

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WP(C).No. 17531 of 2015 (N)

PETITIONER(S):

**REENA V, AGED 42 YEARS
LOWER PRIMARY SCHOOL ASSISTANT
LUTHERGIRI UPPER PRIMARY SCHOOL, ARYANAD, ARYANAD.P.O.
THIRUVANANTHAPURAM DISTRICT
PIN-695542 RESIDING AT DIVYAPRABHA, PUZHAMALAKKAL
PULIMOOD, KULAKKADA.P.O., ARYANAD
THIRUVANANTHAPURAM, PIN-695542.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695001.**
- 3. THE DEPUTY DIRECTOR (EDUCATION)
THIRUVANANTHAPURAM-695001.**
- 4. THE ASSISTANT EDUCATION OFFICER,
NEDUMANGAD, THIRUVANANTHAPURAM, PIN-695541.**
- 5. THE CORPORATE MANAGER,
CORPORATE MANAGEMENT OF LUTHERAN SCHOOL
INDIA EVEAGILICAL LUTHERAN CHURCH, THIRUVANANTHAPURAM SYNOD
KONCORDIA HIGH SCHOOL COMPOUND, PEROORKADA(PO)
THIRUVANANTHAPURAM DISTRICT, PIN-695005.**
- 6. A.V. DEEPA RANI, LOWER PRIMARY SCHOOL ASSISTANT
LUTHERGIRI UPPER PRIMARY SCHOOL, ARYANAD
THIRUVANANTHAPURAM, PIN-695542.**

**R5 BY ADV. SRI.D.KISHORE
R6 BY ADV. SRI.P.RAVINDRAN (SR.)
R6 BY ADV. SRI.SREEDHAR RAVINDRAN
R BY GOVERNMENT PLEADER, SMT. LOUSY A.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : TRUE COPY OF THE ORDER NO.76/2011-2012 DATED 30-5-2011.
- EXT.P2 : TRUE COPY OF THE ORDER NO.F1/34555/11 DT 28-7-2011
- EXT.P3 : TRUE COPY OF THE ORDER NO.F1/84226/11/DPI/K.DIS DT 31-7-2013
- EXT.P4 : TRUE COPY OF THE ORDER NO.012/2014-15 DT 19-2-2015.
- EXT.P5 : TRUE COPY OF THE GOVERNMENT CIRCULAR NO.13122/J2/11/G.EDN
DT 30-5-2011.
- EXT.P6 : TRUE COPY OF THE JUDGMENT DATED 1-4-2015 IN WPC.NO.19706/2013-K.
- EXT.P7 : TRUE COPY OF THE APPEAL BEFORE DPI UNDER RULE 10,
CHAPTER XIVA KER.
- EXT.P8 : TRUE COPY OF THE HEARING NOTE BEFORE THE 2ND RESPONDENT.
- EXT.P9 : TRUE COPY OF THE ORDER NO.F(1) 59230/2013/DPI/K.DIS DT 29-5-2015.
- EXT.P10 : TRUE COPY OF THE ORDER NO.039/2015 DT 3-6-2015.

RESPONDENT(S)' EXHIBITS

- EXT.R6(a) TRUE COPY OF THE RELIEVING ORDER ISSUED BY THE
HEADMASTER OF THE SCHOOL
- EXT.R6(b) TRUE COPY OF THE PROCEEDINGS OF THE AEO DATED 09.06.2015.
- EXT.R5(a) TRUE COPY OF THE ORDER No.F1/34555/11 DATED 28.07.2011 OF THE
2ND RESPONDENT.
- EXT.R5(b) TRUE COPY OF THE GO (Rt.) No.5152/11/G.Edn, DATED 21.11.2011 OF
THE 1ST RESPONDENT.
- EXT.R5(c) TRUE COPY OF THE JUDGMENT DATED 29.03.2012 IN WP(C)
31696/2011.
- EXT.R5(d) TRUE COPY OF THE ORDER No.F1/84226/11/DPI/K.DIS DATED
31.07.2013 OF THE 2ND RESPONDENT.
- EXT.R5(e) TRUE COPY OF THE ORDER No.012/2014-15 DATED 19.02.2015 OF THE
5TH RESPONDENT.
- EXT.R5(f) TRUE COPY OF THE JUDGMENT DATED 01.04.2015 IN WP(C)19706/2013
OF THIS HON'BLE COURT.
- EXT.R5(g) TRUE COPY OF THE RELIEVING ORDER DATED 04.06.2015 ISSUED BY
THE HEADMASTER LUTHERGIRI UPS, ARYANAD.

// True copy //

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 17531 of 2015
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Dated this the 2nd day of July, 2015

JUDGMENT

The petitioner is an LPSA in Luthergiri UP School, Aryanad, which is under the managership of the 5th respondent . She joined against a leave vacancy from 30.10.1998 to 09.02.1999, which appointment was duly approved by the educational authority. Thereafter, she was appointed against a regular vacancy with effect from 26.08.2002 in L.M.P. School Chullimanoor. This appointment was also approved by the educational authority. The issue in the writ petition stems from an order of transfer dated 30.05.2011 (Ext.P1), whereby the 5th respondent transferred the petitioner from Chullimanoor LMP School to Luthergiri UP School at Aryanad, and the 6th respondent from Luthergiri UP School at Aryanad to LMP School at Chullimanoor. The facts in the writ petition would reveal that the LMP school Chullimanoor is an uneconomic school, where as the Luthergiri UP School is a regular school. There were objections raised with regard to the transfer of the petitioner from an uneconomic school to a regular school and likewise, there were also objections with regard to the transfer of the 6th respondent from a regular school to an uneconomic school. The objections raised at the instance of the educational authorities eventually culminated in an order of the DPI, cancelling the

transfer order dated 30.05.2011. This order of the DPI (Ext.P3) dated 31.07.2013 was challenged in proceedings before this Court. It would appear that there were three rounds of litigations, wherein the matter was referred to the educational authorities for an adjudication. But the orders passed by the educational authorities were all challenged before this Court. Finally, by Ext.P6 judgment, this Court directed the petitioner to approach the 2nd respondent with his objections, against a report that was submitted before this Court by the 5th respondent Manager, stating proposals for transfer of teachers under the educational agency in question. Pursuant to Ext.P6 judgment of this Court, the petitioner preferred Ext.P7 appeal before the 2nd respondent contending inter alia, that there had been a violation of Rule 10 of Chapter XIV A of Kerala Education Rules, while effecting the transfer. The 2nd respondent, by Ext.P9 order dated 29.05.2015, rejected the appeal preferred by the petitioner, and directed the petitioner to be transferred back to Chullimanoor LMP School, and the 6th respondent to be adjusted at the Luthergiri UP School, Aryanad from 01.06.2011 to 01.04.2014. Thereafter, the 5th respondent passed Ext.P10 order dated 03.06.2015, giving effect to the directions of the 2nd respondent in Ext.P9 order. In the writ

petition, Exts.P9 and P10 are impugned, inter alia, on the ground that in Ext.P9 order of the 2nd respondent, there is no consideration of the various Government Orders, that the petitioner had placed reliance upon in the writ petition that was disposed by Ext.P6 judgment. It is pointed out that, while there was a specific direction in Ext.P6 judgment to the 2nd respondent to consider the said Government Orders also, a perusal of Ext.P9 would indicate that there was no such consideration by the 2nd respondent. The petitioner would also rely on the provisions of Rule 10 of Chapter XIV A of Kerala Education Rules, to contend that the inter se seniority between the petitioner and other teachers, including the 6th respondent, was not given due weightage while passing Ext.P9 order.

2. The writ petition was admitted by this Court on 11.06.2015, when an interim order was also passed, permitting the petitioner to continue as LPSA in the Luthergiri UP School, Aryanad, for a period of one month. The 5th respondent has filed a counter affidavit in the matter and the 6th respondent has filed a petition to vacate the interim order that was passed by this Court on 11.06.2015. The affidavit filed on behalf of the 6th respondent,

in support of the petition for vacating the interim order, indicates that Ext.R6(a) proceedings dated 04.06.2015, relieving the petitioner of her service under Luthergiri UP School Aryanad, and permitting the 6th respondent to join duty at Luthergiri UP School, Aryanad, was approved by the 4th respondent by Ext.R6(b) order dated 09.06.2015. It was thereafter, that the interim order dated 11.06.2015 was passed in the writ petition. Counsel for the petitioner would point out that the petitioner was unaware of the proceedings dated 04.06.2015, inasmuch as the petitioner was on leave from 04.06.2015 to 12.06.2015. The question then is, in the light of these facts how is this Court to resolve the situation of retention of both the petitioner and the 6th respondent in the Schools under the management of the 5th respondent?

3. I have heard Sri.M.V. Thampan, the learned counsel for the petitioner, Sri.Kishore, the learned counsel appearing for the 5th respondent, Sri. P.Ravindran, the learned Senior Counsel appearing for the 6th respondent and also the learned Government Pleader appearing for the official respondents as well.

4. On a consideration of the facts and circumstances of

the case and the submissions made across the bar, I find that, inasmuch as the decision to transfer the petitioner from the Luthergiri UP School, Aryanad to LMP School, Chullimanoor, and the 6th respondent from the LMP School, Chullimanoor to Luthergiri UP School, Ayanad was dated 04.06.2015, and the said decision was approved by the 4th respondent on 09.06.2015 through Ext.R6(b) order, the petitioner cannot insist on continuing at the Luthergiri UP School, Aryanad, since the order transferring her had already come into effect, before she approached this Court, through the present writ petition. I find, however, that there is force in the contention of the petitioner that in Ext.P9 order, the 2nd respondent has not considered the matter in the light of the material, that was produced before him by the petitioner, pursuant to Ext.P6 judgment. I also note that the 2nd respondent only reiterates his earlier view in Ext.P3, which was based on the existing Government Orders with regard to transfer of teachers from uneconomic schools. Under the circumstances, I am of the view that the interests of justice would be met, by permitting the petitioner to prefer a revision against Ext.P9 order before the State Government, rather than relegating the petitioner back to the 2nd respondent for a fresh consideration of the matter.

Accordingly, I dispose the writ petition, permitting the petitioner to prefer a revision petition against Ext.P9 order, within a period of ten days from today. If the petitioner prefers the revision petition before the 1st respondent within the period of ten days granted to her, the 1st respondent shall consider and pass orders on the said revision petition, after hearing the petitioner, the 6th respondent and the 5th respondent Manager, within a period of six weeks thereafter. To enable the 1st respondent to do so, the petitioner shall produce a copy of the writ petition, together with a copy of this judgment alongwith the revision petition, that she is permitted to file through this judgment, before the 1st respondent. It is made clear that, till such time as orders are passed by the 1st respondent as directed, the posting of the petitioner as well as the 6th respondent shall be governed by Ext.P9 order of the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE