

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 33276 of 2014 (H)

PETITIONER(S):

**SABIRA.K., AGED 32 YEARS
LOWER PRIMARY SCHOOL ASSISTANT, PMS AIDED LP SCHOOL
MUTHUPARAMBA, THAVANOOR P.O, MALAPPURAM.**

**BY ADVS.SRI.AUGUSTINE JOSEPH
SRI.K.S.ROCKEY
SRI.TONY AUGUSTINE
SRI.M.STEPHEN**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001.**
- 2. THE ASSISTANT EDUCATIONAL OFFICER,
KIZHISSERRI, MALAPPURAM 673 645.**
- 3. THE MANAGER
PMS AIDED L.P SCHOOL, MUTHUPARAMBA, THAVANOOR
MALAPPURAM 679 573.**

R BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMPIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 33276 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE ORDER DATED 3.7.12 FROM THE 2ND RESPONDENT.

EXHIBIT P2. COPY OF THE JUDGMENT IN WPC 23696/2012 DATED 10.10.12.

EXHIBIT P3. COPY OF THE ORDER DATED 1.1.13 OF THE 2ND RESPONDENT.

EXHIBIT P4. COPY OF THE ORDER DATED 27.11.14 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P4(A): TRUE TRANSLATION OF EXT.P4.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.33276 OF 2014 (H)

Dated this the 19th day of August, 2015

J U D G M E N T

The petitioner, who was appointed as a Lower Primary School Assistant on 28.8.2006, is essentially aggrieved by the approval of her appointment from 28.8.2006 to 30.4.2007 on daily wage basis, and from 2.6.2007 onwards on regular scale of pay basis. The petitioner preferred W.P.(C).No.23696/2012 challenging the approval that was granted to her appointment on the aforesaid basis, and by Ext.P2 judgment, this Court directed the educational authorities to approve the appointment of the petitioner on regular scale with effect from 28.8.2006. Consequently, the 2nd respondent, by Ext.P3 order dated 1.1.2013, approved the appointment of the petitioner as directed in Ext.P2 judgment. Thereafter, by Ext.P4 order dated 27.11.2014, the 2nd respondent, purportedly acting on the basis of the decision of the Supreme Court in **State of Kerala v. Sneha Cheriyan [2013 (1) KLT 755 (SC)]** directed that excess amounts drawn by the petitioner between 28.8.2006 and 1.6.2007 had to be recovered from the petitioner. In the writ petition, Ext.P4 order of the 2nd respondent is

impugned inter alia on the ground that the said direction goes against the ratio in the judgment of this Court in **Nair Service Society v. State of Kerala [2014 (4) KLT 921]**, which has considered the scope of the decision of the Supreme Court in **Sneha Cheriyan's case [supra]** with particular emphasis on its applicability to appointment in regular vacancies that arise in an aided school.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the issue involved in this case, as noted above, is squarely covered in favour of the petitioner by the decision of this Court in **Nair Service Society v. State of Kerala [2014 (4) KLT 921]**, and accordingly, the approval to the appointment of the petitioner on regular scale of pay basis must hold good for the period from 28.8.2006 onwards. I find force, however, in the contention of the learned Government Pleader, who places reliance on paragraph 19 of the decision of this Court in **Nair Service Society's case [supra]** with regard to the ineligibility of the

petitioner to vacation salary during the academic year 2006-07 in view of the express provisions of Rule 49 of Chapter XIVA of the Kerala Education Rules, which mandates that, a teacher, must have worked for more than eight months in the academic year, to be entitled to vacation salary for the said year. In the instant case, it is not in dispute that during the academic year 2006-07, the petitioner had worked only from 28.8.2006 to 31.3.2007 during the academic year, and hence, she would not be entitled to vacation salary as rightly contended by the learned Government Pleader. Resultantly, while allowing the writ petition, recognising the right of the petitioner to an approval of her appointment on regular scale of pay basis from 28.8.2006 onwards, I make it clear that the petitioner will not be entitled for vacation salary during the academic year 2006-07. Accordingly, Ext.P4, to the extent it denies vacation salary to the petitioner for the academic year 2006-07 alone, is sustained, and the recovery directed in Ext.P4, in all other respects, is quashed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp