

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT:  
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR  
MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).NO. 9515 OF 2014 (L)  
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PETITIONER(S) :  
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RUBY VARGHESE AGED 54 YEARS  
W/O. M.H. YACOB, LOWER PRIMARY SCHOOL ASSISTANT  
NEHRU MEMORIAL CONVENT L.P. SCHOOL, VATTEKKAD  
MOOKKANNOOR, ERNAKULAM DISTRICT.

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

RESPONDENT(S) :  
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1. THE STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT  
GENERAL EDUCATION DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,  
JAGATHY, THIRUVANANTHAPURAM-695014.

3. THE DEPUTY DIRECTOR OF EDUCATION,  
ERNAKULAM AT KAKKANAD-682030.

4. THE DISTRICT EDUCATIONAL OFFICER,  
ALWAYE, ERNAKULAM DISTRICT-683101.

5. THE ASSISTANT EDUCATIONAL OFFICER,  
ANGAMALY, ERNAKULAM DISTRICT-683572.

6. THE MANAGER  
NEHRU MEMORIAL CONVENT L.P. SCHOOL, VATTEKKAD  
MOOKKANNOOR, ERNAKULAM DISTRICT-683577.

7. SMT. M.J. MARIAMMA,  
NEHRU MEMORIAL CONVENT L.P. SCHOOL, VATTEKKAD  
MOOKKANNOOR, ERNAKULAM DISTRICT-683577  
ERNAKULAM DISTRICT.

8. NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS  
REPRESENTED BY ITS SECRETARY, GATE NO. 4, 1ST FLOOR  
JEEVAN TARA BUILDING 5, SANSAD MARG, PATEL CHOWK  
NEW DELHI-110001.

R8 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

R6,R7 BY ADV. SRI.V.M.KURIAN

R5 BY ADV. GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

R8 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

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P1. TRUE COPY OF THE ORDER OF APPOINTMENT OF THE PETITIONER DATED  
17-7-1979.

P2. TRUE COPY OF THE REPRESENTATION OF THE PETITIONER TO THE MANAGER  
DATED 4-6-2013.

P3. TRUE COPY OF THE JUDGMENT IN WPC NO. 15309 OF 2013-K DATED  
17-7-2013.

P4. TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER DATED  
12-7-2013.

P5. TRUE COPY OF THE APPEAL FILED BEFORE THE DISTRICT EDUCATIONAL  
OFFICER DATED 20-7-2013.

P6. TRUE COPY OF THE JUDGMENT IN WPC NO. 19625 OF 2013-C DATED  
7-8-2013.

P7. TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DATED  
26-8-2013.

P8. TRUE COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT  
DATED 30-8-2013.

P9. TRUE COPY OF THE G.O. (RT) NO., 1274/2014/G.EDN. DATED 12-3-2014  
OF THE GOVERNMENT.

P10. TRUE COPY OF THE CONSTITUTION OF EDUCATIONAL AGENCY.

P11. TRUE COPY OF THE ORDER OF THE 8TH RESPONDENT DATED 15-3-2011.

P12. TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 25-1-2002.

RESPONDENT(S) ' EXHIBITS:

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EXHIBIT-R6(A): TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE MANAGER DATED  
02.05.2013

EXHIBIT-R6(B): TRUE PHOTOCOPY OF THE ORDER DATED 03.06.2013 APPOINTING  
THE 7TH RESPONDENT AS HEADMISTRESS

EXHIBIT R6(C): TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY THIS  
RESPONDENT BEFORE THE 5TH RESPONDENT.

EXHIBIT R6(D): TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BEFORE THE  
1ST RESPONDENT.

WP(C).NO. 9515 OF 2014 (L)

EXHIBIT R6(E) : TRUE COPY OF THE CRITERIA AND PROCEDURE FOR SELECTION OF  
HEADMASTER DATED 01.03.2013

EXHIBIT R6(F) : TRUE COPY OF THE PROCEEDINGS IN RESPECT OF THE PETITIONER

EXHIBIT R6(G) : TRUE COPY OF THE PROCEEDINGS IN RESPECT OF THE 7TH  
RESPONDENT.

//TRUE COPY//

P.A TO JUDGE

**A.K.JAYASANKARAN NAMBIAR, J.**

.....  
**W.P.(C).No.9515 of 2014**

.....  
**Dated this the 20<sup>th</sup> day of July, 2015**

**J U D G M E N T**

The petitioner was appointed as Lower Primary School Assistant in the School under the management of the 6<sup>th</sup> respondent on 17.07.1979. The School in question is a minority educational institution. To a vacancy to the post of Headmaster that arose in the School with effect from 01.06.2013, although the petitioner who was the Senior most LPSA aspired for promotion, the 6<sup>th</sup> respondent took steps to appoint the 7<sup>th</sup> respondent who was junior to the petitioner in service as Headmaster. The petitioner, therefore, preferred Ext.P2 representation before the 5<sup>th</sup> respondent indicating that the appointment of the 7<sup>th</sup> respondent as the Headmaster was by overlooking the seniority of the petitioner, and although the 6<sup>th</sup> respondent School might claim a minority educational institution status, they still had to comply with a fair procedure in the matter of selection of an incumbent to the post of Headmaster. It is the case of the petitioner in the said representation that such a procedure had not been followed, and therefore, the appointment of the 7<sup>th</sup> respondent as Headmaster was vitiated. By Ext.P4 order dated

12.07.2013, the 5<sup>th</sup> respondent rejected the claim of the petitioner. In the said order, there is no mention about a selection process having been undertaken by the 6<sup>th</sup> respondent Manager while selecting the 7<sup>th</sup> respondent as the Headmaster of the School. The petitioner would also point out that in Ext.R6(c) hearing note that was submitted by the 6<sup>th</sup> respondent before the 5<sup>th</sup> respondent, there is no mention of any selection procedure having been published or followed by the 6<sup>th</sup> respondent Manager. An appeal preferred by the petitioner against Ext.P4 order of the 5<sup>th</sup> respondent, also did not meet with any success and by Ext.P7 order dated 26.08.2013, the 4<sup>th</sup> respondent rejected the appeal preferred by the petitioner. In a further revision filed by the petitioner before the 1<sup>st</sup> respondent, by Ext.P9 order dated 12.03.2014, the 1<sup>st</sup> respondent rejected the revision petition filed by the petitioner. In the writ petition, the petitioner impugns Exts.P4, P7 and P9 orders, interalia, on the ground that in selecting the 7<sup>th</sup> respondent as the Headmaster of the School, the 6<sup>th</sup> respondent Manager had not followed the procedure that was mandated by the decision of the Full Bench of this Court in **Kurian Lizy v. State of Kerala [2006 (4) KLT 264 (F.B)]**. It is his specific contention that at no stage of the proceedings before the 5<sup>th</sup> respondent, the 4<sup>th</sup> respondent or the 1<sup>st</sup> respondent, had the 6<sup>th</sup> respondent produced any

document to show that a transparent procedure for selection of candidates to the post of Headmaster was published in the School notice board, and followed in the matter of selection of the Headmaster.

2. A counter affidavit as well as two additional counter affidavits have been filed on behalf of the 6<sup>th</sup> respondent. In the said counter affidavits, documents have been produced to show that there was a consideration of the candidature of the petitioner as well as the 7<sup>th</sup> respondent, and an inter se evaluation of the merits of both the candidates, against certain criteria that were fixed by the 6<sup>th</sup> respondent. It is also stated that the stand of the petitioner before the lower authority, that the institution is not a minority educational institution, cannot be legally countenanced inasmuch as the status of the School in question as a minority institution was evidenced by valid documents which the petitioner had not impugned earlier. In the counter affidavits filed by the 5<sup>th</sup> respondent, Exts.P4, P7 and P9 orders are sought to be justified on the basis of the reasons contained therein.

3. I have heard the learned counsel for the petitioner, the

learned counsel for the 6<sup>th</sup> respondent and the learned Government Pleader for the official respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the specific case of the petitioner before the 5<sup>th</sup> respondent , 4<sup>th</sup> respondent and the 1<sup>st</sup> respondent respectively that, in the matter of selection of an incumbent to the post of Headmaster of the School, the 6<sup>th</sup> respondent had not published any criteria or guidelines for selection prior to carrying out a selection process for the selection of Headmaster, has not been rebutted through any document produced on behalf of the 6<sup>th</sup> respondent before the said authorities. No doubt, the 6<sup>th</sup> respondent has produced certain documents along with the additional counter affidavits filed before this Court, to suggest that there had been an evaluation of the inter se merits of the petitioner and the 7<sup>th</sup> respondent, against fixed criteria which had been published by the 6<sup>th</sup> respondent. On a consideration of the submissions of counsel on either side, I am of the view that, inasmuch as the factual aspect, as to whether the 6<sup>th</sup> respondent had actually published the criteria that was to govern a selection to the post of Headmaster in the notice board of the School during the relevant time, and prior to the

commencement of the selection process, is one that has to be established by looking into the evidence produced by either side, it would be in the interests of justice to relegate the matter to the 5<sup>th</sup> respondent for a fresh determination of the aforesaid factual aspect. Accordingly, I quash Exts.P4, P7 and P9 orders and direct the 5<sup>th</sup> respondent to consider the documents and other evidence produced on behalf of the petitioner as well the 6<sup>th</sup> respondent Manager and ascertain whether, as a matter of fact, the 6<sup>th</sup> respondent had duly published the relevant criteria, as well as the procedure for selection to the post of Headmaster in the School to the vacancy that arose with effect from 01.06.2013. The 5<sup>th</sup> respondent shall enter a finding as to whether the said publication other procedures, as detailed in the judgment of the Full Bench of this Court in **Kurian Lizy v. State of Kerala [2006 (4) KLT 264 (F.B)]**, were complied with by the 6<sup>th</sup> respondent Manager prior to selecting the 7<sup>th</sup> respondent as the Headmaster of the School. Based on the findings of fact arrived at by the 5<sup>th</sup> respondent, the 5<sup>th</sup> respondent shall take a decision as to whether the appointment of the 7<sup>th</sup> respondent, overlooking the seniority of the petitioner was legal and proper. If the appointment of the 7<sup>th</sup> respondent is found to be irregular/illegal then the 5<sup>th</sup> respondent shall issue consequential orders approving the

appointment of the petitioner as the Headmaster of the School in the vacancy arising with effect from 01.6.2013, by considering her admitted seniority over the 7<sup>th</sup> respondent as an LPSA in the School. If on the other hand, it is found that the 6<sup>th</sup> respondent had complied with the procedure laid down in the Full Bench decision referred above, then the consequential order to be passed by the 5<sup>th</sup> respondent shall be one that approves the appointment of the 7<sup>th</sup> respondent as the Headmaster of the School with effect from 01.06.2013. The 5<sup>th</sup> respondent shall comply with the directions in this judgment within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

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