

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 23243 of 2012 (E)

PETITIONER:

**SULAJA KUNNUMMA,
HIGH SCHOOL ASSISTANT,
IRITTY HIGHER SECONDARY SCHOOL,
KEEZHUR PO, IRRITY - 670 703.**

**BY ADVS.SRI.M.P.SREEKRISHNAN
SMT.M.H.BINDU**

RESPONDENT(S):

- 1. DISTRICT EDUCATIONAL OFFICER,
THALASSERY - 670 101.**
- 2. THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
THIRUVANANTHAPURAM.P.O.**
- 3. THE MANAGER,
IRITTY HIGHER SECONDARY SCHOOL,
KEEZHUR PO, IRRITY - 670 703.**
- 4. JITHA BALAGOPAL, KAITHAKKARIYIL HOUSE,
KUNNOTH, KILIYANTHARA PO - 670 706.**
- 5. K.T. BHARATHI, PRATHIBHA, KEEZHUR P.O.,
KEEZHUR AMSOM DESOM, IRRITY - 670 703.**

**R1 & R2 BY GOVERNMENT PLEADER SMT.LOWSYA
R4 BY ADVS. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
R5 BY ADVS. SRI.M.RAMESH CHANDER
SRI.ANEESH JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-01-2015 ALONG WITH WPC. 26456/2012 & WPC. 29471/2012,
THE COURT ON 06-02-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT-P1 - THE TRUE COPY OF THE JUDGMENT DATED 31-1-2011 IN OS.432/1990 AND 150/1992 ON THE FILES OF THE MUNSIFF'S COURT KUTHUPARAMBA.
- EXHIBIT-P2 - A TRUE COPY OF THE ORDER DATED 10-6-2011 PASSED IN IA.882/2011 IN OS.132/2011 ON THE FILES OF THE MUNSIFF'S COURT KUTHUPARAMBA.
- EXHIBIT-P3 - A TRUE COPY OF THE ORDER DATED 18.8.2011 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P4 - A TRUE COPY OF THE ORDER DATED 6.9.2011 IN IA.14834/2011 OF THIS HON'BLE COURT.
- EXHIBIT-P5 - A TRUE COPY OF THE JUDGMENT DATED 8.11.2011 IN WPC. NO.23151/2011 OF THIS HON'BLE COURT.
- EXHIBIT-P6 - A TRUE COPY OF THE ORDER DATED 10-1-2012 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT-P7 - A TRUE COPY OF THE ORDER FROM THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER .

RESPONDENTS' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.23243, 26456 & 29471 of 2012**  
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Dated this the 6th day of February, 2015

J U D G M E N T

“C.R.”

The dispute in these writ petitions pertains to appointment in a regular vacancy of a High School Assistant (Social Studies) in Iritty Higher Secondary School and, therefore, they are taken up and disposed of together by a common judgment.

2. W.P.(C).No.29471/2012 is filed by the Iritty High School Society (hereinafter referred to as the “Society”), which is a Corporate Educational Agency. This writ petition is filed challenging the order passed by the Government to approve the appointment made by former Manager, K.T.Bharathi. W.P.(C). No.23243/2012 is filed by the appointee namely, Sulaja Kunnumma appointed by the Society. W.P.(C).

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No.26456/2012 is filed by Jitha Balagopal, an appointee by K.T.Bharathi.

3. In O.S No.432/1990, a suit filed by the members of the Society, it was declared that K.T.Bharathi was an usurper of the office and not a duly elected official of the Society and directed the District Educational Officer, Thalassery to conduct a fresh election in accordance with the bye-law before 01/07/2011.

4. The appointment of the Manager in the School run by the Society is based on the decision of the Management Committee, which is duly elected in accordance with the bye-law.

5. K.T.Bharathi challenged the above judgment in appeal as A.S.No.81/2011. She also filed a stay application for staying the operation of the decree. That was also dismissed on 24/06/2011. In the meanwhile, a notice of election on general body was issued pursuant to the direction of the civil court. That was issued on 09/06/2011. In the General Body

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held on 25/06/2011, a new committee was formed. In the meanwhile K.T.Bharathi, who was declared to be usurper by the civil court appointed Jitha Balagopal as H.S.A. (S.S) [petitioner in W.P.(C).No.26456/2012] on 13/06/2011. The plaintiff in the suit made an attempt to injunct the order of appointment of Jitha Balagopal as H.S.A.(S.S) by I.A.No.882/2011 in O.S.No.132/2011 and, the Civil Court on noting S.33 of the Kerala Education Act, 1958 dismissed the application on 10/06/2011. However, it was observed in that order that since K.T.Bharathi is holding office on temporary arrangement, it is not proper or legal on her part to make permanent appointment of teachers during interregnum. Sulaja Kunnumma, petitioner in W.P.(C). No.23243/2012, was appointed by the Manager, who was appointed by the Committee elected pursuant to the direction of the civil court.

6. The District Educational Officer rejected the approval of appointment of Jitha Balagopal as H.S.A. (S.S). It appears that Jitha Balagopal approached the

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Deputy Director of Education and he also affirmed the decision of the District Educational Officer. It is also noted by the District Educational Officer that K.T.Bharathi is not entitled to make appointment. Jitha Balagopal challenged the said orders before the Government. The Government by Ext.P7 order (produced in W.P.(C).No.23243/2012 held that the appointment made by the approved Manager till she is removed cannot be rendered void in the light of the judgment of this Court in **Padmanabhan Nambiar v. Government of Kerala [1977 (2) KLT 725]**.

7. The only question is whether the appointment made by a person who was declared by a civil court as an usurper and who continued in the office till the new committee elects a Manager, is entitled to make appointment. It is to be noted that the civil court in the judgment, directed to continue same position during the interregnum.

8. The learned counsel Shri M.P.Sreekrishnan appearing for Sulaja Kunnumma (petitioner in W.P.(C).

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No.23243/2012, submits that the facts and circumstances would clearly establish that K.T.Bharathi, former Manager exercised her power with *mala fide* intention and subverted the very administrative objective of the Management in bringing right candidate to be appointed as a teacher in the school. He submits that *status quo* does not authorise K.T.Bharathi to make appointment.

9. On the other hand the learned counsel appearing for Jitha Balagopal submits that K.T.Bharathi was not removed and her removal is only after the elections were over. By virtue of *de facto* doctrine and the doctrine of necessity, the appointment made by her cannot be rendered void. The learned counsel also relied on the decision in **Padmanabhan's** case (*supra*) to support his argument. It is also submitted that the Educational Agency is bound by the acts of Manager in terms of Rule 3(4) of Chapter III of the Kerala Education Rules, 1959. The learned counsel appearing for K.T.Bharathi also raised similar arguments.

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10. The Manager in a school has a pivotal role to play in the Management and administration of the school. His choice of wisdom in selecting teachers and management of the school would reflect upon the transformation of the pupils studying in the school. Education is a State function being discharged through public and private bodies. Therefore, every action of the Manager is accountable under law. He has to discharge his duties and functions in good faith and to subserve the public interest. By granting authority to a Manager, the State affirms confidence in the Manager to uphold State interest in the school. The authority granted to Manager reflects reposition of confidence placed on him by the State based on the mandate to hold the office and in this case mandate is given by the Corporate Agency.

11. Malice in the legal sense is used to pin point an action bereft of justification or reason and exercised with ulterior motive to gain or to cause loss. The Hon'ble Supreme Court in **S.R.Venkataraman v.**

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Union of India [AIR 1979 SC 49] have explained malice as follows:

“Malice, in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.”

In **Ravi Yashwant Bhoir v. Collector [(2012) 4 SCC 407]** has also explained Malice in law as follows:

“The State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. “Legal malice” or “malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Passing an order for unauthorised purpose constitutes malice in law. *Mala fide* exercise of power does not imply any moral turpitude. It means

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exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts.”

12. In the present case, K.T.Bharathi was declared as a usurper to the office by the civil court. Usurper in law means one who lacks moral as well as legal authority to remain in the office. While directing to hold the election, the civil court ordered that during the interregnum, the present position will continue. This is essentially to avoid any hindrance in the day-to-day administration of the school. It does not give any authority under law to that person to act and to take a decision in appointment of teachers. The moment the decree of declaration is passed by the civil court, the authority to act as a Manager by K.T.Bharathi is obliterated. This is because the mandate to act as a Manager is lost under law and therefore, continuation

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in the office thereafter is without trust of the State. Thus, K.T.Bharathi's position is reduced to that of a caretaker by making an interim arrangement during the interregnum to manage the affairs of the school. Unless the civil court specifically orders that K.T.Bharathi is invested with the power of Manager during the interregnum, after the declaration, the arrangement only would be in the nature of temporary measures to take care the affairs of the school. The civil court having declared K.T.Bharathi as an usurper, could not have intended to entrust her the office of Manager by directing that the present position shall continue. Having adverted to the Judgment as a whole, I am of the view that the intention of the civil court was only to entrust K.T.Bharathi the duty of a caretaker in interregnum. The declaratory decree of the civil court would come into effect the moment the decree is passed. The caretaker has no power to make an appointment in the school. Any appointment is only a misuse of duty entrusted upon her as a caretaker.

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Therefore, any action on the part of K.T.Bharathi is malice in law in as much as this was done in violation of the decree of the civil court. As a consequence of such declaration, the relationship of the Manager with the State has been snapped thus rendering action of K.T.Bharathi in making appointment as a misuse of duty of a caretaker.

13. It is to be noted that as per the order in I.A.No.882/2011 in O.S.No.132/2011 after the disposal of the O.S.No.432/1990, it was found that the Manager has no power to make permanent appointment. However, the civil court did not pass any order of injunction in view of S.33 of the Education Act. It is to be noted that K.T.Bharathi approached this Court in appeal (A.S.No.81/2011) and moved an application for stay. The application for stay was dismissed on 24/06/2011. The election was scheduled on 25/06/2011 to elect a new Manager and notice was issued to the general body on 9/6/2011. The appointment was made by K.T.Bharathi on 13/06/2011 just before 12 days of the general body to

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elect the new Manager. The newly elected Manager assumed charge and passed an order on 18/8/2011 reviewing the appointment of Jitha Balagopal and treating her appointment only as a temporary appointment as K.T.Bharathi lacks authority to appoint permanent teachers.

14. The Government while passing the impugned order produced as Ext.P7 in W.P.(C).No.23243/2012, relied on the judgment of this Court in **Padmanabhan Nambiar's** case (*supra*). However, it is to be noted that *de facto* doctrine applies only when the Manager was acting *bona fide*. In **Padmanabhan Nambiar's** case (*supra*), this Court found that the appointment of the Manager was found defective on account of certain particulars. It was also observed in the same judgment of the Division Bench that any action of an usurper or intruder for all legal purposes would be treated as void.

15. It has been already noted that K.T.Bharathi had no right to act as a Manager and her duty was reduced to that of a caretaker and therefore, *de facto*

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doctrine would not apply. *De facto* doctrine would apply only when a power is exercised in good faith and *bona fide*. It cannot save an action done with malice. Thus, in the light of the declaration of civil court that K.T.Bharathi was an usurper, her action in making appointment has to be treated as void.

16. Accordingly, W.P.(C).Nos.23243/2012 and 29471/2012 are allowed. Impugned order therein is set aside. There shall be a direction to the District Educational Officer to approve the appointment of Sulaja Kunnumma in the post of H.S.A (S.S.) in accordance with law. Needful shall be done within a period of six weeks. W.P.(C).No.26456/2012 filed by Jitha Balagopal is dismissed. Parties shall suffer their respective costs.

A.MUHAMED MUSTAQUE, JUDGE

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