

പതിനാലാം കേരള നിയമസഭ

പതിനാറാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നമിടാത്ത ചോദ്യം നം.3064

07/11/2019-ൽ മറുപടിക്ക്

എയ്ഡഡ് സ്ഥാപനങ്ങളിലെ നിയമനം പി.എസ്.സി.യ്ക്ക് വിട്ടുന നടപടി

ചോദ്യം

ഉത്തരം

ശ്രീ.പി.സി. ജോർജ്ജ്:

പ്രൊഫ. സി. രവീന്ദ്രനാഥ്
(പൊതുവിദ്യാഭ്യാസ വകുപ്പുമന്ത്രി)

- (എ) എയ്ഡഡ് സ്ഥാപനങ്ങളിലെ നിയമന നടപടി കേരള പബ്ലിക് സർവ്വീസ് യും കമ്മീഷൻ വിട്ട് നൽകണമെന്ന് ആവശ്യപ്പെട്ടുകൊണ്ട് ശ്രീ. എം.കെ സലീം നൽകിയ WP (C) No: 41271/2018 നമ്പർ കേസിൽ പൊതുവിദ്യാഭ്യാസ വകുപ്പിൽ നിന്നും ഹൈക്കോടതി മുമ്പാകെ നൽകിയ സത്യവാങ്മൂലത്തിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ;
- (ബി) എയ്ഡഡ് സ്ഥാപനങ്ങളിലെ നിയമന നടപടി നിലവിൽ സുതാര്യമായാണ് നടക്കുന്നതെന്ന് സർക്കാർ ഹൈക്കോടതിയെ അറിയിച്ചിട്ടുണ്ടോ; എങ്കിൽ വിശദമാക്കാമോ;
- (സി) എയ്ഡഡ് സ്ഥാപനങ്ങളിലെ നിയമന നടപടി കേരള പബ്ലിക് സർവ്വീസ് കമ്മീഷൻ മുഖേന നടത്തണമെന്ന് യുവജനക്ഷേമവും യുവജനകാര്യവും സംബന്ധിച്ച നിയമസഭാ സമിതി 2017 മെയ് 18 ന് നിയമസഭയിൽ സമർപ്പിച്ച റിപ്പോർട്ടിന്മേൽ പൊതുവിദ്യാഭ്യാസ വകുപ്പ് എന്തൊക്കെ നടപടികൾ സ്വീകരിച്ചു; വിശദമാക്കാമോ?

(എ) ഈ കേസ് സംബന്ധമായ സർക്കാർ നിലപാട് ഹൈക്കോടതിയെ അറിയിച്ചുകൊണ്ട് നൽകിയ സത്യവാങ്മൂലത്തിന്റെ പകർപ്പ് അനുബന്ധം 1 ആയി ചേർക്കുന്നു.



സെക്ഷൻ ഓഫീസർ

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

W. P. (C) No. 41271 of 2018

M.K. Salim : Petitioner

Vs.

State of Kerala & Others : Respondents

**COUNTER AFFIDAVIT FILED BY THE 1st AND 2nd
RESPONDENTS
IN THE ABOVE WRIT PETITION**

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I, A. Shajahan, S/o. Abdul Rasak, aged 58 Years, residing at Thiruvananthapuram, do hereby solemnly affirm and state as follows:-

1. I am the Secretary to Government, General Education Department, Government Secretariat, Thiruvananthapuram. I am conversant with the facts of the case as disclosed from the relevant records. I have been authorized to swear to this affidavit on behalf of the 1st and 2nd respondents. I have read and understood the contents of the writ petition and also of the affidavit filed along with it. All the averments and allegations in the Writ Petition, in so far as they are contrary or inconsistent to the facts admitted hereunder are incorrect and hence denied. The Writ Petition is not maintainable either in law or on the facts of the case.

2. As per Section 11 of Kerala Education Act 1958 (hereinafter referred as 'the Act' for brevity), subject to the Rules

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and conditions laid down by the Government, teachers of aided schools shall be appointed by the Managers of such schools from among the persons who possess the qualification prescribed under section 10 of the Act.

3. As per Section 36 of the Act, Government may make Rules either prospectively or retrospectively for the purpose of carrying into effect the provisions of this act.

4. As per Section 11 of the Act and Rule 1 of Chapter XIV A of Kerala Education Rules (KER for short), Manager is the appointing authority in aided schools.

5. The Petitioner now challenges the statutory rules passed by the Government in 1959, after a long period of 60 years. The contention of the petitioner that, it is against article 14 and 16 of the constitution is baseless. The academic/training qualification prescribed by the Government for appointment to the posts of aided as well as Government schools are one and the same. Hence candidates having the same educational qualification are being considered for appointment to the schools in both sectors. Only the mode of appointment is different.

6. It is submitted that though Manager is the appointing authority in aided schools, he cannot make appointments discarding the qualifications and the service conditions for respective posts prescribed by the Government and existent ban on filling up posts, if any. As per section 11 of the Act and Rule 1 Chapter XIV A of KER, it is mandatory on the part of the Manager to follow Rules/Government directions issued by Government from time to time while making appointments. If the Manager violates the rules, there is also provision in Rule 7 of Chapter III of KER to declare him unfit to hold the office of the Manager. It is pertinent to note that, appointment of a Manager should also be approved by the Educational Officer concerned under Rule 4 *ibid*.

7. It is submitted that, it cannot be said that the appointment made by the Manager is ultimate and it should be approved. The Educational Officer concerned at various levels such as Assistant Educational Officer, District Educational Officer, Deputy Director of Education and the Director of Public Instructions, verify the appointments made by the Manager and approve the same. Rule 8 of Chapter XIV A KER elaborately describes the process involved in this regard. Then only the teacher appointed to a particular post gets approval in the post and only thereafter he/she get salary from Government exchequer. Hence it is clear that in the aided sector, though the teachers are appointed by Managers, their appointment (tentative) will be approved/confirmed only after it is verified at various levels in Government machinery, according to the Rules/Government directions prevailing at the time of appointment.

8. Taking stock of the above circumstances, and in consideration of the social as well as legal circumstances considering the financial liability which will be incurred if such schools are taken over by the Government, it is humbly submitted that it being a policy matter, Government does not intend to amend the Kerala education Act and Rules for the time being, so as to make appointments in aided schools only through Kerala Public Service Commission.

9. The contention of the petitioner that, the existing mode of appointment in the aided sector is against article 14 and 16 of the Constitution is baseless. The academic/ training qualification prescribed by the Government for appointment to the posts of aided as well as Government schools are one and the same. Hence candidates having the same educational qualification are being considered for appointment to the schools in both sectors, only the mode of appointment is different. The comparison of the petitioner between the appointment of candidates in schools and the appointment of candidates in various other departments like KSRTC is totally baseless.

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10. It is submitted that it cannot be said that the appointment made by the Manager is ultimate and it should be approved. As mentioned above, the concerned Educational Officers at various levels (AEO/DEO/DD/DPI) verify the appointments made by the Manager and then only give approval. Only thereafter, the teacher appointed to a particular post get salary from Government exchequer.

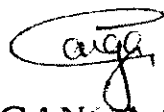
In the light of above facts, it is submitted that the writ petition is devoid of merit and hence liable to be dismissed.

All the facts stated above are true and correct to the best of my knowledge, information and belief.


Dated this the 7th day of August, 2019.


DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 7th day of August, 2019 at the Office of the Government Secretariat, Thiruvananthapuram.


GANGA G.R
Section Officer
.....G. Ed. Dept.
Govt. Secretariat
Thiruvananthapuram

PRAMOD. P.G.
GOVERNMENT PLEADER


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