

The Upper Primary School, vs State of Kerala,

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Court : Kerala

Decided On : Oct-01-2021

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/20836/2021

Appellant : The Upper Primary School,

Respondent : State of Kerala,

Judgement :

WP(C) NO. 20836 OF 2021 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943 WP(C) NO. 20836 OF 2021 PETITIONER/S: THE UPPER PRIMARY SCHOOL, PULLAMCODE, EDAYAM P.O., VALAKOM, KOLLAM 691 532, REP. BY ITS MANAGER, MAMMAN THOMAS, S/O. LATE G. THOMAS, AGED 71 YEARS, MAMOOTTIL HOUSE, ARAKKAL, EDAYAM P.O., KOLLAM 691 532. BY ADV B.MOHANLAL RESPONDENT/S:

1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL EDUCATION, DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 695 001. 2 THE DIRECTOR OF GENERAL EDUCATION, JAGATHY P.O., THIRUVANANTHAPURAM 695 014. 3 THE DEPUTY DIRECTOR OF EDUCATION, THEVALLY P.O., KOLLAM 691 009. 4 THE DISTRICT EDUCATIONAL OFFICER, PUNALUR P.O., KOLLAM 691 305. 5 THE ASSISTANT EDUCATIONAL OFFICER, ANCHAL P.O., KOLLAM 691 306. SMT NISHA BOSE, SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 20836 OF 2021 2

JUDGMENT

On the premise that the petitioner had failed to give an appointment to a 51B claimant in spite of there being an established vacancy and obey the departmental instructions, Ext.P7 order has been passed by the 1st respondent. According to the petitioner, directions have been issued to the officer concerned to initiate action against the petitioner under Chapter III, Rule 7 of the KER. The petitioner contends that by Exhibit P3 order, appointment was granted prior to the passing of Exhibit P5 and in that view of the matter, there is no disobedience or failure on the part of the petitioner to carry out the departmental instructions.

2. On instructions, the learned Government Pleader submitted that the

1st respondent, after evaluating the facts and circumstances had only directed the DDE to proceed under Rule 7 of Chapter III of the KER. It is submitted that as per the Rules, the Director is required to afford a reasonable opportunity to the Manager or the educational agency to show cause against the proposed action to be taken and it is only after the conduct of a due enquiry that further proceedings shall be initiated.

3. Sri B. Mohanlal, the learned counsel submitted that a reading of

Exhibit P7 order makes it appear that the AEO has been directed to carry out the enquiry, which according to the learned counsel is illegal. This submission is WP(C) NO. 20836 OF 2021 3 controverted by the learned Government Pleader as the educational officer stated in Exhibit P7 is the DDE.

4. Having considered the submissions, I do not think that any

interference is warranted. The petitioner may raise all his contentions before the DDE when he receives a show-cause notice under Rule 7. The petitioner shall be afforded an opportunity to raise all his contentions before any action is taken. With the above directions, this petition is disposed of. Sd/- RAJA VIJAYARAGHAVAN V JUDGE sru WP(C) NO. 20836 OF 2021 4 APPENDIX OF WP(C) 20836/2021 PETITIONER EXHIBITS Exhibit P1 THE TRUE COPY OF THE ORDER DATED 18/02/2019 ISSUED BY THE PETITIONER TO SMT. BHAGYA CHOODAN S. Exhibit P2 THE TRUE COPY OF THE ORDER NO. C-2271/2019 DATED 24.07.2019 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER. Exhibit P3 THE TRUE COPY OF THE APPOINTMENT ORDER DATED 06.06.2019 ISSUED BY THE PETITIONER TO SMT. BHAGYA CHOODAN S. Exhibit P4 THE TRUE COPY OF THE JUDGMENT DATED 16.01.2020 IN WPC NO. 21485/2019 OF THIS HONBLE COURT. Exhibit P5 THE TRUE COPY OF ORDER NO. BI/3629/2019/L.DIS DATED 22.09.2020 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

Exhibit P6 THE TRUE COPY OF THE ORDER

NO.C/2006/2020/D.DIS DATED 02.03.2021 ISSUED BY THE 5TH RESPONDENT. Exhibit P7 THE TRUE COPY OF THE G.O.(RT) NO. THE 1ST RESPONDENT. RESPONDENTS EXHIBITS:NIL

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