICT, PIN-673 504
RESIDING AT MARUNNOLI HOUSE, PULIYAVU P.O., PARAKADAVU
KOZHIKODE.

BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695 033.

3. THE DEPUTY DIRECTOR OF EDUCATION
KOZHIKODE-673 001.

4. DISTRICT EDUCATION OFFICER
VADAKARA-673 101.

5. THE MANAGER
MIM HIGHER SECONDARY SCHOOL, P.O.PERODE, NADAPURAM
VADAKARA, KOZHIKODE DISTRICT-673 504.

R1-R4 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER(S) EXHIBITS

P1 : COPY OF ORDER NO.K.DIS.B3/253/07, DTD.24.4.2007 PASSED BY 4TH RESPONDENT.

P2 : COPY OF APPEAL DATED NIL FILED BY 5TH RESPONDENT BEFORE 3RD RESPONDENT.

P3 : COPY OF ORDER NO.K.DIS./11683/2007/B4(2) DTD.1.10.2007 PASSED BY 3RD RESPONDENT.

P4 : COPY OF REVISION FILED BY 5TH RESPONDENT BEFORE 1ST RESPONDENT.

P5 : COPY OF ORDER NO.4585/S1/09/G.EDN., DTD.25.2.2009 PASSED BY 1ST RESPONDENT.

P6 : COPY OF REPRESENTATION DTD. 4/2009 FILED BY 5TH RESPONDENT BEFORE HON'BLE MINISTER FOR EDUCATION, GOVERNMENT OF KERALA.

P7 : COPY OF ORDER NO.34776/S1/09/G.EDN. DTD.15.7.09 PASSED BY 1ST RESPONDENT.

P8 : COPY OF GOVERNMENT ORDER GO(RT)2662/2008/G.EDN. DTD.12.6.2008 PASSED BY 1ST RESPONDENT.

P9 : COPY OF ORDER NO.GO(P)NO.46/2006 OF 1ST RESPONDENT DTD.1.2.2006.

P10: COPY OF ORDER NO.GO(P)NO.19/2009 DTD.9.2.2009 OF 1ST RESPONDENT.

P11: COPY OF ORDER GO(P)NO.10/2010 DTD.12.1.2010 OF 1ST RESPONDENT.

P12: COPY OF CIRCULAR NO.74101/J2/2004, G.EDN. DTD.24.1.2005 OF 1ST RESPONDENT.

P13: COPY OF INFORMATION DTD.14.6.2010 OBTAINED BY PETITIONER UNDER THE RIGHT TO INFORMATION ACT.

P14: COPY OF ORDER NO.D.DIS. B3-8214/2011 DTD.12.1.2012 OF 4TH RESPONDENT.

P15: COPY OF REPRESENTATION DTD.14.6.2011 SUBMITTED BY PETITIONER'S MOTHER BEFORE HON'BLE MINISTER FOR EDUCATION, KERALA.

P16: COPY OF ORDER NO.9158/S1/12/G.EDN. DTD.21.3.2012 OF 1ST RESPONDENT.

RESPONDENTS' EXHIBITS :NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.29458 of 2012

.....
Dated this the 9th day of July, 2015

J U D G M E N T

The petitioner has been working as H.S.A. (Arabic) in the MIM Higher Secondary School, Perode, with effect from 01.01.2007. He was first appointed as a leave substitute Full Time Menial with effect from 29.06.2006. He was thereafter promoted and appointed as H.S.A. (Arabic) with effect from 01.01.2007. When the order of appointment of the petitioner was sent for approval, the same was denied by Ext.P1 order dated 24.04.2007 on two grounds, namely, (i) that the appointment of the petitioner as Full Time Menial from 29.06.2006 to 31.03.2011 could not be approved for want of approval of a Senior appointee and (ii) that the appointment of the petitioner to the post of H.S.A. (Arabic) being to a newly created post in 2004-2005, ought to have been filled up by a protected teacher. Although, the 5th respondent Manager preferred an appeal before the 3rd respondent against Ext.P1 order, the same was rejected by Ext.P3 order dated 01.10.2007. A further revision petition filed by the 5th respondent Manager before the 1st respondent was also rejected by Ext.P5 order dated 25.02.2009. Thereafter, the Manager made a

representation before the Minister, which was also rejected by Ext.P7 order dated 15.07.2009. It is challenging Exts.P1, P3, P5 and P7 orders that the petitioner has preferred the writ petition, wherein a direction is sought to the respondents to approve the appointment of the petitioner as H.S.A.(Arabic) with effect from 01.01.2007.

2. A Counter affidavit has been filed by the 3rd respondent wherein the stand taken is the same as in Exts.P3, P5 and P7 orders that are impugned in the writ petition. It is specifically pointed out that during the period when the petitioner was appointed as an H.S.A. (Arabic) in the School, there were protected teachers available for appointment in the said School.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that it is the specific case of the petitioner that at the time of his appointment as H.S.A. (Arabic) in the School with effect from 01.01.2007, there was no protected teacher available for appointment to the said post in the

school. The petitioner would also rely on Ext.P8 order dated 12.06.2008, to show that the objection with regard to the non-approval of a Senior appointee in the post of Full Time Menial no longer survives because the appointment of the said senior appointee was already approved. The said order is also relied upon to show that the approval to the appointment of the Senior appointee was done after taking note of the fact that, a protected teacher had already been appointed in the School. It is also the specific contention of the petitioner that there are sufficient protected teachers appointed in the School and at any rate, the 5th respondent Manager did not receive any list of protected teachers that had to be absorbed in the academic year 2004-2005 or subsequently from the education authority. The petitioner would also rely on Ext.P13 reply, that was received by him under the provisions of the RTI Act, which would indicate that there was no protected teacher available to be absorbed in 2007. It is in the back drop of the said facts that, the entitlement of the petitioner for an approval to his appointment with effect from 01.01.2007 has to be considered. I note in this connection that by a judgment of a Division Bench of this Court in **State of Kerala v.Nadeera [2013 (2) KLT 88]**, it is clearly noted that, prior to 19.11.2009, there was no obligation on the part of Managers of aided Schools to secure a list of

protected teachers from the educational authorities prior to making appointments to vacancies in the School. That apart, in the instant case, the reliance of the petitioner on Ext.P13 reply obtained under the RTI Act is also well founded in that, the said document clearly indicates that there was no protected teacher that remained to be absorbed in the School in the year 2007. I therefore find that, the stand of the respondents that on account of the non-appointment of a protected teacher, the appointment of the petitioner as H.S.A.(Arabic) with effect from 01.01.2007 could not be approved, cannot be legally sustained.

Resultantly, I quash Exts.P1 , P3, P5 and P7 orders and direct the respondents to approve the appointment of the petitioner as H.S.A.(Arabic) in the school with effect from 01.01.2007 and disburse all consequential benefits to the petitioner within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

