

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Con.Case(C).No. 1745 of 2015 (S) IN WP(C).9113/2013

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AGAINST THE ORDER/JUDGMENT IN WP(C) 9113/2013 of HIGH COURT OF KERALA
DATED 14-07-2014**

PETITIONER/PETITIONER:

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T.C.SHAMSUDHEEN, AGED 55 YEARS
S/O.LATE HAJI P. ABDUL KHADER, AHMA MAHAL
MANICAKAVU ROAD, THANA, KANNUR - 670 012.**

**BY ADVS.SRI.GEORGE POONTHOTTAM
SMT.NISHA GEORGE**

RESPONDENT/4TH RESPONDENT:

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T.C.FATHIMA, AGED 75 YEARS,
W/O.LATE HAJI P. ABDUL KHADER, "NOORIYA", MACHERY,
MOWANCHERY POST, KANNUR - 670 613.**

BY ADV. SRI.N.M.MADHU

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Con.Case(C).No. 1745 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-I: CERTIFIED COPY OF THE JUDGMENT IN WPC NO.9113/2013 DATED 14.7.2014.

ANNEXURE-II: COPY OF THE APPLICATION DATED 26.6.2015.

ANNEXURE-III: COPY OF THE COMMUNICATION NO.A/1677/14 DATED 13.7.2015.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A. TO JUDGE

vpv

P.N.RAVINDRAN, J.
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C.O.(C)No.1745 of 2015
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Dated this the 21st day of December, 2015

JUDGMENT

The petitioner is the son of late Haji P. Abdul Khader, who was the individual educational agency and Manager of Mowancherry Upper Primary School in Kannur Distrct. Haji P. Abdul Khader passed away on 31.01.1994 and thereupon, with the consent of his other children, the Assistant Educational Officer, Kannur provisionally approved his wife, the sole respondent in the contempt case, as the Manager of the school with effect from 1.2.1994. A managing body was however not constituted for the school. With the result, the petitioner moved a representation before the Director of Public Instruction requesting him to initiate urgent steps to ensure that a legally constituted body manages the school. He thereafter filed W.P. (C)No.9113 of 2013 in this court praying for an order directing the Director of Public Instruction to consider and pass orders on the said representation, a copy of which was produced and marked as Ext.P1 in W.P.(C)No.9113 of 2013, within a time limit to be fixed by this court. In that writ petition, the other children of the former Manager were impleaded. After hearing learned counsel appearing on both sides and

after considering the rival contentions, I disposed of the writ petition with the following directions:

"4. When the writ petition came up for hearing today, learned counsel on both sides submitted that with the death of Haji P. Abdul Khader, the individual educational agency and Manager on 31.1.1994, his legal heirs (the petitioner and respondents 4 to 12) became a corporate educational agency and therefore, rules will have to be framed in tune with the provisions contained in rule 2 of Chapter III of the Kerala Education Rules for the administration and management of the school. The learned Government Pleader appearing for the official respondents also reiterated the said submission. In such circumstances, as the petitioner and respondents 4 to 12 constitute a corporate educational agency with effect from 1.2.1994, but till date rules have not been framed in tune with rule 2 of Chapter III of the Kerala Education Rules, I am of the opinion that the petitioner and respondents 4 to 12 must meet and frame a set of rules and submit it for approval to the Director of Public Instruction. I accordingly dispose of the writ petition with the following directions:-

- i) The petitioner and respondents 4 to 12 shall within two months from today, prepare the constitution of the corporate educational agency of Mowancherry Upper Primary School including the rules governing the manner in which the proprietary body shall carry out its functions relating to management of the school and the manner in which the managing body shall be elected or appointed, the conditions and tenure of their office and the duties and powers with respect to the management of the institution and also the manner of appointing the Manager.*
- ii) The Constitution/Rules as directed above shall thereupon be submitted to the Director of Public Instruction, who shall within two months from the date of receipt of the same, pass appropriate orders in the matter after affording all the parties an opportunity of being heard. Thereupon, the school shall be administered in accordance with the terms and stipulations in the Constitution/Rules of the educational agency.*
- iii) Until such time as the Director issues orders in the matter, the fourth respondent shall continue as the*

provisional Manager of the school, subject to the condition that appointments shall not be made until a regular Manager is appointed."

2. This contempt case is filed alleging that notwithstanding the specific directions issued by this court, the respondent herein who was the fourth respondent in W.P.(C)No.9113 of 2013 and the provisional Manager of the school, appointed Smt.T.C.Swetha as teacher on 1.6.2015. The respondent has entered appearance through counsel and filed an affidavit dated 21.12.2015 wherein she has averred as follows:

*"4. It may be noted that during the academic year 2011-12 there was an additional post of L.P.S.A. in the school and Smt. Swetha T.C. was appointed in the said post. However her appointment was not approved due to the direction of the Government that only the posts available in 2010-11 could be sanctioned in the subsequent years. However Smt. Swetha T.C. was continuing in service as reflected in Annexure R1. Subsequently when Smt. C.Pushpa got retired on 31.05.2015 I had shifted Smt.Swetha T.C. to that vacancy and submitted a statement of change of staffs. Copy of the said statement dated 01.06.2015 is produced herewith and marked as **Annexure R2.***

5. I was under the bonafide impression that shifting of an existing staff from one post to another would not come within the purview of making a new appointment, lest I would not have made such shifting. If at all the shifting of Smt. Swetha T.C. would amount to a fresh appointment, I tender my unconditional apology for doing the same and I may be permitted to withdraw the order of the appointment as the appointment has not been approved yet by the authorities concerned."

3. Shorn of details, the contention of the respondent who is present in person, is that she was under the impression that the

judgment of this court did not stand in the way of shifting Smt.T.C.Swetha to the post which fell vacant on 1.6.2015. It is evident from the materials before me that Smt.T.C.Swetha was not appointed for the first time on 1.6.2015. The materials before me disclose that she was appointed on 29.6.2011. That appointment was however not approved. The Manager thereafter proceeded to reappoint her with effect from 1.6.2015 by shifting her to that vacancy. Such a procedure is unknown to law. Smt.T.C.Swetha could have been shifted to another vacancy only if her appointment had been approved. In the light of the specific directions issued by this court in the judgment delivered on 14.7.2014 in W.P.(C)No.9113 of 2013, the respondent herein could not have effected any appointment in the school.

In such circumstances, as a fresh order of appointment has not been issued and as the only proceeding issued by the Manager is shifting a teacher to a vacancy which arose on 1.6.2015, I am of the opinion that this contempt case can be closed with the observation that the department shall not take any action in the statement of change of staff dated 1.6.2015 submitted by Smt.T.C.Fathima, the provisional Manager of Mowancherry Upper Primary School. In the light of the direction issued by this court that the Manager should not effect any appointment, any appointment if made will be in contempt

of this court and cannot therefore be countenanced. I accordingly accept the apology tendered by the respondent and close the contempt case with the aforesaid observations.

Sd/-

**P.N.RAVINDRAN
JUDGE**

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