

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 29601 of 2015 (A)

PETITIONER(S) :

R.GIRIJA,
HSA(HINDI), KANNADI HIGHER SECONDARY SCHOOL,
KANNADI PO, PALAKKAD-678701.

BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI

RESPONDENT(S) :

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

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 014.

3. THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD-678 001.

4. THE DISTRICT EDUCATIONAL OFFICER
PALAKKAD-678 001.

5. THE MANAGER
KANNADI HIGHER SECONDARY SCHOOL, KANNADI PO
PALAKKAD-678 701.

R BY GOVERNMENT PLEADER SMT.A.LOWSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : COPY OF THE APPOINTMENT ORDER DT 28-7-2011 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.

P2 : COPY OF THE ORDER NO.B4/5411/12/L.DIS. DT 3-9-2012 ISSUED BY THE 4TH RESPONDENT.

P3 : COPY OF THE ORDER NO.K.DIS/B4/10520/2012 DT 12-2-2013 ISSUED BY THE 3RD RESPONDENT.

P4 : COPY OF THE ORDER NO.EM1/78657/2012/DPI/K.DIS DT 24-7-2013 ISSUED BY THE 2ND RESPONDENT.

P5 : COPY OF THE REVISION PETITION DT 9-9-2013, FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT UNDER RULE 92 OF CHAPTER XIVA OF KER.

P6 : COPY OF THE COMMUNICATION NO.56859/E1/2013/G.EDN., DT 21-7-2014 FROM THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

P7 : COPY OF GO(P) 46/2006/G.EDN., DATED 1.2.2006 ISSUED BY THE GOVERNMENT.

P8 : COPY OF GO(P) 199/2011/G.EDN., DATED 1.10.2011 ISSUED BY THE GOVERNMENT.

P9 : COPY OF THE CERTIFICATE DATED 29.11.2013 ISSUED BY THE HEADMISTRESS OF THE SCHOOL TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C) No.29601 of 2015

Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner was appointed as HSA (Hindi) on 28.07.2011. Admittedly there was a protected teacher appointed to the said post. The Management was obliged to give such appointment, since it is a new school. The protected teacher was deployed to her parent school on 20.07.2011, when a vacancy arose there. Hence, the HSA (Hindi) post remained vacant, to which the petitioner was appointed.

2. The petitioner's approval was rejected by Ext.P2 on the ground that, the vacancy is reserved for a protected teacher and hence, no appointment otherwise could be made. The petitioner filed an appeal initially before the Deputy Director of Education and then before the Director of Public Instructions, which were rejected by Exts.P3 and P4. The Government in revision, by Ext.P6 granted her approval from 01.06.2012 but however, affirmed her appointment prior to that; i.e: from 28.07.2011 only on daily wage basis. The petitioner challenges the same.

3. The issue with respect to protected teachers'

appointment is covered by the decision in ***State of Kerala v. Nadeera [2013 (2) KLT 88]***. The new schools, by the order of the Government, were obliged to appoint one protected teacher to the vacancies arising in such schools. This Court in ***Nadeera's case*** (supra) held that, such appointment could be made, only if the list is furnished to the Managers of the aided schools. In this case, there is no such dispute, since the Manager of the school, the 5th respondent appointed a protected teacher, who left only on her being accommodated in her parent school. It cannot be said that, on such vacancy arising, it should be kept vacant till a protected hand is found. In fact, a reading of Ext.P4 would indicate that there is no protected teacher in the District and the only available teacher was accommodated in the parent school, which gave rise to the present vacancy.

4. In such circumstances, there could be no infirmity found in the appointment of the petitioner to the vacancy which arose on 28.07.2011. The petitioner's appointment from 28.07.2011 has to be regularised and approved in the regular pay scale applicable to the post. The above shall be done within a period of one month from the date of receipt of

a certified copy of the judgment and the salary and arrears shall be disbursed within a period of two months from that date.

The writ petition is allowed.

Sd/-
K.VINOD CHANDRAN, JUDGE

AV/21/11