

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

WP(C).No.21985 OF 2020(W)

PETITIONERS:

- 1 CORPORATE MANAGER  
CHALDEAN SYRIAN CHURCH SCHOOLS,  
CHURCH OF THE EAST, MAR TIMOTHEUS HIGH ROAD, THRISSUR-  
680001.
- 2 JOICE JOY, L.P.S.A,  
CHALDEAN SYRIAN L.P.SCHOOL, CHURCH OF THE EAST,  
MAR THIMOTHEUS HIGH ROAD,  
THRISSUR-680001.

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

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL  
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR OF GENERAL EDUCATION,  
DIRECTORATE OF GENERAL EDUCATION,  
JAGATHY, THIRUVANANTHAPURAM-695014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION,  
THRISSUR-680001.
- 4 THE DISTRICT EDUCATIONAL OFFICER,  
THRISSUR-680001.
- 5 THE ASSISTANT EDUCATIONAL OFFICER,  
THRISSUR EAST, THRISSUR-680001.

SMT. NISHA BOSE - SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
30.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

**Dated this the 30th day of October 2020**

The petitioners, who are Corporate Manager of the Chaldean Syrian Church School, Thrissur and a Lower Primary School Assistant (LPSA) appointed in the said School, have approached this Court impugning Exts.P2, P12, P13, P16 and P18 orders of the Government rejecting the proposal for approval of appointment of the second petitioner solely on the ground that it has been preferred beyond the statutory period prescribed by the provisions of the Kerala Education Act and Rules (KER).

2. The specific case of the petitioners is that the second petitioner was initially appointed to a vacancy that arose consequent to the retirement of the then Headmistress, but that since the same was not granted approval by the Educational Authorities, she was appointed to another vacancy that arose in the school in the year 2013. The petitioners say that since there were several vacancies available in the school, the Educational Authorities could not have rejected the approval of the second petitioner but that it was kept pending solely for the reason that

no post had been sanctioned in the school to accommodate him.

3. The petitioners say that, subsequently, as is evident from Exts.P6 and P11, posts were sanctioned by the DEO from the year 2013-14 onwards and that, therefore, there was no legal impediment for the Educational Authorities in approving the appointment of the second petitioner. They allege that, however, in spite of all these, the Government has issued Exts.P2, P12, P13, P16 and P18 orders, merely saying that the proposal of the second petitioner has been delayed and therefore, that it cannot be granted approval.

4. The petitioners, therefore, pray that Exts.P2, P12, P13, P16 and P18 orders be set aside and that the competent Educational Authorities be directed to approve the appointment of the second petitioner from 2013, when she was initially appointed, taking note of Ext.P11 order.

5. In addition to the afore, the learned senior counsel, Sri.Jaju Babu, instructed by Sri.Brijesh Mohan, learned counsel for the petitioners, submitted that the Educational Authorities have completely lost sight of the fact that Ext.P11 order has sanctioned the post with effect from 2013-14 and that this was clearly intended to protect teachers like the second petitioner, who had been working from that year in the school without any

cause of complaint. The learned senior counsel submitted that it is a travesty that the second petitioner has been made to work for the last seven years without any salary and that she is still continuing to do so under the hope that the Government will, at least now, wake up and consider her case in terms of Ext.P11 order.

6. In response, the learned senior Government Pleader, Smt.Nisha Bose, submitted that the sole reason why the approval of appointment of the second petitioner has been rejected is because the proposal for the same came much after the statutory period fixed. She submitted that, therefore, this Court may not interdict Exts.P2, P12, P13, P16 and P18 orders, since the appointment of the second petitioner cannot be approved at this distance of time.

7. Even when I hear the learned senior Government Pleader on the afore lines, it becomes apodictic that the sole reason why the second petitioner's approval had not been considered until now is because there were no post sanctioned by the Government in the school to accommodate her. However, as is manifest from Ext.P11, the post has been sanctioned with effect from the year 2013-14, the year in which the petitioner was appointed; and obviously, this can only mean that the

Government intended that the teachers working in the school from those years will have to be protected and given their due benefits under the provisions of law.

8. I cannot, therefore, countenance the afore submissions of the learned senior Government Pleader, because the posts were sanctioned through Ext.P11 only in 2019, and if it is to be taken that the Manager could have appointed teachers only after that date, this will create an absurd and incongruous situation where the posts are admittedly created with effect from 2013-14, but can be filled up only after 2019. I am certainly of the firm view that this is not the way in which the position ought to have been seen by the Educational Authorities.

9. That said, since Ext.P18 and all earlier orders rejecting the proposal for the appointment of the second petitioner were edified solely on the reason that it has been made much beyond the time prescribed by the KER, and since this cannot appeal to me because Ext.P11 was concededly issued by the DEO only in the year 2018, I am of the undoubted opinion that the fifth respondent - AEO must reconsider the proposal for approval of the appointment of the second petitioner, based on the applicable provisions of law; however, without adverting to the question of delay, since I cannot find favour with the same.

Resultantly, this writ petition is ordered, setting aside Exts.P2, P12, P13, P16 and P18 orders issued by the Educational Authorities in the hierarchy of the Statute; with a consequential direction to the fifth respondent - AEO to reconsider the proposal for approval of the appointment of the second petitioner with effect from 02.06.2013, as per Exts.P1, P7 to P10 orders, on its merits and not to reject the same solely on the ground of delay, after affording an opportunity of being heard to the petitioners – either physically or through video conferencing – thus leading to an appropriate decision thereon, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

Needless to say, once the afore exercise is completed and if the appointment of the second petitioner is approved, all resultant orders with respect to benefits payable to her shall be issued and the same disbursed to her without any avoidable delay but not later than two months thereafter.

**Sd/- DEVAN RAMACHANDRAN**

stu

**JUDGE**

## **APPENDIX**

### **PETITIONER'S EXHIBITS:**

|             |  |
|-------------|--|
| EXHIBIT P1  | TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER DATED 3.6.2013 ISSUED BY THE 1ST PETITIONER.  |
| EXHIBIT P2  | TRUE COPY OF ORDER NO.C/1656/13/K.DIS DATED 30.09.2014 ISSUED BY THE 5TH RESPONDENT.   |
| EXHIBIT P3  | TRUE COPY OF STAFF FIXATION ORDER NO.C/1399/14 DATED 16.12.2014, FOR THE ACADEMIC YEAR 2014-15 ISSUED BY THE 5TH RESPONDENT.                   |
| EXHIBIT P4  | TRUE COPY OF THE STAFF FIXATION ORDER NO. C/2229/2015 DATED 5.5.2016, FOR THE ACADEMIC YEAR, 2015-16 ISSUED BY THE 5TH RESPONDENT.             |
| EXHIBIT P5  | TRUE COPY OF THE LETTER NO. C/2229/2015 DATED 25.6.2016 ISSUED BY THE 5TH RESPONDENT TO THE MANAGER, C.S.L.P.S THRISSUR ALONG WITH TYPED COPY. |
| EXHIBIT P6  | TRUE COPY OF THE ORDER NO. BI-10036/2016/K. DIS DATED 20.11.2017 ISSUED BY THE 4TH RESPONDENT ALONG WITH TYPED COPY.                           |
| EXHIBIT P7  | TRUE COPY OF THE PROCEEDINGS OF THE 1ST PETITIONER VIDE ORDER NO. 06A/2013-14 DATED 3.6.2013.  |
| EXHIBIT P8  | TRUE COPY OF THE APPOINTMENT ORDER DATED 3.6.2013 ISSUED BY THE 1ST PETITIONER TO THE 2ND PETITIONER.  |
| EXHIBIT P9  | TRUE COPY OF THE ORDER NO. 03/2014-15 DATED 2.6.2014 ISSUED BY THE 1ST PETITIONER TO THE 2ND PETITIONER.                                       |
| EXHIBIT P10 | TRUE COPY OF THE APPOINTMENT ORDER DATED 2.6.2014 ISSUED BY THE 1ST PETITIONER TO THE 2ND PETITIONER.  |

- EXHIBIT P11 TRUE COPY OF THE ORDER NO. C/3993/2018  
DATED 12.02.2018 ISSUED BY THE 5TH  
RESPONDENT.
- EXHIBIT P12 TRUE COPY OF THE ORDER NO.  
C/4835/2017/K.DIS DATED 5.1.2018 ISSUED BY  
THE 5TH RESPONDENT.
- EXHIBIT P13 TRUE COPY OF THE ORDER NO. C/318/2018/K.  
DIS DATED 8.2.2018 ISSUED BY THE 5TH  
RESPONDENT.
- EXHIBIT P14 TRUE COPY OF THE PETITION DATED 26.2.2018  
SUBMITTED BY THE 1ST PETITIONER BEFORE THE  
2ND RESPONDENT.
- EXHIBIT P15 TRUE COPY OF THE COVERING LETTER  
NO.C/1575/2018 DATED 25.5.2018 ALONG WITH  
OPINION AND PROFORMA ISSUED BY THE 5TH  
RESPONDENT.
- EXHIBIT P16 TRUE COPY OF THE PROCEEDING VIDE ORDER NO.  
F2/15466/2018/DPI/K. DIS DATED 20.8.2018  
ISSUED BY THE ADDITIONAL DIRECTOR OF THE  
2ND RESPONDENT ALONG WITH TYPED COPY.
- EXHIBIT P17 TRUE COPY OF THE REVISION PETITION DATED  
17.9.2018 FILED BY THE 1ST PETITIONER  
BEFORE THE 1ST RESPONDENT.
- EXHIBIT P18 TRUE COPY OF THE LETTER NO.  
B2/433/2018/GEN.EDN. DATED 28.8.2020 ISSUED  
BY THE 1ST RESPONDENT ALONG WITH TYPED  
COPY.
- EXHIBIT P19 TRUE COPY OF G.O.(P) NO. 33/2013/GEN. DATED  
29.11.2013 ISSUED BY THE GOVERNMENT.