

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942

WP(C).No.13579 OF 2014(V)

PETITIONER:

RENNY THOMAS,
AGED 33 YEARS,
S/O.THOMAS, LOWER PRIMARY SCHOOL ASSISTANT, ST.MARY'S
UP SCHOOL, MANKULAM P.O., MANKULAM, IDUKKI DISTRICT.

BY ADVS.
SRI.V.A.MUHAMMED
SRI.V.RAJASEKHARAN NAIR

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTPAURAM-695 001.
- 2 THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM-695 014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION,
IDUKKI AT THODUPUZHA, IDUKKI DISTRICT-685 584.
- 4 THE DISTRICT EUDCATIONAL OFFICER,
KATTAPPANA, IDUKKI DISTRICT-685 508.
- 5 THE ASSISTANT EUDUCATIONAL OFFICER,
NEDUMKANDAM, IDUKKI DISTRICT-685 553.
- 6 THE CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY DIOCESE OF IDUKKI,
KARIMBAN P.O., MANIPPARA, IDUKKI DISTRICT-685 502.

BY ADV. SRI.P.M.MANOJ, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, who was appointed as LPSA on 10.06.2005, is aggrieved by the denial of approval to her appointment up to 01.02.2006.

2. Petitioner was appointed as LPSA in the S.B. LP School, under the corporate management of 6th respondent, against a vacancy which arose on transfer. The AEO rejected the proposal for approval of her appointment on the ground that since the school is a newly opened school, the vacancy should have been filled up by a protected teacher. It is stated that in Revision before the Director of Public Instructions, Ext.P3 order was passed directing approval from 01.02.2006, taking note of the declaration furnished by the Manager that one vacancy of LPSA was set apart for appointing a protected teacher, in the light of G.O.(P) No.46/06/G.Edn. dated 01.02.2006. Thereafter petitioner's appointment was approved as per Ext.P4

order with effect from 01.02.2006. The petitioner submits that the Department had not furnished any list of protected teachers to the Manager as on 01.06.2005, in accordance with Ext.P7 G.O.(P) No.178/2002/G.Edn. dated 28.06.2002 and therefore petitioner was entitled to get her appointment approved from 01.06.2005.

3. The respondents have filed a counter affidavit stating that the proposal for approval was rejected on the ground that the Manager did not appoint a protected teacher as ordered in the circular no.74101/J2/2004.G.Edn. dated 24.01.2005 of the Government. It is also stated that the Government ordered approval of such appointments in the newly upgraded schools only as per order dated 01.02.2006 and the said order does not have any retrospective effect. It is also stated that as per the order dated 01.02.2006, in case a protected teacher is not available the Manager should furnish a bond/undertaking to the effect

that he will set apart a vacancy for the protected teacher. But in this case, the Manager furnished a bond only on 01.02.2006 and therefore petitioner's appointment was approved with effect from 01.02.2006.

4. The learned counsel for the petitioner submitted that by Ext.P4, the approval was granted only for the period from 01.02.2006 to 31.03.2006 and thereafter from 05.06.2006 onwards. It is the contention of the petitioner that in this case the list of protected teachers was furnished/intimation regarding the protected teacher was furnished only in December, 2005, much after the appointment of the petitioner. As per Ext.P8 guidelines, the list of protected teachers should have been furnished by the Educational Officer before 31st July of every year. In this case, such a list was not furnished within the time limit prescribed in Ext.P5 order. Ext P13(a) information collected under the Right to Information Act would

show that there was no protected teacher available in the sub district as on 10.06.2005.

5. In the above circumstances the denial of approval to petitioner's appointment from 01.06.2005 on the ground that the Manager executed the bond only on 01.02.06 was not proper. The respondents have not produced any material to show that the Manager refused to appoint a protected teacher even after the list of protected teacher was furnished. Therefore in the light of the judgments of this Court in *Nadeera v State of Kerala* [2011(3) KLT 790] and *State of Kerala and Others v. S.Haseena and Another* [2013 (2) KHC 103], relied on by the learned Counsel for the petitioner, approval should have been granted from the date of her appointment in Ext.P1, as it is seen that the Department failed to furnish any list of protected teachers to the Manager.

In the above circumstances, I am of the view that the petitioner is entitled to be granted

approval with effect from the date of her appointment in Ext.P1 i.e., 10.06.2005. There shall be a direction to the Assistant Educational Officer - the 5th respondent to issue revised orders of approval on the appointment of the petitioner from 01.06.2005 and to grant her all consequential benefits within a period of four months from the date of receipt of a copy of the judgment.

Accordingly, the writ petition is disposed of.

Sd/-

P.V.ASHA
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 10/6/2005.
EXHIBIT P2	TRUE COPY OF THE PROCEEDINGS OF THE ASSISTANT EDUCATIONAL OFFICER DATED 22/9/2005.
EXHIBIT P3	TRUE COPY OF THE ORDER OF THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION DATED 25/5/2007.
EXHIBIT P4	TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER AND APPROVAL THEREOF DATED 10/6/2005.
EXHIBIT P5	TRUE COPY OF THE G.O. (RT) NO.3776/2006/ G.EDN. DATED 24/8/2006.
EXHIBIT P6	TRUE COPY OF THE APPOINTMENT ORDER OF SMT.LEENA JOSEH DATED 1/7/2005.
EXHIBIT P7	TRUE COPY OF THE G.O. (P) NO.178/2002/G.EDN. DATED 28/6/2002 OF THE GOVERNMENT.
EXHIBIT P8	TRUE COPY OF THE CIRCULAR NO.74101/J4/04/ G.EDN DATED 24/1/2005 OF THE GOVERNMENT.
EXHIBIT P9	TRUE COPY OF THE JUDGMENT IN W.P. (C) NO.2563/2006-E DATED 24/9/2008.
EXHIBIT P10	TRUE COPY OF THE JUDGMENT IN W.P. (C) NO.8039/2008 DATED 1/6/2009.
EXHIBIT P11	TRUE COPY OF THE DECISION REPORTED IN 2013 (2) KHC 103 (DB) DATED 19/2/2013.
EXHIBIT P12	TRUE COPY OF THE DECISION REPORTED IN 2011 (3) KLT 790 DATED 4/8/2011.

EXHIBIT P13	TRUE COPY OF THE INFORMATION FURNISHED UNDER RIT ACT DATED 15/12/2011.
EXHIBIT P13(A)	TRUE COPY OF THE REPLY FURNISHED UNDER RIT ACT DATED 18/12/2013.
EXHIBIT P14	TRUE COPY OF THE DECISION REPORTED IN 2009 (3) KLT 863 DATED 29/6/2009.
EXHIBIT P15	TRUE COPY OF THE JUDGMENT IN WA NO.183/2010 DATED 21/7/2010.
EXHIBIT P16	TRUE COPY OF THE ORDER IN SLP NO.36558/2010 DATED 10/1/2011 OF THE SUPREME COURT.
EXHIBIT P17	TRUE COPY OF THE DECISION REPORTED IN 1993 (2) KLT SHORT NOTES 27 DATED 2/8/1993.
EXHIBIT P18	TRUE COPY OF THE G.O.(RT) NO.3921/2013/ G.EDN DATED 25/09/2013 OF THE GOVERNMENT.