

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 15TH DAY OF DECEMBER 2021 / 24TH AGRAHAYANA, 1943

WP(C) NO. 26419 OF 2020

PETITIONER:

THARA THANKAM DAVID
D/O. (LATE) DAVID SOLOMAN, KOALATH HOUSE,
VATTAPPARA P.O., THIRUVANANTHAUPRAM-696 028.

BY ADVS.
DR.GEORGE ABRAHAM
SHRI.JOBY D JOSEPH

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM-695 001.
- 2 DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM-695 014.
- 3 MANAGER
CORPORATE MANAGEMENT OF LUTHERAN SCHOOLS,
CONCORDIA HIGHER SECONDARY SCHOOL COMPOUND,
PEROORKADA P.O., THIRUVANANTHAPURAM-695 005.
- 4 REGIONAL DEPUTY DIRECTOR
DIRECTORATE OF HIGHER SECONDARY EDUCATION,
CHENGANNUR--689121.
- 5 DEPUTY DIRECTOR OF EDUCATION
THIRUVANANTHAPURAM-695 001.

6 SREEJA O.
 LABORATORY ASSISTANT, CONCORDIA,
 LUTHERAN HIGHER SECONDARY SCHOOL, SOUTH ARYAD,
 ALAPPUZHA-686 563.

 BY ADVS. SRI BIJOY CHANDRAN, SR. GP
 SRI. LIJU.V.STEPHEN
 SRI. INDU SUSAN JACOB

 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.12.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Sri. David Soloman, the father of the petitioner, had worked as a Headmaster at the Concordia Upper Primary School, Peroorkada. He expired while in service on 12.02.2009. At the time of the death of Sri. David Soloman, the petitioner was a minor. The petitioner contends that being the dependent of the deceased, she submitted Ext.P2 application in the prescribed format for getting employment under the Dying in Harness Scheme in terms of Rule 51B of Chapter XIV A of the KER. When the Manager refused to consider the request, the petitioner approached this Court and filed W.P.(C)No.26279 of 2019. The 2nd respondent in the meanwhile issued Exhibit-P8 communication directing the petitioner to approach the Manager and get the application processed. However, in terms of the directions issued by this Court, the request made by the petitioner was taken up. However, no orders have been passed to date. The petitioner contends that there has arisen vacancies of non-teaching staff at the Lutheran High School and the petitioner in the said circumstances approached the RDD. The RDD forwarded the request made by the petitioner to the Regional Director as is evident from Ext.P10. The petitioner contends that thereafter the 6th respondent was appointed as Laboratory

assistant by overlooking the claim of the petitioner. It is in the afore circumstances that the petitioner is before this Court seeking to quash Ext.P8 and P10 and for issuance of further directions to respondents 1 to 5 to terminate the service of the 6th respondent from the post of Laboratory Assistant and to appoint the petitioner and for incidental reliefs.

2. A detailed counter affidavit has been filed by the 3rd respondent controverting the contentions. After narrating the sequence of events justifying the acts of the 3rd respondent, it is stated as follows in the 7th paragraph of the counter affidavit:

“7. The 3rd respondent further reiterates that, as submitted before the respondent authorities on earlier occasions, the 3rd respondent is willing to consider petitioner for appointment under the Compassionate Appointment Scheme in the vacancies that will arise in future in the non-teaching category under the 3rd respondent Schools on receipt of proper application with the requisite documents.”

3. Sri. George Abraham, the learned counsel appearing for the petitioner submits that in view of the assertion in the counter affidavit that the management is willing to consider the petitioner for appointment under the compassionate appointment scheme, in the vacancies which are likely to arise in future, the said assertion be recorded and the writ petition be

disposed accordingly. The learned counsel would also rely on the judgment of the Apex Court in *Shreejith L. v. Deputy Director (Education) Kerala and Ors* [(2012) 7 SCC 248] and it is submitted that an application for compassionate appointment cannot be rejected for the reason that it is not in the prescribed format. According to the learned counsel, if there are deficiencies and defects in the application form, the same has to be pointed out and an opportunity should be given to remove the same within a reasonable time. Only if the defects are not removed within the time granted can an adverse inference be drawn.

4. Sri. Bijoy Chandran, the learned Senior Government pleader would refer to the Order No. ET (4)/41200/2019/DGE dated 20.1.2020 which was produced along with the memo and it is submitted that the Additional Director had noted the contention of the management that the petitioner had not submitted any application before the management seeking compassionate appointment. The officer had also noted the contention of the management that her application for compassionate appointment could be considered if the petitioner produced before the management all records including legal heirship certificate, death certificate of her father, income certificate, age and certificate showing the qualification.

5. Smt. Indu Susan Jacob, the learned counsel appearing for the 3rd respondent reiterated the stand in the counter that the 3rd respondent is willing to consider the petitioner for appointment under the compassionate appointment scheme in the vacancies, that are likely to arise on or after 20.01.2020, the date on which the Additional Director had passed the order. It is submitted by the learned counsel that to date, the documents made mention of in the order dated 20.01.2020 have not been produced.

6. I have considered the submissions advanced and have perused the records. In view of the stand taken by the management that the petitioner can be considered for appointment under the compassionate appointment scheme in the vacancies that are likely to arise in future in the non-teaching category, necessary directions can be issued.

7. Resultantly, there will be a direction to the petitioner to submit the documents made mention of in Order No. ET (4)/41200/2019/DGE dated 20.1.2020 of the Additional Director within a period of ten days from the date of receipt of a copy of this judgment. On such production, the 3rd respondent shall consider the petitioner for appointment under the compassionate appointment scheme in the vacancies that are likely to arise on or after 20.1.2020. It is made clear that the petitioner shall be appointed within a period of 30 days from the date on which the vacancy

arises.

This writ petition is disposed of with the above directions.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

DSV

APPENDIX OF WP(C) 26419/2020

PETITIONER(S) EXHIBITS :

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| EXHIBIT P1 | TRUE COPY OF THE DEATH CERTIFICATE OF SRI. DAVID SOLOMAN ISSUED BY THE DEPARTMENT OF URBAN AFFAIRS. |
| EXHIBIT P2 | TRUE COPY OF THE COVERING LETTER DATED 11.8.2012, ALONG WITH NECESSARY APPLICATION FORMS WITH CONSENT LETTER OF OTHER DEPENDENTS. |
| EXHIBIT P3 | TRUE COPY OF THE ACKNOWLEDGMENT CARD ISSUED BY THE MANAGER DATED 6.11.2012. |
| EXHIBIT P4 | TRUE COPY OF THE LETTER SENT BY THE PETITIONER DATED 8.12.2017. |
| EXHIBIT P5 | TRUE COPY OF THE COMMUNICATION ISSUED BY THE PETITIONER TO THE SECRETARY, THIRUVANANTHAPURAM SYNOD. |
| EXHIBIT P6 | TRUE COPY OF THE PETITION SUBMITTED BEFORE THE 2ND RESPONDENT DATED 13.8.2019. |
| EXHIBIT P7 | TRUE COPY OF THE JUDGMENT DATED 3.10.2019 IN WPC NO.26276/2019. |
| EXHIBIT P8 | TRUE COPY OF THE COMMUNICATION DATED 23.9.2019 ISSUED BY THE 2ND RESPONDENT. |
| EXHIBIT P9 | TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT DATED 3.12.2019. |
| EXHIBIT P10 | TRUE COPY OF THE COMMUNICATION DATED 10.1.2020 ISSUED BY THE REGIONAL DEPUTY DIRECTOR. |

RESPONDENT(S) EXHIBITS :

- EXHIBIT R3(a) TRUE COPY OF THE LETTER DATED 15.10.2019 MADE BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT R3(b) TRUE COPY OF THE LETTER DATED 03.12.2019 INTIMATING THE HEARING SCHEDULED ON 13.12.2020.
- EXHIBIT R3(c) TRUE COPY OF THE HEARING NOTE SUBMITTED BY THE 3RD RESPONDENT FOR THE HEARING ON 13.12.2019.
- EXHIBIT R3(d) TRUE COPY OF THE ORDER DATED 20.1.2020 ISSUED BY THE ADDITIONAL DIRECTOR GENERAL OF EDUCATION.
- EXHIBIT R3(e) TRUE COPY OF THE REPLY DATED 19.12.2019 MADE BY THE 3RD RESPONDENT.
- EXHIBIT R3(f) TRUE COPY OF THE CIRCULAR DATED 30.08.2017 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT R3(g) TRUE COPY OF THE APPOINTMENT ORDER DATED 7-7-2019 OF MR. VIVEK J O
- EXHIBIT R3(h) TRUE COPY OF THE APPOINTMENT ORDER DATED 7-7-2019 OF SMT. SREEJA O
- EXHIBIT R3(i) TRUE COPY OF THE PROCEEDING DATED 17-8-2020 OF THE 4TH RESPONDENT
- EXHIBIT R3(j) TRUE COPY OF THE APPROVAL ORDER DATED 25.08.2020 ISSUED BY THE 4TH RESPONDENT.