

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

RP.No. 900 of 2015 (B) IN WP(C).27414/2015

AGAINST THE ORDER IN WP(C) 27414/2015 of HIGH COURT OF KERALA
DATED 18-09-2015

REVIEW PETITIONER/1ST RESPONDENT:

THE MANAGER, C.A. HIGHER SECONDARY SCHOOL
PERUVAMBA, PALAKKAD DISTRICT.

BY ADVS. SRI. V.A. MUHAMMED
SRI. M. SAJJAD

RESPONDENTS/PETITIONER AND RESPONDENTS 2, 3 AND 4::

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1. C.V. BINDU
HIGH SCHOOL ASSISTANT (ENGLISH),
C.A. HIGHER SECONDARY SCHOOL, PERUVAMBA
PALAKKAD - 678 531.
 2. THE DISTRICT EDUCATIONAL OFFICER
PALAKKAD 687 001.
 3. THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD 678 001.
 4. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, TRIVANDRUM 695 001.

R1 BY DR. GEORGE ABRAHAM
R2 TO R4 BY GOVERNMENT PLEADER SRI P.P. PADMALAYAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

REVIEW PETITIONER'S ANNEXURES:

ANNEXURE I: COPY OF G.O.(P)No.220/2005/G.EDN. DT.19.7.2005 OF THE GOVERNMENT.

ANNEXURE II: COPY OF LETTER NO.B6-830/2014 OF THE DISTRICT EDUCATIONAL OFFICER DT.9.9.2015.

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL.K.NARENDRAAN,J
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R.P.No.900 of 2015
in
W.P.(C)No.27414 of 2015
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Dated this the 28th Day of October, 2015

O R D E R

The petitioner in this Review Petition is the 1st respondent in W.P(C).No.27414 of 2015. The said Writ Petition is filed by the 1st respondent herein seeking a writ of mandamus commanding the petitioner and respondents 2 to 4 herein to release her salary and other monetary benefits based on Ext.P2 Government Order dated 7.6.2014, with effect from 1.6.2011 onwards. She has also sought for a writ of mandamus commanding the petitioner herein to permit her to join duty as HSA(English) at C.A Higher Secondary School, Peruvamba.

2. On 10.9.2015, this Court admitted the Writ Petition on file and issued notice by special messenger to the petitioner herein (1st respondent in the Writ Petition). In spite of service of notice in the Writ Petition, none appeared for the 1st respondent-Manager and this Court by an interim order dated 18.9.2015 directed the 1st respondent-Manager to permit the writ petitioner to join duty as HSA(English) at C.A Higher

Secondary School, Pruvamba within a period of two weeks from the date of receipt of a copy of that order. Seeking review of interim order dated 18.9.2015 in W.P(C).No.27414 of 2015 the 1st respondent-Manager is before this Court in this Review Petition.

3. The learned counsel for the review petitioner would contend that, the 1st respondent has no legal or statutory right to claim appointment as HSA(English) against the retirement vacancy of Smt.Kunjamma Abraham, as she is not qualified for that post and since no regular vacancy occurred on the retirement of Smt.Kunjamma Abraham. According to the learned counsel, the Government have not considered these crucial aspects while issuing Ext.P2 order dated 7.6.2014. The learned counsel would also contend that, the interim order passed by this Court is in the nature of a final decision.

4. I heard the arguments of the learned counsel for the review petitioner, learned counsel for the first respondent and also the learned Government Pleader appearing for the respondents 2 to 4.

5. In **Parsion Devi and others v. Sumitri Devi and others (1997 (8) SCC 715)** the Apex Court held that, there

is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter can be corrected by exercise of the review jurisdiction. Later, in **Lily Thomas v. Union of India (2000 (6) SCC 224)** the Apex Court held that, the power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

6. in W.P.(C).No.27414 of 2015 the 1st respondent herein is mainly seeking implementation of Ext.P2 Government Order, the validity of which was under challenge in W.P.(C) Nos.16819 of 2014 and 26201 of 2014. The first writ petition, namely, W.P.(C)No.16819 of 2014 was filed by one C.V.Krishnadas, who is working as HSA(Maths) at C.A Higher Secondary School, Pruvamba. During the pendency of that Writ Petition, one K.Ramya, who was working as HSA(English) at that school, filed W.P.(C)No.26201 of 2014. One of the contentions raised in W.P.(C)No.26201 of 2014 was that, there was no vacancy to accommodate the 1st respondent herein and the Government issued Ext.P2 order without looking into that

factual aspect. In Ext.P3 judgment, this Court found no reason to interfere with Ext.P2 order and as such its validity was upheld by dismissing W.P.(C)Nos.16819 of 2014 and 26201 of 2014.

7. The learned counsel for the review petitioner would contend that, this Court decided the issue in Ext.P3 judgment without notice to the review petitioner. However, as can be seen from Ext.P3 judgment, the review petitioner was arrayed as the 5th respondent in W.P.(C)Nos.16819 of 2014 and 26201 of 2014. The Judges papers in those Writ Petitions would show that, in spite of receipt of notice in W.P.(C)No.16819 of 2014, the review petitioner has not chosen to enter appearance. During the pendency of that Writ Petition, another teacher filed W.P.(C)No.26201 of 2014, which was admitted on file on 9.10.2014, and urgent notice was ordered to all the respondents. However, no process was paid in order to sent notice to the respondents. Later, W.P.(C)No.26201 of 2014 was tagged along with W.P.(C)No.16819 of 2014 and disposed of by Ext.P3 common judgment. It is pertinent to note that, the learned counsel who represented the petitioners in W.P.(C) Nos.16819 of 2014 and 26201 of 2014 is none other than the

learned counsel now appearing for the review petitioner.

8. The learned counsel for the review petitioner would then contend that, the 1st respondent is not having the requisite qualification for appointment to the post of HSA (English), since she secured admission for B.Ed. Degree Course under Distance Education Programme in Indira Gandhi National Open University (IGNOU) by misrepresenting that she is having regular full time teaching experience for two years. A reading of G.O.(P)No.94/2009/G.Edn. dated 28.3.2009 relied on by the learned counsel for the review petitioner would show that, the eligibility for admission to B.Ed. Degree Course conducted by IGNOU is restricted to in-service candidates with Bachelor or higher Degree from recognised University and two years full time regular teaching experience. It was taking note of the aforesaid qualification for admission to B.Ed. Course stipulated by IGNOU, the Kerala Public Service Commission advised the Government to prescribe the B.Ed. Degree awarded by IGNOU as an alternate qualification for appointment to the post of teachers. A reading of Ext.P3 judgment would show that, the question regarding the eligibility of the 1st respondent herein for admission to B.Ed.

Degree Course conducted by IGNOU was never an issue before this Court. The fact that, B.Ed. Degree awarded by IGNOU is recognised as an alternate qualification for appointment to the post of teachers is not in dispute. The question whether the admission secured by the 1st respondent herein to B.Ed. Degree Course conducted by IGNOU is vitiated by fraud or misrepresentation is a matter which has to be decided in the Writ Petition, based on the pleadings on record.

9. The learned counsel for the review petitioner would then contend that, the interim order passed by this Court dated 18.9.2015 is in the nature of a final decision. By interim order dated 18.9.2015, this Court has only directed the review petitioner to permit the 1st respondent herein to join duty as HSA(English) at C.A Higher Secondary School, Pruvamba within a period of two weeks from the date of receipt of a copy of that order. As held by the Apex Court, the power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. If the interim order passed by this Court is erroneous, it is for the aggrieved party to challenge the same in an appeal filed under Section 5 of the

Kerala High Court Act, 1958.

None of the grounds raised in the Review Petition fall within the purview of Order XLVII Rule 1, read with Section 114 of the Code of Civil Procedure, 1908. In the result, the Review Petition fails and the same is dismissed.

No order as to costs.

Sd/-
ANIL.K.NARENDRAN,
JUDGE

AVS