

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 36212 of 2004 (J)

PETITIONER:

**CORPORATE MANAGER
CARMELITE CONGREGATION OF SISTERS
UDAYA PROVINCE, IRINJALAKUDA.**

**BY ADVS.SRI.PKM.HASSAN
SRI.FIROZ K.ROBIN**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
GENERAL EDUCATION DEPARTMENT
GOVT. OF KERALA, THIRUVANANTHAPURAM.**
- 2. DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM.**
- 3. DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.**
- 4. DISTRICT EDUCATIONAL OFFICER,
IRINJALAKUDA.**
- 5. TAHSILDAR (R.R.), MUKUNDAPURAM.**

BY GOVERNMENT PLEADERSRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 - COPY OF THE STAFF FIXATION ORDER DATED 06.07.1999 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P2 - COPY OF THE APPEAL DATED 02.08.1999 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P3 - COPY OF THE ORDER DATED 14.12.1999 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4 - COPY OF THE APPEAL DATED 31.12.1999 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P5 - COPY OF THE ORDER DATED 22.03.2000 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6 - COPY OF THE APPOINTMENT ORDER DATED 05.06.2000 WHICH IS HAVING THE APPROVAL OF THE 4TH RESPONDENT.
- EXHIBIT P7 - COPY OF THE STAFF FIXATION ORDER ISSUED BY THE 4TH RESPONDENT TO LFCHS, IRINJALAKUDA DATED 14.07.2003.
- EXHIBIT P8 - COPY OF THE SANCTION ORDER ISSUED BY THE 2ND RESPONDENT DATED 18.07.2003.
- EXHIBIT P9 - COPY OF THE APPEAL MEMORANDUM DATED 20.08.2003.
- EXHIBIT P10 - COPY OF THE ORDER DATED 19.07.2004 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P11 - COPY OF THE REVISION APPEAL DATED 03.08.2004 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P12 - COPY OF THE ORDER DATED 02.11.2004 PASSED BY THE 2ND RESPONDENT REJECTING THE APPEAL FILED BY THE PETITIONER.
- EXHIBIT P13 - COPY OF THE NOTICE DATED 28.10.2003 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P14 - COPY OF THE OBJECTION DATED 03.08.2004 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P15 - COPY OF THE ORDER DATED 10.08.2004 ISSUED BY THE 3RD RESPONDENT.

[CONTD.....]

- EXHIBIT P16 - COPY OF THE RR NOTICE DATED 29.11.2004 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P17 - COPY OF THE REVISION PETITION DATED 15.12.2004 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P17(A) - COPY OF THE STAY PETITION DATED 15.12.2004 FILED BEFORE THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.36212 of 2004

Dated this the 14th day of September, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that recovery has been ordered from the petitioner, the Manager of a Teachers' Training School, aided by the Government. The brief facts to be noticed are that, the petitioner's School was one started in the year 1954. From the year 1995-1996, there was a ban on admissions, which was continued in the two successive academic years. The re-introduction of admission to TTC course was made in the year 1999-2000 and the issue relates to the staff fixation order at Ext.P1, which was challenged in appeal and revision.

2. For the academic year 1999-2000, besides the Headmaster, three TEs (Teachers Educators) were sanctioned as per Ext.P1. The petitioner filed an appeal from the staff fixation order and by Ext.P3, an additional post of Physical Education Teacher was granted. Again, a revision was filed, which resulted

in Ext.P5, in which an additional post of Arts and Crafts Teacher was also granted.

3. The issue relates to the appointment made by the Manager to the post permitted by Ext.P5. By Ext.P6, on 05.06.2000, one Sr.Reena A.O. was appointed to the said post. The controversy arose since the Corporate Manager of the educational agency, having many aided Schools under it, continued a protected teacher in another of its Schools: Little Flower Convent High School, Irinjalakkuda. Admittedly, in the year 2000-2001, when a vacancy arose by Ext.P5, a new person was appointed in the post of Arts and Crafts Teacher, without accommodating the protected hand under the same educational agency; a teacher of the same category, who was continued in the LFCHS, Irinjalakkuda as a protected hand.

4. It is an admitted fact that for the said academic year, there was no sanctioned post in Arts and Crafts in the LFCHS School and the incumbent was continued only by virtue of the protection, though there was a division fall and there was no requirement of an Arts and Crafts Teacher. The eventual consequence was that, a protected teacher was continued in one

of the Schools, while in another School under the same Corporate Management, a fresh hand was appointed, who was a 51A claimant. The fact that the person was a 51A claimant is of no relevance, since the 51A claimant has no claim to salary during the period he/she is kept out of service. However, with respect to a protected teacher, the protection is granted by virtue of Government Orders in so far as the teacher having continued from a particular date. Such continuance with salary, without a sanctioned post, casts a liability on the Government for the salary so paid, despite there being no need for such teacher. The Government, by the act of the petitioner herein, was obliged to pay the salary of a protected Arts and Crafts Teacher in one of the Schools under the Corporate Management, while the Corporate Manager appointed a 51A claimant to a sanctioned post; in another aided School.

5. The learned counsel would rely on ***Vasudevan Namboodiri v. State of Kerala [1997 (2) KLT 529]***, which however on facts, is not applicable. The issue considered therein was wrong staff fixation made by the Government, which was successfully challenged in appeal. In the present case, the fact of

a fresh appointment having been made, when a protected teacher was continued in another School under the same educational agency is admitted.

6. The learned Single Judge in **Vasudevan Namboodiri** (supra) also noticed Sub-rule (4) of Rule 7 of Chapter-III, which enumerated the instances when salary can be recovered from Managers. The present case squarely comes under an irregular appointment of a person claiming under Rule 51A Chapter XIVA. The Crafts Teacher at the LFCHS, was one originally appointed and continued in the Teachers Training School, whose transfer to LFCHS was on account of the ban on admissions and the abolition of post in the TTS. The said teacher was retained at LFCHS only by virtue of the benefit of protection. On restoration of admission to the TTS and sanction of a post of Craft teacher, the protected teacher ought to have been accommodated there and the appointment of a Rule 51A claimant is irregular.

7. The petitioner also contends that, protection and re-deployment of protected teacher was a consequence of GO(P) No.178/2002/G.Edn. dated 28.06.2002, which however was introduced after the appointment made in the present case.

Further, even that would not have any relevance, since the deployment of protected teachers was a measure to ensure that Government is not made to pay the salary of the protected teacher, while the Aided Schools, even under different Managements, made fresh appointments by virtue of the fresh sanction of posts permitted under the KER.

In the present case, a protected teacher was continued in a School of the very same Corporate Management, while a fresh appointment was made in another School, thus bringing on the Government, liability of two salaries, while there was only one sanctioned post. This Court does not find any infirmity in the orders passed against the Manager for recovery.

The writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A. to Judge