



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

WP(C) NO. 2454 OF 2021

PETITIONER:

LEENA V A,
AGED 40 YEARS,
WIFE OF VIPIN JOSEPH,
HIGH SCHOOL ASSISTANT (HINDI),
MARY MATHA HIGH SCHOOL, PANTHALAMPADAM P O,
PANNIANKARA, PALAKKAD-678 683.

BY ADVS.
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-695001.
- 2 THE DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM-695014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD-678001.



2025:KER:7

W.P (C) No.2454 of 2021

2

- 4 THE DISTRICT EDUCATIONAL OFFICER,
FORT MAIDAN, PALAKKAD DISTRICT-678001.

- 5 THE MANAGER,
MARY MATHA HIGH SCHOOL, PANTHALAMPADAM,
P.O PANNIANKARA, PALAKKAD-678683.

BY ADV
SRI.E.G.GORDEN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



K.BABU, J.

W.P (C) No.2454 of 2021

Dated this the 6th day of January, 2025

JUDGMENT

The prayers in this Writ Petition (Civil) are as follows:

- “(i) Call for the records relating to Exhibits P-1, P-2, P-3 and P-6 and set aside the originals of the same by the issue of a writ of certiorari or other appropriate writ or order.
- (ii) Issue a writ of mandamus or other appropriate writ order or direction commanding the 4th Respondent to approve the appointment of the petitioner as HSA (Hindi) from 02.06.2008 onwards and disburse the attendant benefits forthwith, as though the Manager has executed the required bond, in the light of Exhibits P-7 to P-11.
- (iii) Pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case.”

2. The petitioner was appointed as High School Assistant (HSA) (Hindi) in the Mary Matha High School, Panthalampadam, an



aided school under the administrative jurisdiction of respondent No.4. Approval to the appointment of the petitioner was rejected by the District Educational Officer (DEO) (respondent No.4) stating that the vacancy had to be filled up by protected hand. The Manager of the school (respondent No.5) filed an appeal before the Deputy Director of Education, Palakkad (respondent No.3). The appeal was rejected, upholding the order of the DEO. The Manager filed second appeal before the Director General of Education (respondent No.2), which was also rejected as per Ext.P3. The Manager challenged the above orders, filing a Revision Petition before the Government. When there occurred a delay in the consideration of the revision petition, the petitioner and the Manager approached this Court filing W.P (C) No.28520/2010. As per judgment dated 15.09.2010, this Court directed the Government to consider the revision petition in a time-bound manner. Thereafter, the Government issued Ext.P6 order rejecting the request of the petitioner.

3. For and on behalf of the official respondents, respondent



No.4 filed a counter, wherein the following contentions have been raised:

3.1. Mary Matha High School, Panthalampadam commenced functioning on 04.07.1983. The school is in the category of “newly opened schools”. As per GO (P) No.46/2006/G.Edn dated 01.02.2006, the Managers of all aided schools which were started between 1979 and 1990 shall appoint one protected teacher in the schools. Respondent No.5 has not complied with this condition before appointing the petitioner. The absence of the protected teacher does not make the Manager competent to appoint a fresh teacher on a regular basis.

3.2. The appointment of the petitioner has been approved with effect from 01.06.2011 onwards as per the terms and conditions laid down in G.O (P) No.199/2011/G.Edn dated 01.10.2011.

3.3. Government Order by G.O(P) No.154/2014/G.Edn dated 11.08.2014 amended the KER stating that the service of the teachers prior to 01.06.2011 shall not be reckoned for any service benefits,



but shall only be deemed to commence afresh with effect from 01.06.2011.

4. I have heard Sri.V.A.Muhammed, the learned counsel appearing for the petitioner assisted by Adv.Bismi and Sri.E.G.Gorden, the learned Government Pleader.

5. The learned counsel for the petitioner made the following submissions:

- (a) The interest of justice requires that the appointment of the petitioner as HSA is to be approved with effect from 02.06.2008.
- (b) In Exhibit P6 order, the Government stated that the absence of the protected teacher does not make the Manager competent to appoint a fresh teacher on a regular basis, which reflects that there was no protected teacher available.
- (c) There is nothing to show that the list of protected teachers was sent to the Manager so as to



comply with the condition in Rule 6 (viii) of Chapter V of the Kerala Education Rules.

6. The learned counsel for the petitioner relied on **Nadeera T.S and Another v. State of Kerala and Others [2011 (3) KHC 650]** to fortify his contention.

7. The learned Government Pleader submitted that respondent No.5, the Manager, has not complied with the conditions in the Rule 6 (viii) of Chapter V of the Kerala Education Rules. The absence of the protected teacher does not make the Manager competent to appoint a fresh teacher on a regular basis. The petitioner is entitled to approval only with effect from 01.06.2011.

8. The following facts are not in dispute:

- (i) The petitioner was appointed as HSA (Hindi) on 02.06.2008 against a retirement vacancy.
- (ii) Respondent No.5 appointed the petitioner in terms of the staff fixation order.
- (iii) The petitioner is eligible to be appointed as



HSA (Hindi) on the date of her appointment.

- (iv) The post in which the petitioner was appointed was admissible in 2008 and subsequent years.

9. The learned counsel for the petitioner submitted that Ext.P6 order itself points to the fact that no protected teacher was available for appointment and no list of protected teachers was communicated to the Manager.

10. In the revision petition, the petitioner had raised a specific contention that one protected teacher was working in the school from 1984-2000, and no protected HSA (Hindi) teacher was available for appointment. The official respondents have no case that a protected teacher was available for appointment. The obligation of the Manager to appoint a protected teacher is provided under Rule 6 (viii) of Chapter V of the Kerala Education Rules. The Manager of an aided school in a district cannot have knowledge regarding the availability of protected hands as required in the rules. Therefore, such information should be made available to the



Managers of newly opened schools, enabling them to comply with the rules.

11. The various circulars issued by the Director of General Education mandates that the Deputy Director of Education has to forward a list of protected teachers to the Managers for making appointment. This Court in **Nadeera T.S** (supra) has held that in Rule 6 (viii) of Chapter V of the Kerala Education Rules regarding the appointment of protected hand, time factor is not mentioned.

12. Taking note of the fact that the availability of the protected hands may be delayed, this Court in **Nadeera T.S** (supra) held that to compel a Manager to postpone the appointment of a qualified teacher even after the post is sanctioned by the staff fixation order will go against the scheme of the Act and Rules itself. This Court in **Nadeera T.S** (supra) further held that when the staff fixation order permits the appointment of the required number of staff, the Manager will have to make the appointment in existing vacancies, and the exercise of the power of the Manager in such cases cannot



be said to be against the scheme of the Act.

13. A Division Bench of this Court in **State of Kerala and Others v. Haseena and Another [2013 (2) KHC 103]** held that as per Rule 6(viii) of Chapter V of the Kerala Education Rules, the only obligation cast on the Managers of the aided schools is that they must appoint the protected teachers, whenever a list is sent and beyond that, there is no other obligation cast on them. In the present case, the official respondents have no case that a protected teacher was available, and the list of protected teachers, as required, was forwarded to the Manager concerned.

14. In **Nadeera T.S (supra)**, this Court made the following observations:

“16. Therefore, it can be seen that when the Manager exercised his power to make appointment in terms of staff fixation order of a qualified teacher, the postponement of the approval on the plea that the same can be done only from the date of appointment of the protected hand may not be justified.....

17.As far as grant of approval is concerned, normally, it should conform to the existence of vacancy and the sanction of post as per the staff fixation order and the eligibility of the teacher for appointment by fulfilling the qualification. Once these conditions are satisfied, unless there



is any other legal bar for granting approval, there cannot be a refusal to grant approval normally.”

15. In **Nadeera T.S** (supra), this Court held that there is no enabling provision which allows the Educational Officer to postpone the approval till a protected hand is appointed till the recent Government Order dated 19.11.2009 was issued which can only be prospective. In the present case, evidently, there was no prohibition at the time of appointment of the petitioner.

16. Apart from that, the appointment of a teacher in a school only recognises the obligation of the Manager to conduct the school in terms of the Statute, requirements of the students, and staff fixation. The primary concern is the welfare of the students, and therefore, unless a qualified hand is appointed, the Manager will not be able to conduct the school in a proper manner. This does not mean that he can wriggle out of the obligation regarding the appointment of a protected hand, but the system should not be stretched to the extent of denying approval of the appointment of a



qualified teacher, that too in vacancies like those herein, which arose due to retirement of qualified teachers {Vide: **Nadeera T.S and Another v. State of Kerala and Others [2011 (3) KHC 650]**}.

17. The petitioner is entitled to the reliefs prayed for in the Writ Petition. The impugned orders Exts.P1, P2, P3, and P6 stand quashed. The District Educational Officer (Respondent No.4) is directed to approve the appointment of the petitioner with effect from 02.06.2008. The necessary orders shall be passed within a period of two months from the date of receipt of a certified copy of this judgment. The petitioner is entitled to all consequential benefits.

The Writ Petition (Civil) is allowed as above.

Sd/-
K.BABU,
JUDGE



APPENDIX OF WP(C) 2454/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER
NO.L.DIS/B4/5020/08 DATED 04.10.2008 OF
THE DEO.
- EXHIBIT P2 TRUE COPY OF THE ORDER
NO.K.DIS/B4/27450/09 DATED 09.06.2009
OF THE DDE.
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.
EMI/57867/2009/DPI/K.DIS DATED
17.12.2009 OF THE DIRECTOR.
- EXHIBIT P4 TRUE COPY OF THE REVISION FILED BEFORE
THE GOVERNMENT DATED 16.02.2010.
- EXHIBIT P5 TRUE COPY OF THE JUDGMENT IN WPC NO.
28520/2010 DATED 15/09/2010.
- EXHIBIT P6 TRUE COPY OF THE GO (RT)NO.
1723/2011/G.EDN DATED 07/05/2011 OF THE
GOVERNMENT.
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT IN WA NO.
2290/2015 DATED 25/07/2019.
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT IN WA NO.
2091/2018 DATED 28/06/2019.
- EXHIBIT P9 TRUE COPY OF THE LETTER NO
60930/J2/11.G.EDN DATED 25/10/2011 OF
THE GOVERNMENT.
- EXHIBIT P10 TRUE COPY OF THE GO (RT) NO.
424/2019/G.EDN DATED 31.01.2019 OF THE
GOVERNMENT.



2025:KER:7

W.P (C) No.2454 of 2021

14

EXHIBIT P11

**TRUE COPY OF THE GO (RT)
NO.2029/2017/G.EDN DATED 24/06/2017 OF
THE GOVERNMENT.**