IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

W.A.No. 503 of 2008 ( ) IN WP(C).23885/2003

AGAINST THE JUDGMENT IN W.P.(C) NO.23885/2003 OF HIGH COURT OF KERALA DATED 11-03-2004

APPELLANT(S)/RESPONDENTS:
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1. STATE OF KERALA,
   REP. BY THE SECRETARY TO GOVERNMENT, DEPARTMENT
   OF GENERAL EDUCATION, THIRUVANANTHAPURAM.

2. THE ACCOUNTANT GENERAL (A & E),
   KERALA, ACCOUNTANT GENERAL'S OFFICE,
   THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
   THRISSUR.

4. THE DISTRICT EDUCATIONAL OFFICER,
   IRINJALAKKUDA.

5. THE ASSISTANT EDUCATIONAL OFFICER,
   KODUNGALLUR.

   BY SR. GOVERNMENT PLEADER, SRI. M.A. FAYAZ

RESPONDENT(S)/PETITIONER:

M.R.SUSEELA, L.P.S.A.,
S.V.P.L.P.S., ERYAD.

BY ADV. SRI.M.V.S.NAMBOOTHIRY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.A.NO.503 OF 2008

APPENDIX

APPELLANTS' ANNEXURES:

ANNEXURE AI	PHOTOCOPY OF THE PROCEEDINGS ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION DATED 24.05.2008.
ANNEXURE AII	PHOTOCOPY OF THE FULLY VOUCHERED CONTINGENT BILL.
ANNEXURE AIII	THE SIGNED RECEIPT DATED 26.05.2008 CONTAINING THE SEAL OF THE ADVOCATE M.V.S. NAMBOODIRI.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. No.503 OF 2008

Dated this the 8th day of June, 2015

JUDGMENT

Antony Dominic, J.

Aggrieved by the judgment of the learned Single Judge, this appeal is filed by the Respondents in W.P.(C) No.23885 of 2003. Following Ext.P11 judgment of this Court in O.P.No.20280 of 2001, the learned Single Judge set aside Ext.P10, a communication issued by the appellants, rejecting the re-option exercised by the respondent relying on G.O.(P) No.952/95(63)/Fin. dated 05.12.1995 and directed that consequential orders should be passed. Though the appellants had sought review of the judgment by filing R.P. No.589 of 2004, the same was also dismissed by order dated 13.11.2007.

2. As we have already stated, the respondent herein exercised re-option relying on the Government Order dated 05.12.1995 mentioned above. That re-option exercised by the

respondent was rejected by Ext.P10 order of the appellants, taking the stand that the Government Order was not applicable to teachers and therefore, the re-option was untenable. It is this order of the appellants that was set aside by the judgment under appeal, where the learned Single Judge has proceeded on the assumption that the issue canvassed by the respondent was covered in her favour by Ext.P11 judgment in O.P.No.20280 of 2001.

3. However, as rightly pointed out by the learned Government Pleader, a reading of Ext.P11 judgment shows that though reference was made therein to Ext.P1 to P6 Government Orders, none of them include the Government Order dated 05.12.1995. Therefore, we find merit in the contention of the learned Government Pleader that the learned Single Judge ought not have been placed reliance on Ext.P11 judgment. We have also gone through the Government Order dated 05.12.1995. This Government Order refers to the earlier Government Orders revising the pay scales of Government employees and teachers and by this, the Government partially modified the previous orders and the Government have cautiously confined the benefit of modification only to Government employees and not to

teachers. It was on that basis, in Ext.P10, the Government took the stand that the Government Order dated 05.12.1995 was inapplicable to teachers. Having gone through the Government Order dated 05.12.1995, we find that this contention also is well-founded.

For both the above reasons, we find that the conclusions of the learned Single Judge cannot be sustained. Accordingly, the judgment under appeal is set aside, and the appeal is allowed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI .P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-