

The Manager Vs. the State of Kerala

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Court : Kerala

Decided On : Feb-17-2014

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : The Manager

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM MONDAY, THE 17TH DAY OF FEBRUARY 2014 28TH MAGHA, 1935 WP(C).No. 3284 of 2014 (I) ----- PETITIONER(S): ----- 1. THE MANAGER ST.THOMAS UPPER PRIMARY SCHOOL, PARANNUR, CHOONDAL THRISSUR DISTRICT.

2. P.SHAMSUDHEEN URDU TEACHER (PART-TIME), ST.THOMAS U.P.SCHOOL PARANNUR, CHOONDAL, THRISSUR DISTRICT. BY ADVS.SRI.V.A.MUHAMMED SRI.M.SAJJAD RESPONDENT(S): ----- 1. THE STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT GENERAL EDUCATION DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS JAGATHY, THIRUVANANTHAPURAM-695014.

3. THE DEPUTY DIRECTOR OF EDUCATION THRISSUR AT AYYANTHOLE-680003.

4. THE DISTRICT EDUCATIONAL OFFICER CHAVAKKAD, THRISSUR DISTRICT-680506.

5. THE ASSISTANT EDUCATIONAL OFFICER KUNNAMKULAM, THRISSUR DISTRICT-680503. BY SR.GOVERNMENT PLEADER SRI.M.A.FAYAZ THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 3284 of 2014 (I) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 : TRUE COPY OF THE APPOINTMENT

ORDER

OF THE 2D PETITIONER DT.1-7-2011. EXHIBIT P2 : TRUE COPY OF THE

JUDGMENT

IN WPC179492013-P DT.29-7-2013. EXHIBIT P3 : TRUE COPY OF THE G.O.(RT) NO.4494/13/G.EDN. DT.26-10-2013 OF THE GOVERNMENT. EXHIBIT P4 : TRUE COPY OF THE

ORDER

OF THE 5H RESPONDENT DT.15-12-2013. EXHIBIT P5 : TRUE COPY OF THE CIRCULAR OF THE GOVERNMENT DT.10-4-2012. EXHIBIT P6 : TRUE COPY OF THE G.O.(RT)NO.2198/06/G.EDN. DT.30-5-2006 OF THE GOVERNMENT. EXHIBIT P7 : TRUE COPY OF THE

ORDER

OF THE 2D RESPONDENT DT.29-8-1979. EXHIBIT P8 : TRUE COPY OF THE INTERIM

ORDER

IN 158412013-E DT.29-8-2013. RESPONDENT(S)' EXHIBITS : NIL ----- /TRUE COPY/ P. A. TO JUDGE Pn C.K. ABDUL REHIM, J.

JUDGMENT

The 1st petitioner-Manager had appointed the 2nd petitioner as Part-Time Urdu Teacher with effect from 01.07.2011, against a retirement vacancy. Approval of the appointment was rejected initially on the basis that the appointment was effected only by a representative of the Manager. Then a revised proposal was submitted by the 1st petitioner appointing the 2nd petitioner from 01.07.2011. The said proposal was also rejected pointing out the delay occurred in submitting the proposal. But later, the Deputy Director had condoned the delay. Even thereafter the 4th respondent had rejected the approval, which was challenged in a revision petition filed before the 2nd respondent. The 2nd respondent had also confirmed the order, against which the 2nd petitioner moved a revision before the Government. This court in the judgment in WP(C) No.17949/2013 had issued direction to the Government to dispose of the revision petition, in Ext.P2 judgment. By virtue of Ext.P3 the Government issued orders directing approval of the appointment, subject to verification as to whether there existed any dispute with respect to the W.P.(C). No. 3284 of 2014 -2- Management during the relevant time of appointment and as to whether there was any stay against Sri.Tom Thomas, acting as Manager during the said period. But without implementing the said order the 5th respondent had sought for clarification, as per Ext.P4 letter. According to the petitioner the clarification sought for in Ext.P4 was totally unnecessary in view of the subsequent direction contained in Ext.P3. Hence the petitioners are seeking to quash Ext.P4. Inter alia, they seek direction commanding the respondents to grant approval of Ext.P1 appointment.

2. It is evident from Ext.P4 that there existed a dispute between 2 persons with respect to managership of the School in question. It is also evident that different writ petitions were filed by both the parties during the relevant time. But merely because there existed a dispute between two persons with respect to managership of the School, the appointment of the 2nd petitioner will not become automatically invalid. The legal position remaining settled through decision of this court in Manager, St. Mary's H.S. V. Beji Abraham (2002 (1) KLT406(DB) is to the

effect that all actions with respect to appointments made by a defacto Manager need to be considered as valid, despite any subsequent finding to the W.P.(C). No. 3284 of 2014 -3- effect that he was not entitled for the managership. It was observed by this court that appointments made by incompetent Managers cannot take away rights of the appointees.

3. From the facts of the case at hand it is evident that, what was directed to be verified for approving the appointment was only the aspect whether there existed any stay with respect to Sri.Tom Thomas acting as Manager, during the relevant period when the appointment was made. But the 5th respondent has not made any specific verification to that effect. On the other hand he only sought for a further clarification as to whether the approval can be granted in view of the given circumstances. However, since the 5th respondent had sought for a further clarification through Ext.P4, interest of justice will be served by directing the Government to take a decision on the basis of Ext.P4 and to direct implementation of the same within a time limit. Needless to observe that the Government should take into consideration of the legal position remaining settled, while taking a decision on the question referred to it.

4. Under the above mentioned circumstances, this writ petition is hereby disposed of directing the 1st respondent to W.P.(C). No. 3284 of 2014 -4- consider Ext.P4 and to intimate its decision on the question of approval of appointment of the 2nd petitioner to the 5th respondent, if necessary after affording opportunity of personal hearing to the petitioners and others concerned. A decision in this regard shall be taken and communicated to the petitioners and the 5th respondent, at the earliest possible, at any rate within a period of 2 months from the date of receipt of a copy of this judgment.

5. Needless to observe that, the 5th respondent shall implement such decision thereafter, without any further delay. Sd/- C.K. ABDUL REHIM, JUDGE /True copy/ P. A. to Judge Pn