

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 29652 of 2008 (E)

PETITIONERS :

1. SMT.K.P.RAMLA, AYINTHOTINGAN HOUSE,
VALAVATTUR P.O., MALAPPURAM.
2. SMT.E.NASEERA, CHENGOTTIL VEEDU,
PULIKKAL P.O., MALAPPURAM.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.
3. THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM.
4. THE ASSISTANT EDUCATIONAL OFFICER,
KONDOTTY, MALAPPURAM.
5. THE MANAGER, A.M.M.HIGH SCHOOL,
PULIKKAL, MALAPPURAM.
6. SRI.P.PABDU SAMAD, CHELATTU HOUSE,
P.O.PULIKKAL, MALAPPURAM.

R5& R6 BY ADVS. SRI.K.RAMAKUMAR (SR.)

SMT.SMITHA GEORGE

R BY GOVERNMENT PLEADER SRI.ABHIJETT LESSLIE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPOINTMENT ORDER DT.1.1.2003 OF THE 1ST PETITIONER

EXT.P2 : COPY OF THE APPOINTMENT ORDER DT.11.1.2003 OF THE 2ND PETITIONER

EXT.P3 : COPY OF THE ORDER DT.28.10.2002 ISSUED BY THE 3RD RESPONDENT

EXT.P4 : COPY OF THE ORDER DT.5.11.2002 ISSUED BY THE 2ND RESPONDENT

EXT.P5 : COPY OF THE ORDER DT.7.3.2003 ISSUED BY THE 2ND RESPONDENT

EXT.P6 : COPY OF THE ORDER DT.13.5.2005 ISSUED BY THE 2ND RESPONDENT

EXT.P7 : COPY OF THE JUDGMENT DT.12.12.2007 IN WP(C).NO.35985/2007 OF THIS HON'BLE COURT

EXT.P8 : COPY OF THE ORDER G.O.DATED 16.9.2008 ISSUED BY THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS :

EXT.R5(a) : COPY OF ORDER DT.8.11.1999 IN C.M.P.NO.6207 OF 1999 IN W.A.NO.2417 OF 1999

EXT.R5(b) : COPY OF ORDER NO.D/6637/99 DT.2.7.2003 BY R4.

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.29652 of 2008

Dated this the 12th day of March, 2015

J U D G M E N T

The petitioners have filed this writ petition challenging Ext.P8 order of the 1st respondent by which, the appointments of the petitioners have been found to be invalid. The petitioners were appointed as Lower Primary School Assistants of the 5th respondent school. They were appointed on 01.01.2003 and 11.01.2003 respectively, by one Sri.P.P.Kunhalikutty, who according to them, was continuing as the approved Manager of the school. It is stated that he was the Manager of the School from 1972 onwards. A dispute had arisen in the school with respect to the succession of the 6th respondent as the Manager of the school. Though the 6th respondent asserted that, he had been elected as Manager, Sri.P.P.Kunhalikutty disputed even the holding of the meeting in which he was alleged to have been so elected. Therefore, the proceedings, by which the transfer of management was approved by the 3rd respondent, was challenged by him before the 2nd respondent. The 2nd respondent by Ext.P4 stayed the order of the 3rd respondent granting approval to the appointment of the 6th respondent, till a final decision was taken on the representation of Sri.P.P.Kunhalikutty. The case of the petitioners is that, they were appointed during the period that the interim order of stay was in force.

2. The appointment of the petitioners was approved by the 4th

respondent and was confirmed by the 2nd respondent as per Ext.P6. However, the same was challenged by the 6th respondent before the Government. Accordingly, the matter was heard and by Ext.P8 order, it has been held that the appointment of the petitioners was invalid. Consequently, the appointments have been set aside.

3. A counter affidavit has been filed on behalf of respondents 5 and 6. According to the 6th respondent who has sworn to the affidavit, Ext.R5 interim order passed by this Court in Writ Appeal No.2417/1999 was in force. The interim order restrained Sri.P.P.Kunhalikutty from making any appointments. Therefore, even if it is assumed that he was entitled to function as Manager in terms of the interim order Ext.P4, it is stated that, he had not right to make any appointments.

4. Heard. A perusal of Ext.P4 order shows that, after the election of the 6th respondent as the Manager of the School at the General Body held on 14.04.2002, the change of Management had in fact taken place. It has been found in Ext.P4 that, the DEO had not taken all the aspects of the issue into consideration, while transferring the management to Sri.P.P.Abdu Samad (6th respondent). It was the said transfer of management that was approved by the DEO. What P.P.Kunhalikutty had challenged before the 2nd respondent was the approval for such transfer of management. It is true that, as per Ext.P4, the approval granted was stayed. However, it has been found by the 1st respondent in Ext.P8 that, Sri.P.P.Kunhalikutty had been

substituted by the 6th respondent as Manager before the said date and that, after the 6th respondent took over as a Manager, Sri.P.P.Kunhalikutty had no access to the said post during the relevant period. It has been found that, it was the 6th respondent who was actually functioning as the Manager. The above is a finding on a question of fact. No material or evidence has been produced before me to disprove the said finding. According to the learned counsel for respondents 5 and 6, the dispute is still in existence.

The above being the position, I do not find any grounds to interfere with Ext.P8 or to grant any of the reliefs sought for in this writ petition. This writ petition is, therefore, dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV