

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYASHTA, 1937

WP(C).No.18044 of 2009 (A)

PETITIONER:

**THE CORPORATE MANGER,HOLY ANGELS,
CONVENT SCHOOL,TRIVANDRUM.**

**BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS**

RESPONDENT'S:

- 1. STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,THIRUVANANTHAPURAM.**
- 2. THE ASST. EDUCATIONAL OFFICER,NEYATTINKARA.**
- 3. SMT.MARY TELMA,SEWING TEACHER,
ST.TERESA'S CONVENT L.P.SCHOOL,NEYATTINKARA.**

**R1-R2 BY GOVT. PLEADER SMT.RINNY STEPHEN CHAMAPARAMBIL.
R3 BY ADV.SRI.V.RAJENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF G.O(RT) NO.1610/92 G.EDN DATED 6.5.1992 ISSUED BY 1ST RESPONDENT.
- EXT.P2: TRUE COPY OF LETTER NO.28601/R3/G.E DATED 9.1.1993 ISSUED BY 1ST RESPONDENT.
- EXT.P3: TRUE COPY OF THE LETTER DATED 2.3.1996 VACATING THE STAY ISSUED BY 1ST RESPONDENT.
- EXT.P4: TRUE COPY OF G.O(MS) NO.108/01/G.EDN.DATED 23.3.2001 ISSUED BY 1ST RESPONDENT.
- EXT.P5: TRUE COPY OF G.O(RT) NO.3905/97/G.EDN.DATED 11.11.1997.
- EXT.P6: TRUE COPY OF G.O (RT) NO.76/98/G.EDN.DATED 6.1.1998.
- EXT.P7: TRUE COPY OF G.O(RT) NO.2437/98/G.EDN. DATED 23.6.1998.
- EXT.P8: TRUE COPY OF G.O (RT) NO.4613/98/G.EDN DATED 28.11.1998.
- EXT.P9: TRUE COPY G.O (RT) NO.3145/2000/G.EDN. DATED 29.7.2000.
- EXT.P10: TRUE COPY OF G.O(RT) NO.4107/2000/G.EDN DATED 10.10.2000.
- EXT.P11: TRUE COPY OF JUDGMENT DATED 9.10.2006 IN O.P. NO.13784/2002N.
- EXT.P12: TRUE COPY OF G.O(RT) NO.800/2007/G.EDN DATED 21.2.2007 PASSED BY 1ST RESPONDENT.
- EXT.P13: TRUE COPY OF THE JUDGMENT DATED 17.11.2008 IN W.P(C) NO.10409/2007.
- EXT.P14: TRUE COPY OF THE ORDER DATED 25.5.2009.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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Dated this the 25th day of May, 2015

JUDGMENT

The petitioner is the Corporate Manager of the Schools under the management of the Congregation of Carmelite Religious. The petitioner had appointed the 3rd respondent as a Sewing Teacher in St.Teresa's Convent L.P. School on 05.06.1990 in a retirement vacancy. The said appointment was not approved, and by Ext.P1 order dated 06.05.1992, the 1st respondent denied approval by citing Rule 2(3) and 6(B) of Chapter XXIII KER and G.O.(MS). 154/89/General Education dated 22.08.1989. Although appeals and revisions were preferred by the Manager and the teacher concerned, the same did not meet with any success and were rejected by the authorities. The Government also rejected the request for approval. Thereafter, the 3rd respondent teacher approached this Court through OP No.13784 of 2002, relying on Exts.P4 to P10 Government Orders, whereby the Government had granted the benefit of approval of appointments to specialist teachers, who had been appointed notwithstanding the issuance of a Government Order prohibiting such appointments. By Ext.P11 judgment in the said Original Petition, this Court found that the 3rd

respondent had made out a case of discrimination in the matter of approval of her appointment and accordingly disposed the Original Petition, directing the 1st respondent to extend similar treatment to the 3rd respondent also, as was done in the case of teachers covered by Exts.P4 to P10 Government Orders. Consequent to Ext.P11 judgment of this Court, the 1st respondent by Ext.P12 order dated 21.02.2007, directed the 2nd respondent to approve the appointment of the 3rd respondent and pay consequential benefits to the said respondent. The said order, however, carried a rider, in that, it directed the recovery of the amounts paid to the 3rd respondent from the petitioner, Manager. Inasmuch as the petitioner was not heard prior to passing of Ext.P12 order, the petitioner approached this Court, challenging Ext.P12 order, when by Ext.P13 judgment, Ext.P12 order was quashed and the matter remitted to the 1st respondent for issuance of fresh orders after hearing the petitioner. Thereafter, the 1st respondent passed Ext.P14 order dated 25.05.2009, directing the recovery of the amounts paid to the 3rd respondent by way of salary and other allowances, from the petitioner. In Ext.P14 order, the 1st respondent for the first time, seeks to draw a distinction between the factual position that obtained in Exts.P4 to P10 orders, that

were relied upon by the 3rd respondent in the Original Petition, which led to Ext.P11 judgment. It is stated in Ext.P14 that Exts.P5 to P10 orders were passed in the case of specialist teachers, who had been appointed in the School by the respective Managers, before the date of the Government Order, that prohibited the appointment of such specialist teachers. The 1st respondent seeks to draw a distinction in the instant case, by stating that the appointment of the 3rd respondent was made subsequent to the Government Order prohibiting the appointment of specialist teachers. In the writ petition, Ext.P14 is impugned to the extent it directs the recovery of the amounts paid to the 3rd respondent by way of salary and other allowances, from the petitioner, Manager.

2. A counter affidavit has been filed on behalf of the 1st respondent, wherein the sequence of events that led to the passing of Ext.P14 order has been narrated, and Ext.P14 order is sought to be justified on the basis of the reasons contained therein.

3. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the writ petition in its challenge against Ext.P14 order, to the extent it directs the recovery of the salary and other allowances paid to the 3rd respondent from the petitioner, must necessarily succeed. It will be seen from a perusal of the orders produced in the writ petition that the 1st respondent had expressly passed an order approving the appointment of the 3rd respondent, pursuant to Ext.P11 judgment of this Court. The distinguishing features of the petitioner's case, which according to the 1st respondent served to put the petitioner's case on a different plane from those teachers, whose appointments were approved in Exts.P5 to P10 orders, could have been considered by the 1st respondent to deny the approval to the appointment of the 3rd respondent, pursuant to Ext.P11 judgment. Alternatively, the 1st respondent could have adopted the same line of reasoning to challenge Ext.P11 judgment of this Court, if it was also the view that there was a positive direction in Ext.P11 judgment to approve the appointment of the 3rd respondent. Inasmuch as the 1st respondent did not challenge Ext.P11 judgment of this Court in further proceedings, and further, expressly granted

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approval to the appointment of the 3rd respondent in Ext.P12 order, I am of the view that the 1st respondent cannot now turn around and suggest that the approval granted to the appointment of the 3rd respondent was in any manner irregular or illegal. It follows as a consequence that the 1st respondent could not have proceeded against the petitioner for recovery of amounts paid to the 3rd respondent, whose appointment was expressly approved by the 1st respondent.

Resultantly, I quash Ext.P14 order, to the extent it directs recovery of the salary and other amounts paid to the 3rd respondent, from the petitioner and allow this writ petition, by holding that the 1st respondent cannot recover from the petitioner, the amounts paid by way of salary and other allowances to the 3rd respondent, pursuant to the approval of her appointment, vide Ext.P12 order.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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