

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 32386 of 2014 (W)

PETITIONER:

**SAINUL ABUDEEN P AGED 35 YEARS
J.L.TARABIC, AMLP SCHOOL PULLODE, VADAPURAM
MALAPPURAM DISTRICT, PULLODE(H), VADAPURAM PO
NILAMBUR, MALAPPURAM DISTRICT**

BY ADV. SRI.SUNIL KUMAR A.G

RESPONDENTS:

- 1. STATE OF KERALA
REP.BY SECRETARY, DEPARTMENT OF EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 2. THE DIRECTOR PUBLIC INSTRUCTIONS
JAGATHI, THIRUVANANTHAPURAM 695 014**
- 3. THE DISTRICT EDUCATIONAL OFFICER
B2 BLOCK, CIVIL STATION, MALAPPURAM 676 505**
- 4. THE MANAGER
AMLP SCHOOL PULLODE, VADAPURAM
MALAPPURAM DISTRICT 676 542.**

R3 BY GOVERNMENT PLEADER SMT. M.J. RAJASREE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1 COPY OF THE APPOINTMENT ORDER DATED 2/6/03

EXHIBIT P2 COPY OF THE ORDER NO. 60926/S2/2009/G.EDU.DATED 6/12/10

EXHIBIT P3 COPY OF THE LETTER DATED NIL

EXHIBIT P4 COPY OF THE ORDER NO. 5410/S2/12/G.EDU.DATED 29/5/13

EXHIBIT P5 COPY OF THE LETTER DATED 21/2/14

EXHIBIT P6 COPY OF THE ORDER NO. 18889/S2/13/G.EDU DATED 4/9/14.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 32386 of 2014 (W)

Dated this the 1st day of October, 2015

J U D G M E N T

The petitioner a Junior Language Teacher (Full Time) (Arabic), challenges rejection of approval of appointment in the above writ petition.

2. The petitioner was admittedly appointed as a Junior Language Teacher (Full Time) (Arabic) on 02.06.2003 against the retirement vacancy of one Sri.Abdulla, who was due to retire on 30.06.2003 and proceeded on special leave from 02.06.2003. Since his appointment was against a regular vacancy the date of approval cannot be postponed to a future date. But the approval was declined from 2.6.2003 on the ground that as per G.O.(P) No.178/2002/G.Edn. dated 28.06.2002, the School being a new School was obliged to appoint protected hands when any vacancy arise.

3. In any event, even if the school is liable to have appointed a protected hand, the issue with respect to such appointment was considered elaborately in **State of Kerala v. Nadeera [2013 (2) KLT 88]**, wherein it was clearly found that the Circulars of 2002 and 2006 mandated that list of protected teachers be forwarded by the AEO concerned to the DDE, which lists should be made available to the Managers and in such circumstance, the Managers would have no choice or option but to appoint such protected teachers. Even the schools which are presumed to be new establishments, who had executed such agreements, would not have any information as to the protected teachers; which information would be only available with the Educational Authorities under the KER. It was categorically held that, it was mandatory on the part of the Department to maintain such list and the management could be found fault with only if such lists were forwarded

to such managements and there is an appointment made in violation of the stipulation in the Circulars. Needless to say, no such averment is available in the counter affidavit of the respondent.

4. The Government in its counter affidavit states that there was in existence a list of protected teachers at the time of the appointment of the petitioner. However, it is to be emphasized that the Division Bench had specifically held that there should be intimation of such list of protected teachers to the Managers of the Schools; and the mere existence of the list would not persuade this Court to deviate from the facts and law as declared in **Nadeera** (supra).

In the above circumstances, the writ petition is allowed setting aside Exts.P2, P4 and P6. Ext.P1 to the extent it does not grant the approval from the date of appointment

has to be reconsidered. The A.E.O. is directed to reconsider the issue in the light of the aforesaid judgment within a period of three months from the date of receipt of the certified copy of this judgment.

Sd/-
K.VINOD CHANDRAN,
JUDGE