

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 15981 of 2015 (W)

PETITIONER(S)/PETITIONER:

**K.LEENA, AGED 38 YEARS
D/O.VARAPRAVATH KORAN NAIR
ASSISTANT TEACHER(ON LEAVE), KUTTIKKOL L.P.SCHOOL
PERMANENT RESIDENT OF KARTHIKA, PURACHERY.P.O
EZHILODE, KANNUR-670309(CURRENTLY RESIDING AT PANDA
P.B.NO.3311
RIYADH-11471 KSA)-THROUGH THE POWER OF ATTORNEY
HOLDER:VARAPRAVATH KORAN NAIR
S/O.KUNHIRAMAN NAIR, AGED 66 YEARS, PENSIONER
RESIDING AT KARTHIKA, PURACHERY, P.O.EZHILODE
KANNUR-670309.**

**BY ADVS.SRI.MAHESH V RAMAKRISHNAN
SRI.S.UNNIKRISHNAN (VARKALA)**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION(P)DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE ASSISTANT EDUCATIONAL OFFICER,
TALIPARAMBA NORTH SUB DISTRICT, KANNUR-670512.**
- 3. THE MANAGER,
KUTTIKKOL L.P.SCHOOL, EZHAM MILE, P.O.KUTTIKKOL
(VIA)KALLIASSERY, KANNUR-670562.**

**R3 BY ADV. SRI.K.C.SANTHOSHKUMAR
R3 BY ADV. SMT.K.K.CHANDRALEKHA
R1 & R2 BY ADV.LOWSY A., GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF THE ORDER G.O(RT)NO.2519/2014/G.EDN DATED 26-06-2014

**EXT.P2: COPY OF THE APPLICATION DATED 16-04-2015 FOR EXTENSION OF
LWA SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT**

**EXT.P3: COPY OF THE LETTER DATED 12-05-2015 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER**

**EXT.P4: COPY OF THE LETTER DATED 28-03-2015 ISSUED BY THE 1ST
RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS:

**R3(A) : COPY OF THE COMMUNICATION DATED 09.02.2015 ISSUED BY THE
3RD RESPONDENT TO THE PETITIONER**

**R3(B) : COPY OF THE COMMUNICATION DATED 28.03.2015 ISSUED BY THE
1ST RESPONDENT TO THE PETITIONER**

**R3(C) : COPY OF THE COMMUNICATION DATED 12.05.2015 SENT BY THE 3RD
RESPONDENT TO THE PETITIONER.**

//TRUE COPY//

P.A. TO JUDGE

ANIL K. NARENDHAN, J.

W.P.(C) No.15981 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

The petitioner is employed as LPSA in the school managed by the 3rd respondent. She availed Leave Without Allowance to join her spouse abroad and continuing as such for the past 8 years. By Ext.P1 order, the petitioner was granted Leave Without Allowance for joining spouse under the conditions stipulated in Appendix XII C, Part I KSR for the period from 01.04.2013 to 31.03.2014. Seeking extension of the Leave Without Allowance for the period from 01.04.2015 to 31.03.2018, the petitioner submitted Ext.P2 application. But, the 3rd respondent Manager has informed the petitioner vide Ext.P3 that her request for extension of Leave Without Allowance cannot be granted. When the petitioner approached the Government, she was informed by Ext.P4 that she has to re-submit the application in the prescribed form through the 3rd respondent Manager. It is in such circumstances, the petitioner has approached this Court in this writ petition seeking a writ of

mandamus commanding the 3rd respondent to forward Ext.P2 application to the 2nd respondent without any further delay and also a writ of mandamus commanding the 1st respondent to consider and pass appropriate orders on the aforesaid application by granting extension of Leave Without Allowance for a period of three years from 01.06.2015 to 31.03.2018.

2. By order dated 29.05.2015, this Court directed the 3rd respondent to immediately forward Ext.P2 application to the 2nd respondent, if need be, by adding his comments to the application to be forwarded to the 2nd respondent. The 3rd respondent Manager was directed to comply with the aforesaid direction within three days.

3. The 3rd respondent Manager has filed a counter affidavit reiterating the stand taken in Ext.P3 and contending, inter alia, that the specific conditions stipulated in Ext.P1 that, "no further extension of Leave Without Allowance will not be allowed at any cost" disentitles the petitioner from seeking further extension of Leave Without Allowance as sought for in Ext.P2 and that she is liable to be removed from service.

4. I heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for

respondents 1 and 2 and also the learned counsel appearing for the 3rd respondent Manager.

5. The issue raised in this writ petition is covered by the judgment of this Court in **Deepa v. State of Kerala [2010 (4) KLT 795]**. In the aforesaid judgment, interpreting the relevant provisions under the KER as well as the KSR, this Court held that even if Head Master and Manager make recommendation for granting leave, nothing prevents Government from refusing leave. Likewise, even if Manager and Head Master recommend not to grant leave that would not be a bar for Government to grant leave.

6. The learned counsel for the 3rd respondent Manager would submit that, pursuant to the interim order passed by this Court dated 29.05.2015, Ext.P2 application submitted by the petitioner has already been forwarded to the 2nd respondent alongwith the comments of the Manager. The learned counsel for the 3rd respondent would also pointed out that in Ext.P1 Government order, Leave Without Allowance for the period from 01.04.2013 to 31.03.2014 was sanctioned to the petitioner under Appendix XII C, Part I KSR, on a specific condition that no further extension of leave will be allowed at any cost and if she

does not return to duty after the expiry of the leave, she would be removed from service as per rules. Therefore, the learned counsel for the 3rd respondent would contend that in view of the above condition in Ext.P1, which the petitioner has not chosen to challenge, the request made in Ext.P2 cannot be considered favourably.

7. On the other hand, the learned counsel for the petitioner would contend that the petitioner is legally entitled for consideration of Ext.P2 application on merits, in accordance with the conditions contemplated under Appendix XII C read with the relevant provisions under the KSR and also the Government Orders governing the field. The learned counsel would also rely on the judgment of this Court in **Deepa's case (supra)**.

8. The learned Government Pleader would submit that Ext.P2 application is now before the 2nd respondent and the 2nd respondent shall forward the same to the 1st respondent alongwith the recommendation/comment made by the 3rd respondent Manager and on receipt of that application, the 1st respondent shall dispose of the same within a time limit that may be fixed by this Court, after hearing the petitioner and also the 3rd respondent Manager.

Considering the fact that Ext.P2 application submitted by the petitioner for extension of Leave Without Allowance has to be dealt with on merits by the 1st respondent, I deem it just and proper to dispose of this writ petition directing the 2nd respondent to forward Ext.P2 application to the 1st respondent alongwith the comments/remarks of the 3rd respondent Manager within a period of one week from the date of receipt of a certified copy of this judgment and on receipt of the same, the 1st respondent shall pass appropriate orders thereon, as expeditiously as possible, at any rate, within a further period of one month, with notice to the petitioner and also to the 3rd respondent.

JV

sd/-
ANIL K. NARENDRAN,
JUDGE