

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 21761 of 2013 (U)

PETITIONER(S) :

PRASANNA J., AGED 55 YEARS,
W/O. N.VIJAYAKUMAR, LOWER PRIMARY SCHOOL ASSISTANT
(LPSA), LUTHERGIRI UPPER PRIMARY SCHOOL, ARAYANADU,
NEDUMANGAD, TRIVANDRUM.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695001.

3. THE ASSISTANT EDUCATIONAL OFFICER,
NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT-695541.

4. THE HEADMASTER,
LUTHERGIRI UPPER PRIMARY SCHOOL, ARYANADU, NEDUMANGAD
TRIVANDRUM-695541.

R1-3 BY ADV. GOVERNMENT PLEADER SMT.LOWSY A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21761 of 2013 (U)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE TRANSFER AND POSTING ORDER DATED 1-6-2011 ISSUED BY THE MANAGER.

EXHIBIT P2- TRUE COPY OF THE ORDER DATED 28-7-2011 OF THE 2ND RESPONDENT.

EXHIBIT P3- TRUE COPY OF THE COMMON JUDGMENT DATED 16-8-2011 IN WPC NO. 20935/2011 AND CONNECTED CASES OF THIS HON'BLE COURT.

EXHIBIT P4- TRUE COPY OF THE ORDER DATED 21-11-2011 OF THE 1ST RESPONDENT.

EXHIBIT P5- TRUE COPY OF THE COMMON JUDGMENT DATED 29-3-2012 IN WPC 598/2012 AND CONNECTED CASES OF THIS HON'BLE COURT.

EXHIBIT P6- TRUE COPY OF THE ORDER DATED 31-7-2013 OF THE 2ND RESPONDENT.

EXHIBIT P7- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS
-----: NIL

/TRUE COPY/ P.S. TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 21761 OF 2013

Dated this the 9th day of March, 2015

JUDGMENT

The petitioner approached this Court, while she was working as a LPSA in Luthergiri Upper Primary School Aryanadu, Trivandrum, for a direction to the respondents to disburse the salary due to her with effect from 1/6/2011. Pending the writ petition, the petitioner has attained the age of superannuation and retired from the service. The petitioner also seeks a direction to the 4th respondent to forward the pension book in order to enable the 3rd respondent to finalise the pensionary benefits of the petitioner.

2. The issue is based on the transfer order effected by the Manager. The petitioner was transferred to LMLPS, Chenamcode, which was an uneconomic school. The Government Circular NO.28860/12/2007/G.Edn.dated 22/12/2007 states that any vacancy in the uneconomic school shall not be filled up by transfer. Vacancies in the uneconomic school shall be filled up by protected teachers.

Therefore, transfer from an economic school to another economic school is only permissible. Hence, it is stated that the transfer of the petitioner is irregular. Necessarily, this objection is based on the transfer effected by the Manager. The petitioner has no role in effecting the transfer. The entire responsibility in effecting the transfer is vested on the manager of the school. The petitioner only obeyed the transfer order issued by the Manager. Therefore, for any irregularities committed by the Manager, the petitioner shall not be withheld. In fact, it is to be noted that by Ext.P2, Ext.P1 transfer order was cancelled by the 2nd respondent -Director of Public Instructions. Aggrieved by Ext.P2, the manager approached this Court by filing W.P.(C) No.20935/2011. This court stayed Ext.P2 cancellation order and directed the Government to take a decision on the revision filed by the Manager. As per the direction of this Court, the Government passed Ext.P4 order upholding the order of cancellation and directed to grant salary based on the declaration, if the petitioner was actually worked. There were certain challenges against the Government Order as well. Thereafter, Ext.P4 order passed by the Government also has been

challenged before this Court. As per Ext.P5 judgment, the Director of Public Instructions was again directed to reconsider the matter. After reconsidering the matter, the Director of Public Instructions, upheld the cancellation by Ext.P6 order. In other words, the Director of Public Instructions affirmed the cancellation order by cancelling the original order of transfer. Against Ext.P6, another writ petition-W.P.(C) No.19706/2013 was filed before this Court. This Court passed an interim order staying Ext.P6 order of the Director of Public Instructions. The facts remains that the original order of transfer is now remain in force. In the meanwhile, the petitioner is superannuated from the service. The malady in this case would be attributable to the Manager or to the different authorities who have interfered the matter. For any irregularity in the transfer and appointment, no fault can be attributed to the petitioner.

3. In that view of the matter, I am of the view that denial of salary to the petitioner is unsustainable. Therefore, without prejudice to proceed against any person who are liable, the petitioner having rejoined from uneconomic school to economic school-Luthergiri Upper Primary School, Aryanadu

and retired from that school on 31/3/2014, the entire terminal benefits shall be disbursed to her within a period of three months from the date of receipt of a copy of this judgment. The 3rd respondent-Assistant Educational Officer shall forward pension book of the petitioner for necessary action. Arrears of salary also shall be paid along with the pension within the time indicated above. It is made clear that if any loss suffered to the exchequer, the State is free to proceed against the Manager, if so warranted.

The writ petition is disposed of with the above observations.

Sd/-

**A.MUHAMED MUSTAQUE,
Judge.**

dpk

/True copy/ PS to Judge.

