

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 11583 of 2006 (D)

PETITIONER:

**ANNAKUTTY T., U.P.S.A.,
SUHARA U.P.SCHOOL, VELLAR VAYAL, P.O.PAYAM
KANNUR DISTRICT.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

- 1. THE ASSISTANT EDUCATIONL OFFICER, IRITTY**
- 2. THE CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY OF DIOCESE OF KANNUR
FATHIMA CHURCH, THAVAM P.O., KANNUR.**
- 3. JOHNSON LATHER, H.M.(UNAPPROVED),
SUHARA U.P.SCHOOL, VELLAR VAYAL, PAYAM P.O.
KANNUR.**

**R2 BY ADV. SRI.M.VIJAYAKUMAR
R1 BY GOVERNMENT PLEADER SRI.T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**P1 : TRUE COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK OF
THE PETITIONER**

**P2 : TRUE COPY OF THE REPRESENTATION DATED 22.2.2006 FILED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 11583 of 2006 (D)

Dated this the 4th day of November, 2015

J U D G M E N T

The petitioner, a UPSA, claims the Headmaster/Headmistress post which fell vacant in the 2nd respondent school on 1.4.2006.

2. The petitioner contends that she has been denied the said promotion since her husband is said to be the Headmaster of another school under the same Corporate Management. The petitioner admittedly was the senior most UPSA among the minority community members, of the faculty, of the 2nd respondent school. The 3rd respondent was appointed by the 2nd respondent, despite he being junior to the petitioner.

3. The appointment was to the vacancy of 1.4.2006 and the petitioner filed the above writ petition on 20.4.2006 itself. The reliance placed by the petitioner is on the judgment of the learned Single Judge in **Jameela v. State**

of Kerala - 2015 (3) KLT 192 which followed two Full Bench decisions of this Court in **Kurian Lizy & Ors. v. State of Kerala & Ors - 2006 (4) KLT 264** and **Belsi M. v. Corporate Management of Latin Catholic Schools, Diocese of Neyyattinkara - 2010 (2) KLT 134**. Suffice it to refer to the Full Bench decision in **Kurian Lizy** (supra) which laid down the following guidelines.

“We feel that some directions should be issued to the Managements of minority educational institutions, to evolve a procedure for selection to the post of Headmaster, in the light of the observations in the answer to Question 5(c) in T.M.A. Pai Foundation's case (supra) quoted above. We notice that in many cases senior teachers belonging to the minority community, which runs the institution are superseded without assigning any reason. Art.30(1) of the Constitution of India is an armour to protect the minority against the

legislative and executive actions of the State, which is normally controlled by the majority. The said armour cannot be used as a weapon against other members of the same minority community. The protection under Art.30(1) is to the minority community and for the minority community. The Manager may supersede the members of other communities and also members of the minority community, who are found unsuitable for promotion to the post of Headmaster. But there may be teachers, who are, in every respect, qualified and suitable to head a minority educational institution. The management may select the best among them. The selection procedure should be fair, reasonable and transparent. The eligible members of the minority community may not have a feeling that they have been superseded without any valid grounds. So, all minority educational institutions, which propose

to select the best person to the post of Headmaster/Principal of a School or College, as the case may be, ignoring seniority in the feeder category or ignoring the available teachers, should frame and publish regulations or bye laws, containing a transparent procedure, governing such selection. The publication can be made in the Notice Board of the educational institution concerned and a copy of it should be available in school/college library for reference. When superseding a senior qualified member of the minority community the reasons thereof should be clear from the records. The question as framed in the beginning of this order is thus answered accordingly.”

4. In such circumstance, necessarily the petitioner's claim has to be upheld. The petitioner is entitled to be posted as Headmistress from 1.4.2006 in Suhara U.P. School, an aided school. The petitioner is now said to be

the Headmistress of the School. In any event, her promotion has to be given effect from 1.4.2006 and going by the Division Bench judgment of this Court in **Babykutty v. State of Kerala - 2000 (2) KLT 779** the Government shall, with notice to the manager, compute the difference in pay which the petitioner is entitled to, in the post of Headmistress from 1.4.2006, to the date of her promotion and recover the same from the Manager and pay it to the petitioner within six months from the date of receipt of the certified copy of this judgment.

The writ petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE