

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 36304 of 2008 (V)

PETITIONER :

TOVY JOSEPH, KADAPLACKAL,
NAREEMPORA P.O., KACHIYAR, IDUKKI DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS :

1. THE STATE OF KERALA
ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM.
3. THE DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER
KATTAPPANA.
4. THE ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER
KATTAPPANA.
5. THE MANAGER, ST.DOMINIC L.P.SCHOOL,
CHAKKUPALLAM, IDUKKI DISTRICT.

R BY GOVERNMENT PLEADER SRI.ABHIJETT LESSLIE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPROVAL ORDER DATED 26/9/2000

EXT.P2 : COPY OF THE APPROVAL ORDER DATED 17/12/2001

EXT.P3 : COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER DATED
21/03/2004

EXT.P4 : COPY OF THE ORDER NO.B1/4657/04/K.DIS. DATED 30/10/2004

EXT.P5 : COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DATED
02/11/2005

EXT.P6 : COPY OF THE REVISION FILED BEFORE THE GOVERNMENT DATED 12/12/2005

EXT.P7 : COPY OF THE LETTER DATED 13/11/2008 ISSUED BY THE GOVERNMENT

EXT.P8 : COPY OF THE LETTER RECEIVED FROM THE SCHOOL UNDER THE RIGHT TO
INFORMATION ACT

EXT.P9 : COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 11/11/2005

EXT.P10 : COPY OF THE LETTER SENT BY THE DISTRICT EDUCATIONAL OFFICER AND
THE CLARIFICATION GIVEN BY THE 2ND RESPONDENT

EXT.P11 : COPY OF THE APPROVAL ORDER ISSUED IN FAVOUR OF FR.BENNY JOHN

EXT.P12 : COPY OF THE APPROVAL ORDER ISSUED IN FAVOUR OF SMT.SUJA JOHN

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.36304 of 2008

Dated this the 17th day of March, 2015

J U D G M E N T

The petitioner was initially appointed as a Lower Primary School Assistant ('LPSA' for short) for the period from 01.08.2000 to 24.11.2000. As per Ext.P1 dated 01.08.2000, the petitioner's appointment was approved by the 3rd respondent. The petitioner was thereafter, appointed again for the period from 24.01.2001 to 28.03.2001 in the same school. The said appointment was also approved as per Ext.P2. Later on, the petitioner was appointed for a further term from 26.06.2003 to 31.03.2004. The approval for the said appointment was rejected by Ext.P3 on the ground that, the appointment was to a short term vacancy. The 5th respondent who is the Manager of the school challenged Ext.P3 in appeal. However, by Ext.P4, the 3rd respondent rejected the appeal. As per Ext.P5, the 2nd respondent rejected the 5th respondent's revision also. Thereupon, the 5th respondent preferred a representation to the 1st respondent. By Ext.P7, the approval was rejected by the Government also for the reason that, such vacancies in newly opened schools are to be filled up by accommodating protected teachers. The 5th respondent's school being a newly opened school, it is stated that protected teachers ought to have been appointed. The petitioner has challenged the said orders in this writ petition.

2. According to the learned counsel for the petitioner, there is absolutely no justification for rejecting the petitioner's appointment. It is pointed out by the learned counsel that, the petitioner is a claimant under Rule 51A of Chapter XIV A of the Kerala Educational Rules, 1959. Therefore, he had a right to be appointed to the vacancy that came into existence, it is contended. Reliance is also placed on Ext.P9 by which a clarification has been issued by the 2nd respondent. Ext.P11 and P12 are also relied on to point out that, in the case of similar appointees like the petitioner, the Government had granted approval of the appointments. In view of the above, it is contended that there is no justification for denying the said relief to the petitioner.

3. A counter affidavit has been filed by the 1st respondent. The learned Government Pleader appears for respondents 1 to 3. According to the learned Government Pleader, the petitioner's school was a newly opened one and therefore, protected teachers ought to have been accommodated. The learned counsel for the petitioner points out that, there was no list of protected teachers available in the District concerned, at the relevant time.

4. Heard. The appointment of the petitioner was approved for two previous periods as evident from Exts.P1 and P2. The dispute relates to the appointment for the period from 26.06.2003 to 31.03.2004. The reason for rejection of approval stated in Ext.P3 is that, the appointment was for a short term vacancy. However, the

reason stated in Ext.P4 is that, the appointment is not in compliance with G.O.(P).No.178/02 dated 28.06.2002. A perusal of Ext.P5 shows that, the revision has been rejected for the reason that the vacancies arising in newly opened schools had to be filled up by protected teachers. It is worth noticing that the petitioner was a claimant entitled to appointment under Rule 51A of Chapter XIV A of the Kerala Education Rules, since his previous appointments stand approved by Exts.P1 and P2. The question as to whether Rule 51A claimant could be given preference has been clarified in Ext.P9 issued by the 2nd respondent. It is seen from Exts.P11 and P12 that, under similar circumstances, appointments of other teachers have been approved. In view of the above, there is no justification for not approving the appointment of the petitioner.

For the above reasons, this writ petition is allowed. Respondents 1 to 4 are directed to approve the appointment of the petitioner for the period from 26.06.2003 to 31.03.2004.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV