

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 13428 of 2006 (W)

PETITIONER(S):

**P.D.GRACYKUTTY, AGED 43 YRS,
W/O. GEORGE JOSEPH, PHYSICAL EDUCATION TEACHER
ST. JOSEPH'S HIGH SCHOOL, PAYIPPAD, CHANGANACHERY.**

**BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN**

RESPONDENT(S):

- 1. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 2. DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.**
- 3. DISTRICT EDUCATION OFFICER,
KOTTAYAM.**
- 4. THE CORPORATE MANAGER,
THE CORPORATE MANAGEMENT OF SCHOOLS
ARCH DIOCESE OF CHANGANACHERRY.**
- 5. STATE OF KERALA,
REP. BY THE SECRETARY TO EDUCATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**

R,R5 BY ADV. GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE PETITION SUBMITTED BY THE 4TH RESPONDENT
AGAINST THE DECISION OF THE DEPUTY DIRECTOR OF
EDUCATION, KOTTAYAM DATED 21.3.1991.
- EXT.P2 COPY OF THE ORDER OF THE JOINT DIRECTOR OF PUBLIC
INSTRUCTIONS DATED 17.7.90
- EXT.P3 COPY OF THE REPRESENTATION DATED 11.11.2000 FOR
DISBURSEMENT OF SALARY.

RESPONDENTS EXHIBITS:

NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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Dated this the 25th day of September, 2015

J U D G M E N T

The petitioner admittedly was a Full Time Physical Education teacher in Holy Family High School, Parampuzha, w.e.f. 23.01.1989. Her appointment has been approved by the District Educational Officer, Kottayam as per order Endt.K.Dis.B1-2073/89 dated 27.02.1990. The petitioner is aggrieved by the fact that there was an abolition of post of specialist teachers by G.O(MS) 154/89/G.Edn. dated 22.08.1989, which however was not applicable to the approved specialist teachers continuing as such. The said posts were re-established by Ext.P2 dated 17.07.1990. In the meanwhile the petitioner continued in the post as per the specific reservation to approved teachers as per the Government Order. However, the petitioner's salary during the period to 01.04.1989 to 31.05.1990 was not paid.

2. The learned Government Pleader would contend

that the petitioner's approval was on 27.02.1990 and hence the reservation in G.O(MS) 154/89/G.Edn. would not apply to the petitioner. The learned Government Pleader also has an additional contention that there was no sufficient number of students in the school to continue a Full Time Physical Education teacher.

3. The contention of the petitioner's approval order, having come on 27.02.1990, she would not be entitled to the protection in G.O(MS)154/89/G.Edn. cannot be countenanced. Paragraph 3 of the Government Order, the extract of which is reproduced hereunder:

The intention of the provision to Rule 2(2) AND 6B(i) of Chapter XXIII of the Kerala Education Rules and the clarification issued in G.O dated 2.6.79 mentioned above is that specialist teachers already working in Lower Primary and Upper Primary Schools against sanctioned posts should not be affected by the decision to abolish the posts of specialist teachers in Lower Primary and Upper Primary Schools and that they may be

allowed to continue till they vacate the posts by retirement, resignation or like reasons. In other words such posts of Specialist teachers in Lower Primary and Upper Primary Schools continuing under the proviso to Rule 2(2) and 6B(i) of Chapter XXIII will cease to exist when the incumbent vacates the Post by retirement, or resignation etc.

4. The petitioner's continuance as a Full Time teacher was permitted by G.O(MS) No.154/89/G.Edn. Though her approval was by an order dated 27.02.1990, it related back to 23.01.1989 prior to the above Government Order. However, the question of sufficient number of students have to be considered.

5. In such circumstance, the petitioner shall approach the Director of Public Instructions with a certified copy of this judgment as also a representation pointing out specifically the student strength during the period from 01.04.189 to 31.05.1990. The 1st respondent shall after verifying the students strength with the D..E.O or the A.E.O concerned, pass orders on the same, within a period of three months from the date of appearance in

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accordance with law and in accordance with Circular
No. H4-119952/89, dated 28.12.1989.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge.