

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WA.No. 1765 of 2015 () IN WP(C).27364/2014

AGAINST THE ORDER IN IA.11125/15 IN WP(C) 27364/2014 of HIGH COURT OF KERALA
DATED 06-08-2015

APPELLANT(S)/RESPONDENT NO.4:

N.S.SAIJA
UPPER PRIMARY SCHOOL ASSISTANT, M.M.U.P. SCHOOL
P.O. PEROOR, THIRUVANANTHAPURAM-695601.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S)/RESPONDENT 1 TO 3 & APPELLANTS:

1. I.G.SUJITH, AGED 26 YEARS
S/O GOPALAKRISHNA PILLAI
LOWER PRIMARY SCHOOL ASSISTANT, M.M.U.P.SCHOOL
P.O. PEROOR, 695601, KILIMANUR
THIRUVANANTHAPURAM DISTRICT. 695601.
2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARY
THIRUVANANTHAPURAM-695001.
3. THE DIRECTOR OF PUBLIC INSTRUCTIONS
JAGATHY, THIRUVANANTHAPURAM-695015.
4. THE DEPUTY DIRECTOR OF EDUCATION
THIRUVANANTHAPURAM-695014.0
5. THE DISTRICT EDUCATIONAL OFFICER
ATTINGAL, THIRUVANANTHAPURAM-695101.
6. THE ASSISTANT EDUCATIONAL OFFICER
KILIMANUR, THIRUVANANTHAPURAM DISTRICT. 695601.
7. THE MANAGER, M.M.U.P. SCHOOL, P.O. PEROOR,
KILIMANUR, THIRUVANANTHAPURAM DISTRICT -695601
8. SRI. A.M.MUHAMMED ANSAR,
UPPER PRIMARY SCHOOL ASSISTANT, M.M.U.P. SCHOOL
P.O. PEROOR, THIRUVANANTHAPURAM-695601.

R1 BY SRI.V.A.MUHAMMED
R2 TO R6 BY SR GOVERNMENT PLEADER SRI.M.A.FAYAZ
R7 BY SRI.K.SIJU
R8 BY SRI.A.AHZAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.1765 of 2015

Dated this the day 7th of August, 2015

JUDGMENT

Antony Dominic, J.

1.Respondent No.8 in W.P(C).27364/14 is the appellant. The said writ petition was filed by the first respondent herein, seeking to impugn Ext.P2, an order passed by the Director of Public Instructions, whereby, a revision filed against Ext.P1 order of approval was allowed and approval of his appointment was set aside. In the writ petition, an interim order was passed by this Court on 20.8.2014, whereby, Ext.P2 order, to the extent it is against the first respondent, was stayed. Subsequently, the official respondents herein filed I.A.11125/15, seeking a clarification of the order dated 20.10.2014 and this IA was filed apparently because the first respondent filed Contempt of Court Case No.952/15, alleging non-compliance of the order dated 20.10.2014. In the IA, the prayer sought for was to clarify the order dated 20.10.2014 and to give a specific direction whether this Court had intended to direct the official respondents to disburse salary to the first

respondent. In that IA, order dated 6.8.2015 was passed clarifying that the interim order has the impact of nullifying all consequences flowing from Ext.P2 order and consequently, the first respondent is entitled to salary. It is this order which is under challenge before us.

2. We heard learned counsel for the appellant, learned counsel for the first respondent, learned Government Pleader and the counsel appearing for the 8th respondent.

3. The contention raised before us is that there were two vacancies in the school which occurred on 1.6.2011 and 31.10.2011, to which, the 7th respondent in the writ petition and the first respondent herein were appointed. According to the appellant, she was appointed to the vacancy that arose on 23.9.2011. It is stated that since the approval of the appointment of the first respondent to the vacancy that occurred on 31.10.2011 has been set aside, appointment of the appellant is entitled to be considered for approval,

that being to a vacancy which arose prior to the vacancy to which the first respondent was appointed.

4. Though this contention raised by the appellant was refuted by the Government Pleader and the party respondents, having considered the grievance of the appellant in its totality, we do not think it necessary for us to resolve the entitlement of the appellant at this stage of the proceedings and that too, in an appeal filed against an interlocutory order. In sum and substance, the grievance of the appellant is that if, following the interim order dated 6.8.2015, salary is disbursed to the first respondent and if the appointment of the appellant is approved with entitlement for monetary benefits, that entitlement for monetary benefits would be affected by reason of such disbursement of salary to the first respondent. In our view, this apprehension of the appellant can be redressed by clarifying that following the approval of her appointment, if she is found to be entitled for any monetary benefits for any past period, the fact that disbursement has been made to the first respondent consequent upon the

interim order dated 6.8.2015, shall not cause any prejudice to her. Therefore, it is clarified that in the event, following Ext.P2 order impugned in the writ petition, the appointment of the appellant is approved with entitlement for monetary benefits for any past period, the fact that salary has been paid to the first respondent in compliance with the interim order dated 8.8.2015 shall not be to her prejudice in claiming such monetary benefits.

5. Clarifying the position as above and leaving the parties to work out their grievances in the writ petition, this appeal is disposed of.

Partis shall be at liberty to move for earlier hearing of the writ petition.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge