

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

WP(C) .No.9555 OF 2017(T)

PETITIONERS:

- 1        THANKAMMA JOSEPH  
          AGED 39 YEARS, W/O PAUL P.SAJEEVE, RAMAN KARIYIL, MANGANAM  
          P.O. KOTTAYAM DIST- 686 018 (WORKING AS L.P.S.A AT  
          C.M.S.L.P.S.KUNNIKKAD)
  - 2        MOLAMMA K.ISSAC  
          AGED 38 YEARS, W/O ANIL V.K. VEERASSERIL HOUSE, CHENGALAM  
          SOUTH P.O. KOTTAYAM DIST- 686 022 (WORKING AS L.P.S.A AT  
          C.M.S.L.P.S. KURICHY)
  - 3        DAYANA P  
          AGED 48 YEARS, W/O JOY N.O. NEDUMKERIL HOUSE, VARIKKAM KUNNU  
          VADAKARA P.O. KOTTAYAM DIST- 686 605 (WORKING AS LPSA AT CMS  
          L.P.S. AMAYANNUR)
  - 4        SHEEJA .S.  
          AGED 35 YEARS, W/O JOSEPH MANUAL KOCHETTU HOUSE, ELANTHOOR  
          EAST P.O. PATHANAMTHITTA DIST- 689 643 (WORKING AS LPSA AT  
          C.M.S.L.P.S., PRAKKANAM)
- BY ADVS.  
          SRI.V.A.MUHAMMED  
          SRI.M.SAJJAD

RESPONDENTS:

- 1        STATE OF KERALA  
          REP. BY THE SECRETARY TO GOVERNMENT EDUCATION(L) DEPARTMENT,  
          SECRETARIAT, THIRUVANANTHAPURAM- 695 001
- 2        DIRECTOR OF PUBLIC INSTRUCTIONS  
          THIRUVANANTHAPURAM- 695 014
- 3        DEPUTY DIRECTOR OF EDUCATION  
          KOTTAYAM- 686 001
- 4        DEPUTY DIRECTOR OF EDUCATION  
          PATHANAMTHITTA- 689 111
- 5        ASSISTANT EDUCATIONAL OFFICER  
          KARUKACHAL, KOTTAYAM- 686 540
- 6        ASSISTANT EDUCATIONAL OFFICER  
          CHANGANSSERY, KOTTAYAM- 686 101
- 7        ASSISTANT EDUCATIONAL OFFICER  
          ETTUMANOOR, KOTTAYAM- 686 631

- 8 ASSISTANT EDUCATIONAL OFFICER  
KOZHANCHERY, PATHANAMTHITTA- 689 641
- 9 CORPORATE MANAGER  
CMS SCHOOLS, DIOCESE OF MADHYA KERALA (CSI) DIOCESAN  
OFFICE, CATHEDRAL ROAD, KOTTAYAM- 686 001

BY SRI.P.M.MANOJ-SR.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26.02.2021,  
ALONG WITH WP(C).9995/2019(Y), THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942

WP(C) .No.9995 OF 2019(Y)

PETITIONERS:

- 1        THANKAMMA JOSEPH,  
          AGED 40 YEARS  
          WIFE OF PAUL P.SAJEEVE, RAMAN KARIYIL, MANGANAM P.O.,  
          KOTTAYAM DISTRICT - 686 018 (WORKING AS LPSA AT CMS LP  
          SCHOOL, KUNNNIKKAD, KOTTAYAM DISTRICT) .
  - 2        MOLAMMA K.ISSAC,  
          AGED 39 YEARS  
          WIFE OF ANIL V.K., VEERASSERIL HOUSE, CHENGALAM SOUTH P.O.,  
          KOTTAYAM DISTRICT- 686 022. (WORKING AS LPSA AT CMS LP  
          SCHOOL, KURICHY, KOTTAYAM DISTRICT - 686 532) .
  - 3        SHEEJA S. ,  
          AGED 36 YEARS  
          WIFE OF JOSEPH MANUAL, KOCHETTU HOUSE, ELANTHOOR EAST P.O.,  
          PATHANAMTHITTA DISTRICT - 689643. (WORKING AS LPSA AT CMS  
          LP SCHOOL, PRAKKANAM, PATHANAMTHITTA DISTRICT - 689 643) .
- BY ADVS.  
SRI.V.A.MUHAMMED  
SRI.M.SAJJAD

RESPONDENTS:

- 1        THE STATE OF KERALA,  
          REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL  
          EDUCATION DEPARTMENT, SECRETARIAT ANNEXE-II,  
          THIRUVANANTHAPURAM - 695 001.
- 2        THE DIRECTOR OF PUBLIC INSTRUCTIONS,  
          JAGATHY, THIRUVANANTHAPURAM-695 014.
- 3        THE DEPUTY DIRECTOR OF EDUCATION,  
          KOTTAYAM - 686 001.
- 4        THE DEPUTY DIRECTOR OF EDUCATION,  
          PATHANAMTHITTA - 689 111.

- 5 THE ASSISTANT EDUCATIONAL OFFICER,  
KARUKACHAL, KOTTAYAM DISTRICT - 686 540.
- 6 THE ASSISTANT EDUCATIONAL OFFICER,  
CHANGANASSERY, KOTTAYAM DISTRICT - 686 101.
- 7 THE ASSISTANT EDUCATIONAL OFFICER,  
KOZHANCHERY, PATHANAMTHITTA DISTRICT-689641.
- 8 THE CORPORATE MANAGER,  
CMS SCHOOLS, DIOCESE OF MADHYA KERALA(CSI) ,DIOCESAN OFFICE,  
CHATHEDRAL ROAD, KOTTAYAM-686001.
- 9 THE HEADMASTER,  
CMS LP SCHOOL, KUNNIKKAD, KOTTAYAM DISTRICT-686542.
- 10 THE HEADMASTER,  
CMS LP SCHOOL, KURICHY, KOTTAYAM DISTRICT-686532.
- 11 THE HEADMASTER,  
CMS LP SCHOOL, PRAKKANAM, PATHANAMTHITTA DISTRICT-689643.

BY ADV. SRI.V.RAJASEKHARAN NAIR

OTHER PRESENT:

SRI. P.M.MANOJ - SR.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26.02.2021,  
ALONG WITH WP(C).9555/2017(T), THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**J U D G M E N T**

I am considering these two writ petitions jointly because three among the petitioners in W.P.(C)No.9555/2017 have filed W.P.(C)No.9995/2019 and all of them, along with the 4<sup>th</sup> petitioner in W.P.(C)No.9555/2017, impugn the orders of the Government, as per which, their appointment as teachers in “C.M.S L.P Schools” at Kottayam and Pathanamthitta Districts, under the same Corporate Educational Agency - namely, the Corporate Manager, CMS Schools, Diocese of Madhya Kerala (CSI), Kottayam - has been denied approval on the ground that appointments to the post ought to have been filled up by the Manager only through protected teachers.

2. The petitioners allege that though they were appointed validly to available vacancies, consequent to the abolition of the “shift system” in the Schools in question, their appointments have been held up by the Educational Authorities solely saying that such posts could have been filled up only by appointing protected teachers, as per the applicable and extant Government Orders.

3. The petitioners admit that in the Government Orders abolishing the shift system, there was a condition that the ensuing vacancies shall be filled up only by retrenched teachers/protected teachers; but that, as is evident from Ext.P15 series of information received from the competent Public Information Officers - produced along with W.P. (C)No.9995/2019, there were no list of retrenched/protected teachers maintained by the concerned educational Authorities in the districts of Kottayam and Pathanamthitta at the relevant time. They, therefore, contend that even though the relevant Government Orders provide for appointment of protected teachers to the vacancies in the Schools sanctioned on account of abolition of the shift system, in this particular case, it would have no relevance for the reason that there was no such list forwarded to the Manager nor were any teachers available in the educational districts concerned awaiting absorption.

4. The petitioners, therefore, pray that Exts.P1 and P4 in W.P.(C)No.9555/2017 and Ext.P20 in W.P. (C)No.9995/2019 be set aside, and the concerned Educational

Authorities be directed to approve their appointments for the afore reasons.

5. In response, the learned Senior Government Pleader, Sri.P.M.Manoj, submitted that a counter affidavit has been filed on behalf of the Deputy Director of Education, wherein, it has been explained how the relevant Government Orders make it incumbent that the posts in question could have been filled up only by appointing retrenched/protected teachers. He asserted that the Corporate - Manager did not even contact the jurisdictional Deputy Director seeking the list of protected teachers and that he had appointed the petitioners in blatant violation of the Government Order bearing G.O.(M.S)No.92/10/G.Edn dated 04.06.2010, abolishing the shift system in various Schools and this was followed by order No.B6/9235/10 dated 04.10.2010, as per which, the Managers could have only filled up the posts only through retrenched/protected teachers. He then alleged that the Manager, in complete disregard to these directions, filled up the vacancies through fresh hands, even though in the aforementioned Government Order dated 04.06.2010, this

had been prohibited.

6. Sri.P.M.Manoj then added to his submissions by saying that if a teacher in the same category was not available in the “Teachers Bank” of that Revenue District, the Manager ought to have appointed teachers from other Revenue Districts and therefore, that the petitioners' plea for approval cannot be countenanced. He, therefore, prayed that this writ petition be dismissed.

7. It is clear from the afore submissions of the learned Senior Government Pleader, that it is the stand of the Authorities that the Manager did not contact the Deputy Director (shown incorrectly as AEO in the counter affidavit) and did not seek for a list of protected teachers either from that officer or the concerned officers of the other Revenue Districts.

8. However, neither the counter affidavit or the other materials on record even indicate that there was any such list prepared by the concerned Deputy Director or by any other Deputy Director of nearby Revenue Districts; and Ext.P15 series documents would, *prima facie*, indicate that no lists



had been maintained by any such officers.

9. Obviously, therefore, the ratio in the judgments of this Court in **Moosakutty v. DEO, Wandoor [2009 (3) KLT 863]** and **Nadeera v. State of Kerala [2011 (3) KLT 790]** ) would apply in all force to the facts of this case, since it has been declared therein unequivocally by this Court that unless the Manager had been forwarded with the list of protected teachers, he cannot be found guilty of having appointed fresh hands.

10. That said, I cannot see any reference to these aspects having been made by the Government in the impugned orders; and am therefore, of the firm view that Government must reconsider the matter, taking note of the afore submissions as also Ext.P15 series of documents produced along with W.P.(C)No.9995/2017.

Resultantly, these writ petitions are allowed and Exts.P1 and P4 in W.P.(C)No.9555/2017 and Ext.P20 in W.P. (C)No.9995/2019 are set aside; with a consequential direction to the Government to reconsider the matter in the manner afore, after affording an opportunity of being heard to the

petitioners - teachers as also the Manager of the School - either physically or through video conferencing - thus culminating in an appropriate order thereon, as expeditiously as is possible but not later than four months from the date of receipt of a copy of this judgment.

**SD/-**

**DEVAN RAMACHANDRAN**

**JUDGE**

rp

APPENDIX OF WP(C) 9555/2017

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF G.O(RT) NO.3373/2016/G.EDN DATED 14-10-2016
EXHIBIT P2	TRUE COPY OF G.O(MS) NO.92/2010/G.EDN. DATED 04-06-2010
EXHIBIT P3	TRUE COPY OF THE JUDGMENT DATED 27-02-2015 IN WPC NO.6390/2015
EXHIBITP4	TRUE COPY OF G.O(RT)NO.1319/2016/G.EDN. DATED 05-04-2016
EXHIBIT P5	TRUE COPY OF THE REPRESENTATION DATED 29-04-2016 SUBMITTED BEFORE THE GOVERNMENT
EXHIBIT P6	TRUE COPY OF THE JUDGMENT DATED 10-06-2016 IN WPC NO.19885/2016
EXHIBIT P7	TRUE COPY OF THE HEARING NOTE SUBMITTED AT THE TIME OF HEARING
EXHIBIT P8	TRUE COPY OF THE JUDGMENT DATED 10-03-2014 IN WPC NO.6516/2014
EXHIBITP9	TRUE COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER
EXHIBIT P10	TRUE COPY OF THE REPLY FURNISHED BY THE STATE PUBLIC INFORMATION OFFICEDR OF THE 1ST RESPONDENT
EXHIBIT P11	TRUE COPY OF THE REPLY GIVEN BY THE 2ND RESPONDENT
EXHIBIT P12	TRUE COPY OF THE REPLY GIVEN BY THE 3RD RESPONDENT
EXHIBIT P13	TRUE COPY OF THE REPLY GIVEN BY THE 4TH RESPONDENT

APPENDIX OF WP (C) 9995/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER DATED 06/06/2011.
EXHIBIT P2	TRUE COPY OF THE ORDER NO.F/1685/11/K.DIS. DATED 23/09/2011 OF THE AEO, KARUKACHAL.
EXHIBIT P3	TRUE COPY OF THE ORDER NO.B1-10528/2011 DATED 24/12/2011 OF THE DEO, KANJIRAPPALLY.
EXHIBIT P4	TRUE COPY OF THE ORDER NO.F5/32806/2012/DPI/K.DIS. DATED 09/07/2012.
EXHIBIT P5	TRUE COPY OF THE GOVERNMENT LETTER DATED 23/10/2013.
EXHIBIT P6	TRUE COPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER DATED 06/06/2011.
EXHIBIT P7	TRUE COPY OF THE ORDER NO.C/1382/2011/L.DIS. DATED 22/09/2011 OF THE 6TH RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE ORDER NO.B6/8956/11/K.DIS. DATED 14/12/2011 OF THE DEO, KOTTAYAM.
EXHIBIT P9	TRUE COPY OF THE ORDER NO.F5-36435/12/DPI/K.DIS. DATED 25/07/2012 OF THE DIRECTOR.
EXHIBIT P10	TRUE COPY OF THE REVISION PETITION FILED BY THE MANAGER BEFORE THE GOVERNMENT DATED 22/01/2013.
EXHIBIT P11	TRUE COPY OF THE APPOINTMENT ORDER OF THE 3RD PETITIONER DATED 06/06/2011.
EXHIBIT P12	TRUE COPY OF THE ORDER NO.B1/13866/11/K.DIS. DATED 17/12/011 OF THE DEO, PATHANAMTHITTA.
EXHIBIT P13	TRUE COPY OF THE ORDER NO.F3/58251/2012/DPI/K.DIS. DATED 17/10/2012 OF THE DIRECTOR.
EXHIBIT P14	TRUE COPY OF THE ORDER DATED 29/02/2016 ISSUED BY THE AEO, KARUKACHAL.
EXHIBIT P14A	TRUE COY OF THE ORDER DATED 15/02/2016 ISSUED BY THE AEO, CHANGANASSERY.

EXHIBIT P14B	TRUE COPY OF THE ORDER DATED 09/08/2011 ISSUED BY THE AEO, KOZHENCHERRY.
EXHIBIT P15	TRUE COY OF THE INFORMATION SOUGHT FROM THE DDE, PATHANAMTHITTA UNDER THE RIGHT TO INFORMATION ACT, 2005 DATED 29/04/2017.
EXHIBIT P15A	TRUE COPY OF THE INFORMATION FURNISHED BY THE DDE, PATHANAMTHITTA DATED 10/05/2017.
EXHIBIT P15B	TRUE COPY OF THE INFORMATION SOUGHT FROM THE DDE, KOTTAYAM UNDER THE RIGHT TO INFORMATION ACT, 2005 DATED 29/04/2017.
EXHIBIT P15C	TRUE COPY OF THE INFORMATION FURNISHED BY THE DDE, KOTTAYAM DATED 19/06/2017.
EXHIBIT P16	TRUE COPY OF THE G.O. (MS) NO.92/10/G.EDN. DATED 04/06/2010.
EXHIBIT P17	TRUE COPY OF THE ORDER NO.B6/9235/10(2) DATED 04/10/2010 OF THE DDE, KOTTAYAM.
EXHIBIT P18	TRUE COPY OF THE G.O. (RT) NO.1319/2016/G.EDN. DATED 05/04/2016.
EXHIBIT P19	TRUE COPY OF THE G.O(RT) NO.3373/2016/G.EDN. DATED 14/10/2016.
EXHIBIT P20	TRUE COPY OF THE G.O. (RT) NO.2533/2018/G.EDN. DATED 06/07/2018.
EXHIBIT P21	TRUE COPY OF THE DECISION REPORTED IN 2011(3) KLT 790.
EXHIBIT P21A	TRUE COPY OF THE DECISION REPORTED IN 2009(3) KERALA 863.
EXHIBIT P22	TRUE COPY OF THE PROCEEDINGS OF THE 5TH RESPONDENT VIDE LETTER NO.C-1688/2018 DATED 28.10.2018