

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 32890 of 2007 (M)

PETITIONER(S) :

- 1. P.VIJAYAKUMARI, W/O.N.LEKSHMANAN,
MANAGER, P.A.M.M.U.P. SCHOOL, KALLEPULLY,
P.O.KALLEPULLY, PALAKKAD-678 005.**
- 2. MINI LEKSHMANAN, D/O.N.LEKSHMANAN,
MANAGER, AIDED JUNIOR BASIC SCHOOL,
LAKSHMINARAYANAPURAM, PALAKKAD-678 005 &
CHATHU MENON MEMORIAL AIDED JUNIOR BASIC SCHOOL,
MURUKANI, PALAKKAD-678 005.**

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENT(S) :

- 1. THE ASSISTANT EDUCATIONAL OFFICER,
PALAKKAD.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.**
- 3. THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 4. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 5. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
- 6. V.H.MOIDEEN, L.G.ARABIC TEACHER,
G.W.L.P.SCHOOL, OLAVAKKODE, OLAVAKKODE P.O.,
PALAKKAD DISTRICT.**
- 7. K.A.EBRAHIM,
L.G. ARABIC TEACHER, G.H.S.THOLANUR, PALAKKAD DISTRICT.**

R1 TO R5 BY SR.GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE LETTER DATED 21.01.2002 SENT BY THE 1ST PETITIONER TO THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXHIBIT P2: TRUE COPY OF THE LETTER DATED 21.01.2002 SENT BY THE 2ND PETITIONER TO THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXHIBIT P3: TRUE COPY OF THE ORDER DATED 05.03.2003 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXHIBIT P4: TRUE COPY OF THE LETTER DATED 07.05.2003 SENT BY THE 2ND PETITIONER TO THE ASSISTANT EDUCATIONAL OFFICER.
- EXHIBIT P5: TRUE COPY OF THE LETTER DATED 07.05.2003 SENT BY THE 1ST PETITIONER TO THE ASSISTANT EDUCATIONAL OFFICER.
- EXHIBIT P6: TRUE COPY OF THE ORDER DATED 19.06.2003 ISSUED BY THE ASSISTANT EDUCATIONAL OFFICER, PALAKKAD.
- EXHIBIT P7: TRUE COPY OF THE MEMORANDUM OF APPEAL DATED 15.07.2003 SUBMITTED BY THE 2ND PETITIONER BEFORE THE DIRECTOR OF PUBLIC INSTRUCTION, AGAINST EXT.P6.
- EXHIBIT P8: TRUE COPY OF THE ORDER DATED 01.06.2004 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXHIBIT P9: TRUE COPY OF THE LETTER DATED 01.07.2004 SENT BY THE 2ND PETITIONER TO THE ASSISTANT EDUCATIONAL OFFICER
- EXHIBIT P10: TRUE COPY OF THE ORDER DATED 13.08.2004 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.
- EXHIBIT P11: TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT ON 19.11.2004 IN W.P.(C).NO.33655 OF 2004.
- EXHIBIT P12: TRUE COPY OF THE ORDER DATED 24.01.2005 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.
- EXHIBIT P13: TRUE COPY OF THE ORDER DATED 11.04.2005 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTION.
- EXHIBIT P14: TRUE COPY OF THE ORDER DATED 28.05.2005 ISSUED BY THE ASSISTANT EDUCATIONAL OFFICER, PALAKKAD.

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**EXHIBIT P15: TRUE COPY OF THE LETTER DATED 29.09.2004 SENT BY
THE ASSISTANT EDUCATIONAL OFFICER, PALAKKAD TO
THE DIRECTOR OF PUBLIC INSTRUCTION.**

**EXHIBIT P16: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT
DATED 10.08.2005 IN W.P.(C).NO.19780 OF 2005.**

**EXHIBIT P17: TRUE COPY OF THE REPRESENTATION DATED 25.09.2006 SENT BY
THE PETITIONERS TO THE DIRECTOR OF PUBLIC INSTRUCTION
ENCLOSING EXT.P16 JUDGMENT.**

**EXHIBIT P18: TRUE COPY OF THE NOTICE DATED 04.10.2006 SENT BY
THE DIRECTOR OF PUBLIC INSTRUCTION TO THE PETITIONERS.**

**EXHIBIT P19: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT
DATED 02.08.2007 IN C.C.C.NO.1087 OF 2007.**

**EXHIBIT P20: TRUE COPY OF THE ORDER DATED 24.07.2007 PASSED BY
THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTION.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.32890 of 2007

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Dated this the 16th day of September, 2015

JUDGMENT

Ext.P20 by which the Additional Director of Public Instruction has rejected the petitioners' request to run three schools as separate units is under challenge.

2. The first petitioner was the educational agency and the manager of three aided educational institutions, viz., Puthillath Achutha Menon Memorial Upper Primary School, Kallepully, Palakkad (PAMMUP School for short), the Aided Junior Basic School, Lakshminarayanapuram, Palakkad (AJB School, for short) and the Chathu Menon Memorial Aided Junior Basic School, Murukanu, Palakkad (CMMAJB School, for short). By Ext.P3 order dated 5.3.2003, the Director of Public Instruction permitted the first petitioner to transfer the management and ownership of AJB School and CMMAJB School to her daughter, the second petitioner.

Thereafter on 21.4.2003, the first petitioner settled the said two schools on her daughter. Therefore, w.e.f 21.4.2003, the second petitioner is the educational agency and the manager of AJB School and CMMAJB School.

3. By Ext.P6 order dated 19.6.2003, the Assistant Educational Officer, Palakkad approved the second petitioner as the Manager of AJB School and CMMAJB School w.e.f 19.6.2003. The request made by the second petitioner who is the transferee manager, to run the two schools as separate units was declined on the ground that the Director had not granted the said request in Ext.P3. Aggrieved by Ext.P6, insofar as it relates to the date of effect of the change of management and the denial of permission to run the AJB and CMMAJB Schools as separate units, the second petitioner filed an appeal before the Director. By Ext.P8 order dated 1.6.2004, the Director has allowed the appeal and accorded permission to run AJB and CMMAJB Schools as separate units and directed the Assistant

Educational Officer to revise Ext.P6 dated 19.6.2003 by giving effect to the change of management from the date of execution of the settlement deeds viz., 21.4.2003. The Director further ordered that protected teachers, if any, should be absorbed in their parent schools on the occurrence of vacancies.

4. The Director of Public Instruction by Ext.P13 order dated 11.4.2005 modified Ext.P8 and directed that the three schools would be treated as a single unit for all purposes. The petitioners allege that they were neither put on notice nor heard before Ext.P13 was passed. Thereupon, the petitioners filed W.P(C) No.19780 of 2005 before this Court challenging Ext.P13. By Ext.P16 judgment, this Court quashed Ext.P13 and directed the Director of Public Instruction to pass fresh orders in the matter after affording the petitioners an opportunity of being heard.

5. The petitioners further allege that they have forwarded a certified copy of Ext.P16 judgment to the Director for Public

Instruction along with Ext.P17 representation dated 25.9.2006. Thereafter, the petitioners received Ext.P18 notice dated 4.10.2006 from the office of the Director of Public Instruction inviting them to appear for a hearing on 18.10.2006 before the Additional Director of Public Instruction (Academic). As directed in Ext.P18, the petitioners appeared on 18.10.2006 through their authorised representative. By Ext.P20 order dated 24.7.2007, the Additional Director of Public Instruction (Academic) has rejected the request of the petitioners to run the three schools as separate units. It is with this background, the petitioners have approached this Court.

6. The respondents have filed a counter affidavit contending that if the petitioners' schools are treated as different units it would affect the right of Rule 51A claimants.

7. Arguments have been heard.

8. It is crucial to note that by Ext.P3 order, the first petitioner was permitted to effect the change of management of AJB School,

Lakshminarayanapuram and CMMAJB School, Murukani involving change of ownership to her daughter, who is the 2nd petitioner and directed the Assistant Educational Officer to issue formal orders in the matter. The Assistant Educational Officer by Ext.P6 issued formal orders approving the second petitioner as the Manager of AJB School, Lakshminarayanapuram and CMMAJB School, Murukani w.e.f 19.6.2003. On the request of the 2nd respondent, the director also issued Ext.P8 order dated 1.6.2004 modifying Ext.P6 directing that the approval be given effect from 21.4.2003 and allowed the transferee Manager, who is the 2nd petitioner, to run separate managements, and directed the protected teachers, if any, should be absorbed in their parent schools themselves on occurrence of vacancies. Therefore, the stand taken by the petitioners that Rule 51A claimants should be affected on account of the transfer would loses its very legs to stand upon as the interest of Rule 51A claimants were taken care of in Ext.P8 itself.

8. In Ext.P13, the Director had relied on Rule 35 of Chapter XIV-A of the KER to order that the three schools shall be treated as a single unit for all purposes. The learned counsel for the petitioner would submit that Rule 35 of Chapter XIV-A or any other provision in the KER does not support the said conclusion. By Ext.P3, the Director has permitted the first petitioner to effect change of management involving change of ownership of CMMAJB and AJB Schools in favour of the second petitioner. By Ext.P6 order dated 19.6.2003, the Assistant Educational Officer had formally approved the second petitioner as the Manager of the aforesaid schools and by Ext.P8, the change of management involving change of ownership of the schools took effect from 21.4.2003 and, therefore, with effect from 21.4.2003 the three schools form separate units.

9. A perusal of Ext.P20 makes it clear that the DPI has not applied his mind to the relevant materials while passing the impugned order. It is settled law that transfer of a school from one

management to another is not one adversely affecting the interests of the staff of the schools and that their interest is only to continue as members of the staff. Sub Rule (3) of Rule 5A of Chapter III of KER that was inserted by G.O(P) No.226/98/G.Edn. dated 22.6.1998 stipulates that in the case of change of management of a school involving change of ownership, the new manager of a corporate or an individual educational agency shall be bound to absorb any member, who is a claimant under Rule 51A of Chapter XIV-A or he is eligible for protection belonging to a teaching and non-teaching staff of any school of the transferor manager against the vacancies that may arise in future. Therefore, if at all there is a protected teacher in the school belonged to and managed by the first petitioner, the second petitioner is bound to absorb him/her in anyone of the two schools transferred to her. Therefore, this Court is of the view that the apprehension of the State is not well founded and, therefore, Ext.P20 has to go.

In the result, the writ petition is allowed. Ext.P20 is

quashed. Respondents 1 to 5 are directed to give effect and implement Ext.P8 and to recognise the PAMMUP School, Kallepully, the CMMAJB School, Murukani and the the AJB School, Lakshminarayanapuram as separate units for all purposes.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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