

SubhA.E.M Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1100674

Court : Kerala

Decided On : Nov-29-2013

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : SubhA.E.M

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI FRIDAY, THE 29TH DAY OF NOVEMBER 2013 8TH AGRAHAYANA, 1935 WP(C).No. 33776 of 2009 (N) ----- PETITIONER : ----- SUBHA E.M., JUNIOR LANGUAGE TEACHER-HINDI MAR CLEMIS U.P. SCHOOL, VADAPURAM, VADAPURAM P.O., MALAPPURAM DT-676 542. BY ADV. SRI.KALEESWARAM RAJ RESPONDENT(S) : ----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY, DEPARTMENT OF GENERAL EDUCATION KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS JAGATHY, THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.

4. THE DISTRICT EDUCATIONAL OFFICER, WANDOOR.

5. THE ASSISTANT EDUCATIONAL OFFICER, NILAMBUR.

6. THE MANAGER, MAR CLEMIS U.P. SCHOOL VADAPURAM, VADAPURAM P.O., MALAPPURAM DT-676 542. R1 TO R5 BY SR. GOVT. PLEADER SMT. SAREENA GEORGE THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/- WP(C).No. 33776 of 2009 (N) APPENDIX PETITIONER'S EXHIBITS : EXT.P1 : COPY OF

ORDER

DATED 29/09/2005 ISSUED BY THE 5TH RESPONDENT. EXT.P2 COPY OF

ORDER

DATED 19/2006 ISSUED BY THE 4TH RESPONDENT. EXT.P3 COPY OF APPEAL DATED 13/9/2006 FILED BY THE MANAGER BEFORE THE 2ND RESPONDENT. EXT.P4 COPY OF

ORDER

DATED 9/11/2006 ISSUED BY THE 2ND RESPONDENT. EXT.P5 COPY OF REVISION DATED 16/11/2006 FILED BEFORE THE 1ST RESPONDENT FILED BY THE MANAGER. EXT.P6 COPY OF REPRESENTATION DATED 22/11/2006 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER FOR EDUCATION. EXT.P7 COPY OF APPOINTMENT

ORDER

DATED 25/7/2008 ISSUED BY THE MANAGER APPOINTING A PROTECTED HAND NAMELY SMT. SULABHABHAI. EXT.P8 COPY OF APPOINTMENT

ORDER

TOGETHER WITH ENDORSMENT DT. 13.11.2008. EXT.P9 COPY OF APPEAL DATED 3/11/2009 FILED BY THE MANAGER BEFORE THE 2ND RESPONDENT. EXT.P10 COPY OF

ORDER

NO. G2/18346/09/DPI/L.DIS DATED 8/4/2009 ISSUED BY THE 2ND RESPONDENT. EXT.P11 COPY OF

ORDER

NO. KDIS/F/2200/09 DATED 10/8/2009 ISSUED BY THE 5TH RESPONDENT. EXT.P12 COPY OF G.O.(P) NO. 178/2002. (Contd...) WP(C).No. 33776 of 2009 (N) EXT.P13 COPY OF

ORDER

NO. F/3299/08 DATED 24/2/2009 ISSUED BY THE 5TH RESPONDENT. EXT.P14 COPY OF OBJECTION SUBMITTED AGAINST PROMOTION GIVEN TO ONE MRS. SUSEELA. EXT.P15 COPY OF LETTER DATED 22/7/2008 ISSUED BY THE 5TH RESPONDENT. RESPONDENT'S EXHIBITS : NIL //TRUE COPY// P.S. TO JUDGE Mn A.V.RAMAKRISHNA PILLAI, J -----
W.P.(C) No.33776 of 2009 ----- Dated this the 29th day of November, 2013

JUDGMENT

The petitioner has come up before this Court for a declaration that she is entitled to get her service approved for the period ranging from 1.6.2005 to 2.6.2008 and for directing the respondents to approve the petitioner's appointment during the said period.

2. The petitioner's appointment as Junior Language Teacher in Hindi as per Ext.P1 was not approved by the 5th respondent on the ground that the Manager of the school has not appointed a protected hand as provided under G.O.(P) No.178/2002. The petitioner filed an appeal before the 4th respondent which was rejected by the 4th respondent by Ext.P2. Against Ext.P2, the 6th respondent Manager filed Ext.P3 appeal before the second respondent which was rejected by Ext.P4 order. Against that the 6th respondent Manager filed Ext.P5 revision and the petitioner filed Ext.P6 representation WPC No.33776/2009 2 also. Both were rejected. Later, the 6th respondent appointed a protected teacher as evidenced by Ext.P7 and thereafter the petitioner's appointment was approved by the 5th respondent as per Ext.P8 subject to certain conditions. Aggrieved by the conditions laid down in Ext.P8, the 6th respondent Manager filed Ext.P9 appeal before the second respondent upon which the second respondent passed Ext.P10 order directing the 5th respondent to approve the petitioner's appointment with

effect from 2.6.2008 due to the operation of Ext.P12. Thereafter the 5th respondent passed Ext.P11.

3. The petitioner alleges that the non-approval of her service from 1.6.2005 to 2.6.2008 is illegal. According to the petitioner, the condition of appointment in Aided School is governed by Chapter XXII of Kerala Education Rules and when the conditions of the student strength is satisfied, the Manager has a right to make appointment in the school.

4. It was pointed out that under Section 11 of the Kerala Education Rules, the Manager is the appointing authority and if the appointment is in accordance with WPC No.33776/2009 3 the student strength, the approval cannot be denied by relying on an order which is not part of the statutory rules.

5. At the time of the argument, the learned counsel for the petitioner invited my attention to a decision of this Court in State of Kerala v Nadeera (2013(2) KLT88 where it was observed that as per Rule 6(viii) of Chapter V of KER, the only obligation cast on the managers of the Aided Schools is, they must appoint the protected teachers, whenever a list is sent. Beyond that, there is no other obligation cast on them.

6. In the light of the aforesaid decision, this Court is of the definite view that the matter requires a re-look by the respondents concerned. Therefore, this writ petition is disposed of directing the first respondent to reconsider the issue in the light of the observations contained in the decision cited above. To facilitate the action on the part of the first respondent, the petitioner shall be at liberty to file a representation before the first respondent along with a WPC No.33776/2009 4 copy of this judgment within one month from today. In the event of filing such a petition, the same shall be disposed of adverting to the decision of this Court in State of Kerala v Nadeera (2013(2) KLT88 after affording the petitioner an opportunity of being heard. sd/- A.V.RAMAKRISHNA PILLAI JUDGE css/ true copy P.S.TO JUDGE