

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 14713 of 2013 (L)

PETITIONER(S):

REV.FATHER JAMES CHELLAMKOTTU
CORPORATE MANAGER, THE CORPORATE EDUCATIONAL AGENCY
ARCH DIOCESE OF THALASSERY, SANDESHA BHAWAN
THALASSERY-670101.

BY ADVS.SRI.BENNY GERVACIS
SMT.ANNA THOMAS

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION (A) DEPARTMENT
THIRUVANANTHAPURAM-695001.
2. DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695014.
3. DISTRICT EDUCATIONAL OFFICER
KANHANGAD-671315.
4. SMT.MARY JOSEPH P.
H.S.A.(PHYSICAL SCIENCE), ST.THOMAS HIGH SCHOOL
THOMAPURAM P.O, CHITTARAKIL, KASARGOD DT.-671326.
5. SMT.SHIJI GEORGE
H.S.A. (PHYSICAL SCIENCE), ST.JUDE HIGH SCHOOL
VELLARIKUNDU, KASARGOD DT.-671533.

R1 TO 3 BY GOVERNMENT PLEADER SRI.K.K.RAJEEV
R4 BY ADV. SRI.POOVAMULLE PARAMBIL ABDULKAREEM
R5 BY ADV. SRI.P.SANKARANKUTTY NAIR
R5 BY ADV. SRI.K.SANDESH RAJA
R5 BY ADV. KUM.VIDYA MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015,
ALONG WITH WPC. 14915/2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

WP(C).No. 14713 of 2013 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1: PHOTOCOPY OF THE CIRCULAR DATED 14.2.2012 ISSUED BY THE PETITIONER.

EXHIBIT-P2: PHOTOCOPY OF THE TRANSFER ORDER DATED 29.5.2013.

EXHIBIT-P3: PHOTOCOPY OF THE OPTION EXERCISED i.e., THE APPLICATION FOR TRANSFER BY THE 4TH RESPONDENT DATED 27.2.2012.

EXHIBIT-P4: PHOTOCOPY OF THE ORDER DATED 3.8.2012 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P5: PHOTOCOPY OF THE REVISION PETITION DATED 5.9.2012 FILED BY THE PETITIONER.

EXHIBIT-P6: PHOTOCOPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P. (C) NO.20729 OF 2012.

EXHIBIT-P7: PHOTOCOPY OF THE ORDER DATED 10.5.2013 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P8: PHOTOCOPY OF THE HEARING NOTICE ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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W.P.(C) Nos.14713 & 14915 OF 2013

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Dated this the 12th day of November, 2015

JUDGMENT

The issues involved in these writ petitions are essentially one and the same and hence, they were taken up for joint hearing and disposal. The petitioner in the former writ petition is the Manager of the Corporate Educational Agency, Arch Diocese of Thalassery. The Corporate Educational Agency got 87 schools in four educational districts situated in two revenue districts namely, Kannur and Kasaragod. 1228 teachers are working under the educational agency in different categories namely, High School Assistants (HSA), Upper Primary School Assistants (UPSA) and Lower Primary School Assistants (LPSA). The petitioner in the latter writ petition is working as H.S.A under the said educational agency. For the sake of convenience, the parties are referred to hereafter in the judgment in

the order of their status in the former writ petition and the documents are also referred to hereafter in the manner they are set out in that writ petition, unless and otherwise specifically mentioned.

2.The contention of the petitioner is that taking into account the fact that the educational agency got 87 schools in four educational districts it became necessary for effecting transfers in administrative exigency and convenience. For effecting general transfer, the educational agency formulated a policy in tune with Rule 10 of Chapter XIV-A of the Kerala Education Rules. In tune with the provisions under Rule 10, KER, Ext.P1 circular has been issued calling for options and the employees were directed to forward their choices other than the present school in which he/she works in the order of preference duly signed by the Headmaster/Headmistress. Ext.P3 is the option submitted by the fourth respondent, in the latter case, pursuant to Ext.P1 and it would reveal that she had opted three schools in the following order of preference:-

- 1.St.Thomas H.S.S, Thomapuram.
- 2.St.Mary's High School, Kadumeni
- 3.St.Johns High School, Palavayal.

3.Going by Ext.P1, the Headmasters/Headmistresses were directed to pass on the information regarding the circular to all the teaching an non-teaching staff of the school and make available a copy of the enclosed format. They were also directed thereunder to collect the duly filled forms of individual staff and to forward them to the corporate office so as to reach it on or before 5th March, 2012. As per Ext.P2 dated 29.05.2012, the fourth respondent was transferred to St.Thomas High School, Thomapuram. On being aggrieved by the transfer, the fourth respondent moved the second respondent through Ext.P2, referred as such in W.P.(C).No.14915 of 2013 and it is dated 04.06.2012. On being aggrieved by the delay in the matter of its consideration, the fourth respondent had earlier approached this Court by filing W.P.(C).No.13129 of 2012 and the same was disposed of as per Ext.P3 judgment, referred as such in the latter writ petition. As

per the same, the second respondent was directed to consider the said representation within the time stipulated thereunder. Subsequently, Ext.P4 order dated 03.08.2012 was passed by the second respondent. As per the same, after holding that the fourth respondent was bound to obey the orders of the manager and since both the fourth and fifth respondents had opted transfer to St.Thomas High school, Thomapuram, the petitioner-Manager was directed to transfer the fourth respondent back to St.Jude's High School, Vellarikundu and to transfer the fifth respondent to St.Thomas High School, Thomapuram upon finding that it would be convenient for both the teachers. Subsequently, the fourth respondent approached this Court by filing W.P.(C).No.20729 of 2012 seeking for implementation of Ext.P4 order. That writ petition was disposed of as per Ext.P6 judgment, referred as such in the latter writ petition. It is a fact that by that time, the petitioner had approached the Government by filing a revision petition against Ext.P4 under Rule 92 of Chapter XIV-A of the KER. Taking note of the said aspects, W.P.(C)No.20729 of 2012 was

disposed of as per Ext.P6 judgment with a direction to the first respondent, after impleading the Government suo moto as a party to the said writ petition, to consider the revision petition and pass appropriate orders thereon. Consequently, the first respondent passed Ext.P7 order. In the former writ petition, the challenge is against Ext.P7 order whereas the latter writ petition has been filed for the implementation of Ext.P7.

4.Ext.P7 is the order dated 10.05.2013 passed by the first respondent. Evidently, as per the same, the petitioner was directed to transfer the fourth respondent to St.Jude's H.S, Vellarikkundu and to transfer the fifth respondent back to St.Thomas H.S, Thomapuram. When the former writ petition came up for admission on 11.06.2013, this Court admitted the matter and passed an order staying operation of Exts.P4 and P7 for a period of three weeks. The said order was extended from time to time. The latter writ petition came up for admission on 13.06.2013 and the same was admitted and ordered to

be posted along with the former writ petition. Evidently, by virtue of the interim order dated 11.06.2013, Exts.P4 and P7 were not given effect to. In other words, despite the said orders, the transfer which was taken effect earlier was not unsettled by effecting re-transfers of the fourth respondent and the fifth respondent. Obviously, the fourth respondent is aggrieved by the original order of transfer and it was at her instance that Ext.P7 order was passed. But, the re-transfer of respondent Nos. 4 and 5 was not effected by virtue of the interim order dated 11.06.2013. It is to be noted that the fourth respondent was aged 53 years going by the affidavit dated 12.06.2013, filed in the former writ petition. Her age of retirement is 56 years and evidently, she has already crossed the age of 55 years. Going by the provisions under the Kerala Service Rules, in respect of employees who are on the verge of retirement, their pension proposals are to be prepared well ahead of the date of retirement. Taking into account the fact that the fourth respondent has already crossed the age of 55 years, she will have to retire shortly. The date of birth of the fourth respondent is

14.8.1960 as is obvious from Ext.P2 in the latter writ petition. She is aggrieved by Ext.P1 order of transfer, referred as such in the latter writ petition. As per the same, she was transferred to St.Thomas H.S, Thomapuram which situates about 15 kilometres away from her residence. Going by the affidavit filed by the fifth respondent in the latter writ petition, the distance of the school to which the fourth respondent was transferred is only 15 kilometers from the residence of the fourth respondent and the contention that in order to reach the said school, the fourth respondent had to take three buses was also specifically refuted by the 5th respondent. It is further stated therein that the fourth respondent was transferred to the place of her first choice. True that, now the main dispute is only as to whether the directions in Ext.P4 which were restated in Ext.P7 are to be implemented or not. I am of the view that interference with the same at this point of time would unsettle not only the teachers involved in the order of transfer but also would adversely affect the very functioning of the schools. As noticed hereinbefore, at this distance of

time, re-transfer might adversely affect the very prospects of the fourth respondent herself considering the fact that she is on the verge of retirement from service. At the same time, if the fourth respondent is still desirous to get a transfer from the present school, she shall apply to the petitioner in that regard. The application for general transfer would be called for during February of every year and hence, if the fourth respondent is desirous to get re-transfer or to get transfer to any other place, she may apply to the petitioner and in such circumstances, taking into account the fact that she is due retire, such application shall be considered expeditiously. Taking into account all such aspects, I do not find any reason to unsettle the status quo as relates respondents 4 and 5. In other words, they shall be permitted to continue in the respective schools where they are presently working for the time being subject to the above observation. In the circumstances, the latter writ petition is disposed of with the liberty as mentioned above. Now, coming to the entitlement of the fourth respondent to the other reliefs it is to be noted that the petitioner

cannot be said to have violated the orders of the educational authorities so as to make himself liable to be proceeded against. Evidently, he had taken up the grievances against the earlier orders availing the statutory remedies before the competent educational authorities and as against Ext.P7 he has approached this Court. In the circumstances, the fourth respondent who is the petitioner in the latter writ petition is not entitled to any other reliefs. In the light of the judgment in the latter writ petition, no further directions are actually called for in the former writ petition and accordingly, it is closed.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

