
(2014) 03 KL CK 0089
In the High Court Of Kerala
Case No : W.P. (C) No. 23657 of 2005

Chandrasekharan Manikoth	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Constitution of India, 1950 — Article 21A, 30(1)

Citation : (2014) 2 ILR 436 : (2014) 2 KLJ 477 : (2014) 2 KLT 1010 : (2014) LabIC 1844

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : P.T. Antony, Advocate for the Appellant; V.V. Asokan, (Senior Advocate), Smt. S. Amina, Sri K.V. Sohan, Smt. Sreeja Sohan, K. and Smt. Anitha Ravindran, (Senior Government Pleader), Advocate for the Respondent

Final Decision : Dismissed

Judgement

Alexander Thomas, J.—The petitioner herein, who claims proprietary and managerial rights in respect of the 3rd respondent Iverkulam Grameena Padasala Upper Primary School, has approached this Court, with the prayers for a writ of mandamus to direct respondents 1 to 3 not to fill up any vacancy in the 3rd respondent aided school or make any appointment in the said school. The Writ Petition was subsequently amended pursuant to order dated 25-6-2012, whereby a writ of certiorari is also sought to quash the impugned Ext. P-6 Government Order dated 1-7-2005, Ext. P-7 order dated 4-8-2005 passed by the 2nd respondent Assistant Educational Officer (AEO) and Ext. P-8 order dated 13-2-2006 passed by the 2nd respondent AEO.

2. The gist of the case of the petitioner is as follows:

That the Iverkulam Grameena Padasala U.P. School and the Sankara Vilasam Grameena Padasala U.P. School were earlier under the same management and it was under the managership of one Sri G. Sankara Kurup. That Sri Sankara Kurup died in July 2003 and that even earlier, civil litigation was pending in the

competent civil court in the matter of partition of the family properties in question, which also included the issue of partition of the proprietary rights over the above said two schools in question. The preliminary decree in that original suit, viz., O.S. No. 84/1997 on the file of the Sub Court, Thalassery, was passed as per Ext. P-1 on 5-7-2000. It is not disputed by any of the parties that as per clause VII of Ext. P-1 preliminary decree passed on 5-7-2000, it has been expressly stipulated by the civil court concerned that the allotment of the schools in question etc., is left open to be decided in the final decree proceedings. It is also not in dispute that the final decree was passed only on 18-5-2005, whereby there was a bifurcation as regards the proprietary rights of the two schools in question. By this final decree rendered on 18-5-2005, the rights over the Iverkulam Grameena Padasala U.P. School were allotted to the writ petitioner and some members of his family and the rights over the Sankara Vilasam Grameena Padasala U.P. School were allotted to the 4th respondent and some other members of his family. Earlier a leave vacancy had arisen in the Sankara Vilasam Grameena Padasala for the period from 21-8-2000 to 23-10-2000 and later, another leave vacancy arose in the same school from 2-6-2003 to 29-8-2003. The then Manager of the school, who was lawfully approved by the Department had appointed the 5th respondent, Smt. P. C. Praseetha, in the aforementioned vacancy for the period from 21-8-2000 to 23-10-2000 as per Ext. R-5 (a) appointment order. The said appointment order was duly approved by the competent Educational Officer as per proceedings dt. 21-9-2001. Later, the 5th respondent was also appointed in the second spell of vacancy referred to above for the period from 2-6-2003 to 29-8-2003 in the same school and the said subsequent appointment made by the Manager was also approved by the educational authority concerned. Later, a regular vacancy arose in the Iverkulam Grameena Padasala School on 22-11-2004, consequent on the resignation of one Smt P. Vasanthi. Yet another vacancy, by way of retirement, had occurred in the other school, viz., Sankara Vilasam school, which arose on 1-6-2005. The 5th respondent represented to the official respondents that she has a lawful Rule 51 A claim under the Kerala Education Rules (KER) for getting appointment in the regular vacancy which arose on 22-11-2004 in the Iverkulam school and steps were then taken by the departmental authorities to grant her appointment in the said regular vacancy in the Iverkulam school. The petitioner, thereupon, approached this Hon'ble court by filing the above Writ Petition on 8-8-2005. This Court as per Ext. P-5 rendered the interim order on 9-8-2005 in this W.P. (C), to the following effect.

Not admitted. Issue urgent notice on admission by speed post. Appointment, if any, given to the 5th respondent will not be approved in the meanwhile. Post as soon as respondents 4 and 5 are served with notice.

3. Pursuant to the claim made by the 5th respondent as per Rule 51A as against the vacancy which arose in the Iverkulam school, the AEO had permitted the petitioner to continue as teacher in that vacancy and had submitted a report to the Government recommending the case of the petitioner for approval of

appointment in that regular vacancy, as per Rule 51A. The 5th respondent had also represented to the Government to issue necessary orders to the 2nd respondent AEO in the matter of appointment and approval for such appointment in the said vacancy in the Iverkulam school. Thereupon, the Government passed Ext. P-6 Government Order dated 1-7-2005 recognizing the Rule 51A claim of the 5th respondent and directed the AEO to take necessary steps in the matter of approval of the 5th respondent's appointment in the regular vacancy that arose on 22-11-2004 in the Iverkulam school. In pursuance of Ext. P-6 GO. Dated 1-7-2005, the 2nd respondent AEO issued Ext. P-7 proceedings dated 4-8-2005 granting necessary approval to the appointment of the 5th respondent in the said vacancy in the Iverkulam school. Subsequently, the 5th respondent's probation pursuant to the said appointment was also declared by the 2nd respondent as per Ext. P-8 proceedings. It is also submitted by the petitioner that, subsequently, the Director of Public Instructions (DPI), as per Ext. P-9 order dated 4-7-2012, in exercise of the powers under Rule 5 A, Chapter in KER, accorded sanction for approving the managership claim of the petitioner in respect of the Iverkulam school. It is also submitted that in compliance with Ext. P-9 order dated 4-7-2012 issued by the DPI, the 2nd respondent AEO had also issued Ext. P-10 order dated 5-11-2012, approving the status of the petitioner as Manager of the Iverkulam school as per Rule 5 A, Chapter III KER, retrospectively with effect from 30-5-2005.

4. Among the various grounds advanced by the petitioner, the primary contention is that the official respondents 1 and 2 have issued the impugned Exts. P-6 and P-7 orders in derogation of the provisions of the statute governing the field. It is urged that as the proprietary right over the Iverkulam school was allotted to the petitioner as per the civil court's final decree, the 5th respondent's Rule 51A claim could not have been honoured in the Iverkulam school and should have been ordered only as against the regular vacancy which arose on 1-6-2005 in the Sankara Vilasam school. This contention is on the basis that the 5th respondent secured initial appointment as per Ext. R-5 (a) dated 21-8-2000 in the Sankara Vilasam school and that in view of the bifurcation of the schools, the 5th respondent's Rule 51A claim should have been considered only in the Sankara Vilasam school. The next contention of the petitioner is that the impugned Exts. P-6 and P-7 orders are issued in flagrant violation of this Court's interim order dated 9-8-2005 passed in this W.P. (C). It is further contended that as the petitioner has been approved as the Manager of the Iverkulam school as per Ext. P-10 dated 5-11-2012 retrospectively with effect from 30-5-2005, the said impugned orders as per Ext. P-6 dated 1-7-2005 and Ext. P-7 dated 4-8-2005 are issued without jurisdiction, in so far as the appointment order of the 5th respondent in the vacancy that arose on 22-11-2004, has not been issued by the petitioner who secured approval as Manager of the school retrospectively with effect from 30-5-2005. It is also contended that official respondents 1 and 2 have no power to effectuate the appointment and approval of such appointment of the 5th respondent as per the impugned Exts. P-6 and P-7 orders

retrospectively with effect from 22-11-2004.

5. Respondents 1 and 2 and 4 and 5 have filed their respective pleadings, resisting the claims and contentions of the writ petitioner.

6. Heard the learned counsel for the petitioner, the learned Government Pleader for respondents 1 and 2 and the learned counsel for 4th respondent and the learned counsel for 5th respondent.

7. During the course of the hearing, this Court had enquired with the petitioner's counsel as to whether the petitioner would prefer to be relegated to the statutory remedies available under Chapter XIV A of the KER to impugn Exts. P-7 and P-8 orders as there is a statutory provision envisaged under Rule 8 A of Chapter XIV A before the Director of Public Instructions to impugn the validity of the proceedings of the Educational Officer granting approval to an appointment in terms of Rule 8(2) of the KER. To this, the learned counsel for the petitioner submitted that as the impugned approval as per Ext. P-7 has been rendered in compliance with Ext. P-6 order of the 1st respondent Government, it is futile to avail revisional remedy under Rule 8 A before the DPI who is inferior to the Government which had passed the impugned Ext, P-6 order. I am of the considered opinion that the above said submission of the learned counsel for the petitioner is fully right and tenable and that the petitioner should not be relegated in this case to seek the revisional remedy under Rule 8 A of Chapter XIV A KER. More over, the Writ Petition was instituted in the year 2005 and has been pending before this Court for more than 8 1/2 years and it is not proper to relegate the petitioner to an alternate remedy at this distance of time and therefore the matter requires adjudication on merits. More over, both the petitioner as well as the 4th and 5th respondents have been eagerly awaiting for final verdict in this W.P. (C), for quite a long time and it is only just and proper that a decision is rendered in this writ proceedings after adjudication on the merits of the rival contentions of the parties.

8. The main issued to be decided in this case is as to whether the official respondents 1 and 2 were correct in issuing the proceedings as the one as per the impugned Exts. P-6 and P-7 in the matter of honouring the Rule 51A claim of the 5th respondent in the Iverkulam Grameena Padasala School, even though her initial appointment as per Ext. R-5 (a) dated 21-8-2000 was in the Sankara Vilasam School. It is common ground that both the schools in question were under the same management earlier. Though Ext. P-1 preliminary decree was passed on 5-7-2000, the allotment of the above schools has been expressly left open to be decided in the final decree proceedings as per clause VII of Ext. P-1 preliminary decree. So, lawfully, there was no bifurcation of two schools as two units in any manner in terms of Ext. P-1 preliminary decree rendered on 5-7-2000. It is much thereafter that the final decree was passed by the civil court on 18-5-2005, whereby the Iverkulam school was allotted to the petitioner and his family members and the Sankara Vilasam school was allotted to the 4th respondent and his family members. So, the bifurcation of the schools into two

units has become a legal reality only after passing of the final decree on 18-5-2005. Much prior to this, the 5th respondent was appointed on 21-8-2000 as per Ext. R-5 (a) appointment order made by the lawfully approved Manager of the school. This appointment was also duly approved by the educational authorities concerned. Still further, the 5th respondent also secured another spell of appointment in 2003, consequent on the appointment made by the lawfully approved Manager and even this appointment was duly approved by the educational authorities concerned.

9. To a specific query put by the Court to the learned counsel for the petitioner as to whether the petitioner has any dispute as to the validity and sanctity of the Rule 51A claim of the 5th respondent, it is fairly submitted by the learned counsel for the petitioner that the petitioner has no such dispute regarding the Rule 51A claim of the 5th respondent. However, the learned counsel for the petitioner vehemently contended that the Rule 51A claim of the 5th respondent ought not to have been honoured as against the regular vacancy that arose in the Iverkulam School on 22-11-2004, but should only have been honoured as against the regular vacancy that arose in the Sankara Vilasam school on 1-6-2005. The learned counsel for the petitioner explained that this submission is primarily on account of the fact that the 5th respondent secured the foundation of her Rule 51A claim in the year 2000 only consequent on her appointment in the Sankara Vilasam school as per Ext. R-5 (a) dated 21-8-2000 and not in the Iverkulam school and, therefore, her 51A claim should have been only honoured in the Sankara Vilasam school, consequent on the bifurcation of the management of the schools. An Under Secretary to the Government of Kerala has sworn to the counter-affidavit on behalf of the 1st and 2nd respondents in this case submitting that the 5th respondent had secured lawful Rule 51A claim consequent on her aforementioned two spells of appointment in the Iverkulam school and since the first vacancy to honour her Rule 51A claim arose on 22-11-2004 in the Iverkulam school, the claim of the 5th respondent under Rule 51 could have been honoured only as against the said first vacancy that arose in the Ivarkulam school on 22-11-2004. The same line of argument has been broadly followed by the contesting respondents as well.

10. Though a proviso has been introduced in Rule 51A stipulating a minimum period of one academic year service for staking a Rule 51A claim, the said amendment introducing the aforementioned proviso to Rule 51A has been made only as per G.O. (P) 121/05/G.Edn. dt. 16-4-2005 which led to the statutory amendment notification published in Gazette of Kerala dated 27-4-2005. In the instant case, the initial appointment as per Ext. R-5 (a) was in the year 2000 and the regular vacancy in the Iverkulam school also has arisen on 22-11-2004, which is much before coming into effect of the statutory amendment notification dated 27-4-2005. As the petitioner has secured her vested right as per Rule 51A prior to the above amendment notification, her Rule 51A claim is regulated by the unamended provision. None of the parties including the petitioner and the official respondents 1 and 2 including the Government have any dispute as to the

existence of a lawful Rule 51A claim of the 5th respondent. The only dispute herein is as to whether the 5th respondent's claim should have been honoured in the Iverkulam school or in the Sankara Vilasam school. Since the claim of the 5th respondent under Rule 51A is statutory, the same has to be given effect to. Moreover, the claim is to be enforced purely on objective and transparent criteria as laid down in Rule 51A. The aforementioned Rule 51A of Chapter XIV A of the KER, as it stood at the relevant time, reads as follows:

51 A. Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same Educational Agency or an Educational Agency to which the school may be subsequently transferred provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

Note 1. If there are more than one claimant under this rule the order of preference shall be according to the date of first appointment. If the date of first appointments is the same then preference shall be decided with reference to age, the older being given first preference. In making such appointments, due regard should be given to the requirement of subjects and to the instructions issued by the Director under sub-rule (4) of Rule 1 as far as High Schools are concerned.

Note 2. Manager should issue an order of appointment to the teacher by Registered post acknowledgement due and give a period of 14 (fourteen) clear days to the teacher to join duty. If the teacher does not join duty in time the Manager should give a further notice to the teacher stating that another person would be appointed instead and that the preferential right under this rule would be forfeited if not exercised within another 7 (seven) clear days. If nothing is heard during that time also, the preferential right under the rule will be regarded as forfeited.

11. So, qualified teachers who are relieved on account of termination vacancies shall have preference for appointment to future vacancies for the same category of teaching post for which he/she is qualified that may arise in the schools under the same educational agency etc. The 5th respondent was fully qualified for the appointment as per Ext. R-5 (a) dt. 21-8-2000 and that appointment was approved and she was also qualified for the appointment in the vacancy that arose on 22-11-2004. So, if there are more than one school under the same educational agency, even then the Rule 51A claim is to be enforced. It has been held in the case between Mrs. Rachel Phillip Vs. State of Kerala and Others, that the right conferred under Rule 51A does not in any way detrimentally affect the right to administer the school which is even claimed under Article 30(1) of the Constitution of India and is not restrictive even of that Constitutional Right The operative portion of Rule 51A subsequently lays down that the said right conferred on qualified teachers relieved on account of termination of vacancies shall have the preference for appointment of future vacancies in the schools

under the same educational agency, in case the educational agency has more than one school. Note 1 appended to Rule 51A further lays down that if there are more than one claimant under the Rule the order of preference shall be according to the date of the first appointment. Note 2 appended to the above said Rule 51A, further mandate that the Manager should issue an order of appointment to the teacher concerned by registered post with acknowledgment due and give a period of 14 clear days to the teacher to join duty and that if the teacher does not join duty in time the Manager should give a further notice to the teacher stating that another person would be appointed instead and that the preferential right under Rule 51A would be forfeited if not exercised within another 7 clear days and that if nothing is heard from the teacher during that time also, the preferential right under the Rule will stand forfeited. In the decision of this Court, in the case between P.K Pathumma Vs. State of Kerala, , it has been held that in view of the provisions in Note 2 appended to Rule 51A, the Manager is obligated to send an order of appointment by registered post requiring the teacher to join duty within the prescribed period so as to ensure full compliance with the provisions of the above said statutory rule.

12. It is a well-recognized general principle of service jurisprudence that in deciding on the entitlement of in-service personnel for career advancement like promotion, etc., ordinarily, it is the time of occurrence of vacancy that should be relevant in determining the question of promotion and not the time when the order of promotion is actually passed, as the relevant date must be definite and not depending upon the volition of the authorities, in order to avoid the arbitrariness in the determination of the eligibility and entitlement of the claimants. This is well-settled in a series of judicial rulings as in the cases between Varghese v. State of Kerala 1981 KLT 458 (F.B.), P. Padmanabhan Nair and Another Vs. The Deputy Director of Education, Malappuram and Others, , Manager HMHS v. State of Kerala 1987 (2) KLT 555. The general principle is that promotion should be made vis-?-vis the date of occurrence of the vacancy and not with reference to the date on which the appointment is actually made, as held in the case between M. James Thomas and Others Vs. The Hon"ble the Chief Justice and Others, . In the context of the promotions in the KER also it has been held by the court in the case between Meenakshy Vs. State of Kerala and Others that the vital and most relevant aspect to be ascertained is the date of occurrence of the vacancy. This general principle to reckon the date of occurrence of the vacancy for deciding on the eligibility and entitlement of claims, is also importable in the context of a claim to "future" vacancy referable to Rule 51A. The most vital and relevant aspects for determining the eligibility and entitlement of Rule 51A claim to a "future" vacancy should necessarily be the date of occurrence of the "future" vacancy in question and not with reference to the time at which the actual order of appointment and approval is secured for such Rule 51A claimant. The relevant date for determining precisely the title of Rule 51A claimant to a "future" vacancy must be definite and ascertainable by objective criteria and should not be one dependent on the volition of the

authorities, as otherwise the determination would be arbitrary. Therefore, one of the most relevant aspects in the enforcement of Rule 51A claim is as to the state of affairs that existed as on the date of occurrence of the "future" vacancy referred to in Rule 51A.

13. In the case between Mary Commen Vs. Manager, M.G.M. High School, Kuruppampaddy, Kerala and Others, , the Supreme Court has held that though the operative portion of Rule 51A does not in terms lay down that one who worked earlier should be preferred to the one who worked later, but that it could not be in accord with justice to prefer the one who worked later to the one who worked earlier in the absence of anything in the rule giving to the management a right to choose between the two on the ground of suitability, merit or efficiency and therefore, it has held by the Apex Court in that decision that the statutorily laid down preference stipulated in Rule 51A should be based on priority of title and that Rule 51A clearly confers priority to the earlier appointee. Suffice to hold that the provisions in Rule 51A of the KER are mandatory and the statutory functionaries under the KER are obliged to give effect to such statutorily conferred preferential right. It has been reiterated by this Court in the case between Shobhana, A. Vs. Manager and Others, that the aforementioned statutory provisions is mandatory and only if there is refusal to join duty after issuance of appointment order by registered post and after complying with the necessary procedure laid down in the said rule, can the claim or preferential right under Rule 51A be treated as forfeited. It has been further held by this Court in the case between Poornima Vs. Director of Public Instructions, that for the purpose of applying Rule 51A of Chapter XIVA, KER, what is relevant is the date of first appointment and not the date on which such appointment is approved. The said judgment had been affirmed by the Division Bench in W.A. No. 1012/2005.

14. In view of the aforementioned aspects, the vital and relevant aspects in the determination of Rule 51A claim would be the date of first appointment of the claimant as well as the date of occurrence of the "future" vacancy, subject to fulfillment of all other eligibility conditions.

15. So, it is fully evident that even in the case where the educational agency/management concerned has more than one school, the statutory claim as per Rule 51A can be enforced for appointment to future vacancies in the schools under the same educational agency. For instance, a management has two schools viz., school "A" and school "B" an incumbent is initially appointed in school "B" and such a qualified teacher is relieved on account of termination of vacancy as envisaged under Rule 51A and later, a future vacancy is arising in school "A", then such an incumbent has the preferential right to be appointed to such vacancy which has arisen in school "A" itself, notwithstanding the fact that his/her initial appointment, which gave rise to the foundation of his/her Rule 51A claim, was pertaining to school "B". What are really relevant are; the date of first appointment of the incumbent concerned which forms the foundation for Rule

51A claim as well as the date of occurrence of the "future" vacancy. In a case where the Management has more than one school and the management of the schools is bifurcated in the manner known to law, Rule 51A claim which has arisen prior to such bifurcation in any of the schools in question has to be enforced against the first future vacancy that arises in any of the schools, so long as the situation is one pertaining to the period prior to the bifurcation of the management of the school in the manner known to law. This is because the crucial relevant factor is the state of affairs that existed as on the date of occurrence of "future vacancy" and if such vacancy has arisen prior to the bifurcation of the schools, then the claim is to be honoured as against such arisen vacancy.

16. In the instant case, it is beyond dispute that prior to the passing of the final decree on 18-5-2005, the two schools in question cannot be said to have been bifurcated in the manner known to law and therefore, the departmental authorities are bound to treat those two schools as one unit coming under the same management for the purpose of Rule 51A. The initial appointment of the 5th respondent in this case was on 21-8-2000 as per Ext. R-5(a) and the date of occurrence of the "future" vacancy in question against which Rule 51A claim is sought to be honoured has admittedly arisen on 22-11-2004, which is prior to the bifurcation of the schools as per the decree rendered on 18-5-2005. So, irrespective as to which among the two schools the 5th respondent had secured her initial appointment as per Ext. R-4(a) and irrespective as to in which school the subsequent vacancy has arisen, what has to be examined and decided by the departmental authorities is as to whether the incumbent had secured Rule 51A claim as per the statutory provisions and whether the subsequent vacancy to which such claim is sought to be honoured, has arisen at a point of time prior to the bifurcation of the schools in the manner known to law. In the instant case, the first regular vacancy in question against which Rule 51A claim is sought to be honoured, has arisen on 22-11-2004. It is only on or after 18-5-2005 that the two schools can be said to have been bifurcated into two units in the manner known to law. So irrespective as to who was the Manager of the schools, the management as well as the statutory educational authorities concerned as per the KER were under the legal obligation to ensure that the incumbent, who secured her Rule 51A claim in the year 2000, is given the preferential right for appointment under Rule 51A as against the first vacancy which has arisen. This position is irrespective as to in which among the two schools such subsequent vacancy has arisen, as long as it is prior to the bifurcation. This is the only objective and rational way of enforcing Rule 51A claim in the case of schools which are subsequently bifurcated. So, irrespective as to whether the subsequent first "future" vacancy in question has arisen either in Iverkulam School or in Sankara Vilasam School, the management and the statutory functionaries were obliged to honour the Rule 51A claim of the 5th respondent in the facts of the instant case. Therefore, there is no unreasonableness or illegality or impropriety in the issuance of the impugned Exts. P-6 and P-7 orders passed by the first

respondent Government and the 2nd respondent AEO respectively in the matter of honouring of the Rule 51A claim of the 5th respondent. So, merely on account of the fact that there was no clarity as to who was the Manager of the schools in question, till its bifurcation, the claim of the 5th respondent as per Rule 51A could not be defeated or postponed. Therefore, the 1st respondent Government and the 5th respondent AEO, who are the statutory functionaries under the provisions of the KER are fully right in issuing the impugned proceedings as per Exts. P-6 and P-7 in the matter of approval of appointment of the 5th respondent in the vacancy which arose on 22-11-2004 in the Iverkulam Grameena Padasala U.P. School. Suffice to say that the contention of the petitioner that the impugned Exts. P-6 and P-7 orders have been issued in violation of the statute governing the field, is untenable and unsustainable.

17. The petitioner has also vehemently contended that the impugned orders as per Exts. P-6 and P-7 have been passed by the official respondents in violation of the interim order dated 9-8-2005 passed by this Court in the W.P. (C). It is to be noted that the said interim order dated 9-8-2005 [produced in the amended W.P. (C) as Ext. P-5] was passed even before admitting the W.P. (C) and it was specifically ordered therein only to the limited extent that appointment, if any, given to the 5th respondent will not be approved, in the meanwhile and to post the W.P. (C) as soon as respondents 4 and 5 are served with notice. Notice could not be served on respondent No. 5 as the same was returned unserved stating that the address of that respondent is insufficient it is only thereafter that the petitioner took steps to take out notice to 5th respondent in the correct address and this was permitted as per order dated 20-3-2006. Later, on 19-7-2006 and 8-8-2006, it was noted by the Registry that notice could not be sent as the process was not filed by the petitioner. Still further, the petitioner did not take any steps in this regard and this Court by interim order dated 23-5-2008 was constrained to order that in case steps are not taken to complete service within one week, the writ petition will stand dismissed. Even thereafter, there was an endorsement of the Registry on 18-6-2008 that notice to respondent is not returned after service and that service is not complete. On 20-6-2008, it has been ordered that the W.P. (C) be posted only after service of notice. The interim order dated 9-8-2005 was rendered before the admission of the W.P. (C). The W.P. (C) was admitted only on 20-3-2006. That the petitioner has not taken timely steps to serve notice on the contesting respondents is clear from the above said orders and proceedings of this Court referred to above. At any rate, it can be seen that the interim order dated 9-8-2005 is only to the extent that the appointment, if any, given to the 5th respondent will not be approved in the meanwhile. It can be seen that the impugned Ext. P-6 order was passed by the Government on 1-7-2005, in the matter of the approval of the impugned appointment of the 5th respondent. Consequential order as per the impugned Ext. P-7 was passed by the 2nd respondent AEO granting approval to the appointment of the 5th respondent on 4-8-2005. So, it can be seen that both Exts. P-6 order dated 1-7-2005 and Ext. P-7 proceedings dated 4-8-2005 have

been passed by the official respondents prior to the rendering of the interim order dated 9-8-2005. So, as the impugned approval has been granted prior to the interim order dated 9-8-2005, the directions therein had become practically infructuous. It should also be noted that the petitioner has not taken any further steps for vigilantly prosecuting the matter in this writ proceedings in view of the aspects stated earlier herein above.

18. Therefore, as the impugned Exts. P-6 and P-7 orders have been passed prior to the passing of the interim order dated 9-8-2005, it cannot be said that Exts. P-6 and P-7 were issued in violation of this Court's interim order dated 9-8-2005. To a pointed query to the learned counsel for the petitioner during the course of hearing, as to whether the petitioner has a case that the dates pertaining to Exts. P-6 and P-7 are pre-dated so as to get over the interim order dated 9-8-2005, the learned counsel for the petitioner fairly submitted that the petitioner has no such case. Therefore, it cannot be said that the said impugned Exts. P-6 and P-7 orders are in any way issued in derogation of this Court's interim order dated 9-8-2005. The contention of the petitioner in that regard is only to be rejected.

19. Petitioner's counsel has also contended that the 2nd respondent Educational Officer has no jurisdiction to order the appointment of the 5th respondent in the Rule 51A claim vacancy, as that power is exclusively within the domain of the aided school Manager. Though at first blush, the said contention appears to be attractive, the same is devoid of any substance, in the facts of this case. True, that the appointing authority of the teachers of an aided school is the Manager of the school concerned. But in this case, the situation was fluid and there was no clarity as to who was the Manager of the school, due to the pendency of the various steps in the litigative action. Law abhors vacuum or chaos, especially chaotic vacuum, in the affairs in the running of a school aided by the Government. So, in such situation of vacuum, the Governmental authorities have the necessary reserve and incidental powers to take all necessary action so as to take care of the interest of the students and teachers of the aided school. The activity of education conducted in an aided school, is intimately connected to public interest as the entire expenditure for payment of the salaries of the teaching and non-teaching staff of the school is borne from the public exchequer. Such an activity in the field of education is also a facet of the constitutionally recognised right to education enshrined in Article 21A of the Constitution of India and the laws framed in furtherance of that provision. Therefore, public interest demand that such situation of vacuum should be dealt with by the governmental agencies, so as to provide smoothness in the administration of the school. Moreover, in the instant case, the official respondents 1 and 2 are statutorily obliged to honour the Rule 51A claim and hence they have all necessary reserve powers to effectuate such claim. Hence the impugned action of respondents 1 and 2 cannot be said to be without competence in the facts and circumstances of this case and it is held that the same has been done fully in public interest in order to fulfill their statutory obligation. Accordingly, the above said contention of

the petitioner stands repelled.

20. The contention of the petitioner that regarding the retrospectivity of securing approval as Manager of the Iverkulam school with effect from 30-5-2005 as per Ext. P-10, is also devoid of any merit, due to reasons, more than one. Firstly, Exts. P-9 and P-10 proceedings have actually been issued only on 4-7-2012 and 5-11-2012 respectively, which are much after the issuance of the impugned Exts. P-6 and P-7 orders. Secondly and more importantly, though the petitioner is approved as the Manager of the Iverkulam school as per Ext. P-10 dated 5-11-2012 with retrospective effect from 30-5-2005, the date of occurrence of the "future" vacancy referred to in Rule 51A is 22-11-2004. As vacancy has occurred prior to the bifurcation of the schools on 18-5-2005, the enforceability of the Rule 51A claim of the 5th respondent is not in any way dependent as to who was the Manager of the school. The further contention of the petitioner that respondents 1 and 2 have no jurisdiction to retrospectively effectuate the approval of the appointment of the 5th respondent as per the impugned orders with effect from 22-11-2004 is also devoid of any substance. As the most crucial and relevant aspect to determine on the title of a Rule 51A claimant to secure "future" vacancy is the date of occurrence of such vacancy, in cases where there is delay in effectuating such right, giving retrospective appointment could be a reasonable consequence flowing from the right attached to Rule 51A. The Government/Department, who is paymaster of aided school teacher, in their discretion found it appropriate to grant such retrospectivity, due to the delay in taking a proper decision in the matter and such discretion exercised by respondents 1 and 2 cannot in any way said to be unreasonable in the facts of this case. More over in adjudicating the rival claims emanating from a dispute referable to Rule 51A, in the case between P.K Pathumma Vs. State of Kerala, reported in by the judgment dated 29-10-1985, this Court directed the respondent appointing authority therein to appoint the Rule 51A claimant as teacher retrospectively with effect from the date of occurrence of the vacancy, viz., 1-7-1983. Therefore, the exercise of discretion by the respondents 1 and 2 to order such retrospectivity as per the impugned orders does not warrant any interference in judicial review.

21. In view of the above aspects, I am constrained to hold that the contentions and prayers of the petitioner are not tenable. The first prayer has practically become infructuous due to the efflux of time. The amended prayer seeking certiorari to quash the impugned Ext P-6 to P-8 orders is only to be rejected in view of the reasons stated herein above. Accordingly, the Writ Petition stands dismissed. There will be no order as to costs.