

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 29244 of 2013 (E)

PETITIONER:

THE MANAGER, A.U.P. SCHOOL, KARIMPUZHA
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SMT.A.V.PRIYA
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.SANIL KUNJACHAN
SRI.JOHNSON JOSE PANJIKKARAN
SRI.K.KURIAN KOSHY

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001
2. THE DEPUTY DIRECTOR OF EDUCATION
PALAKKAD - 678 001
3. THE ASSISTANT EDUCATIONAL OFFICER
CHERPLACHERY, PALAKKAD - 679 503.
4. SUPER CHECK OFFICER
SUPER CHECK CELL, CIVIL STATION (B BLOCK
6TH FLOOR)KOZHIKODE - 20.
5. SMT.OMANA T,
W/O.UNNIKRISHNAN, KOUSTHUBHAM, KARIMPUZHA
PALAKKAD DISTRICT PIN - 679 513

R5 BY ADV. SRI.R.K.MURALEEDHARAN
R1-R4 BY GOVERNMENT PLEADER SRI P.K. ABDUL REHMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29244 of 2013 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF LETTER OF RESIGNATION WRITTEN AND SIGNED BY THE 5TH RESPONDENT.

EXT.P-2: TRUE COPY OF PROCEEDINGS DATED 12.7.2005 ACCEPTING THE RESIGNATION OF 5TH RESPONDENT ISSUED BY THE PETITIONER/MANAGER

EXT.P-3: TRUE COPY OF LETTER NO.E/3066/2005 DATED 3.8.2005 ISSUED BY 3RD RESPONDENT

EXT.P-4: TRUE COPY OF STATEMENT OF RELINQUISHMENT DATED 31.8.2005 EXECUTED BY 5TH RESPONDENT BEFORE THE 3RD RESPONDENT

EXT.P-5: TRUE COPY OF PROCEEDINGS/ORDER NO.L.DIS.E/3192/05 DATED 13.9.2005 ISSUED BY 3RD RESPONDENT

EXT.P-6: TRUE COPY OF ORDER NO.4537/2013/PUBLIC EDUCATION DEPARTMENT DATED 28.10.2013

EXT.P7: TRUE COPY OF THE ENQUIRY REPORT OF THE SUPER CHECK OFFICER.

EXT.P8: TRUE COPY OF THE ATTENDANCE REGISTER FOR THE MONTH OF JULY 2005 OF KARIMPUZHA HIGHER SECONDARY SCHOOL, THOTTARA, PALAKKAD.

EXT.P9: TRUE COPY OF THE RELEVANT PORTIONS OF THE LIST OF RETRENCHED TEACHERS IN PALAKKAD DISTRICT.

RESPONDENT(S)' EXHIBITS

EXT.R5(A): A TRUE COPY OF THE STAFF FIXATION ORDER OF AUPS, KARIMPUZHJA DATED 15.7.2005.

EXT.R5(B): A TRUE COPY OF THE RELIEVING ORDER ISSUED BY THE PETITIONER DATED 12.07.2005.

EXT.R5(C) A TRUE COPY OF THE REPLY RECEIVED UNDER RIGHT TO INFORMATION ACT DATED 9.1.2014.

ks.

TRUE COPY

P.S.(Hr.Gr.) to Judge

BABU MATHEW P. JOSEPH, J.

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W.P.(C) No. 29244 of 2013

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Dated this the 27th day of February, 2015

JUDGMENT

This writ petition has been filed challenging Ext.P6 order passed by the Government and for other reliefs.

2. Heard the learned counsel appearing for the petitioner, learned Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondent.

3. The petitioner is the Manager of A.U.P.School, Karimpuzha. He has appointed the 5th respondent as an Upper Primary School Assistant in his school on 1-8-2013. That appointment was approved. While the 5th respondent was continuing in that school, she was offered appointment as a High School Assistant (Malayalam) in Karimpuzha Higher Secondary School, Thottara. There was a real likelihood of falling divisions in the petitioner's school at the

end of the academic year 2004-05 namely, on 14-7-2005. Considering the same and the offer received for appointment as a High School Assistant in Karimpuzha Higher Secondary School, the 5th respondent wanted to leave the petitioner's school even before the end of that academic year. She wanted to relieve herself on 12-7-2005 from that school. But, according to her, as the petitioner compelled her to resign from service for relieving her on 12-7-2005 and in view of the fact that it was sure that divisions in that school will be lost and she was certain to get appointment as High School Assistant in Karimpuzha Higher Secondary School, she had acceded to the request of the petitioner and Ext.P1 letter for relieving her was given to him. As requested by the petitioner, certain corrections were effected in Ext.P1 for the purpose of changing that letter as a resignation letter. In short, acting on that letter, she was relieved from the petitioner's school

and she joined as a High School Assistant in Karimpuzha Higher Secondary School on the next day namely, 13-7-2005. That appointment was not approved for want of vacancy, even though without approval she continued upto 31-10-2008. Thus, in effect, she could not continue as an Upper Primary School Assistant in the petitioner's school and as a High School Assistant in Karimpuzha Higher Secondary School in the circumstances.

4. While so, the Government issued G.O.(P) No.199/2011/G.Edn.dated 1-10-2011 formulating a teacher package intending to help the teachers who lost job under various circumstances from the schools and for deploying them suitably and to ensure payment of their salary. After this Government Order came into force, the 5th respondent approached the Government with a petition explaining the reasons under which she was relieved as a resigned person from the petitioner's school on 12-7-2005 and requesting

for including her as one among the teachers in the teacher package. The Government deputed the 4th respondent for conducting an enquiry into the matter. After due enquiry, including hearing of the 5th respondent, Headmaster of Karimpuzha Higher Secondary School, Headmaster of the petitioner's school, Assistant Educational Officer, Cherplacherry, representative of the District Educational Officer and the representative of the Manager of Karimpuzha Higher Secondary School, the 4th respondent submitted Ext.P7 report before the Government. It was specifically recommended in Ext.P7, taking into account the peculiar circumstances which led the 5th respondent to resign from the petitioner's school, for ignoring her resignation and to treat her to be a person retrenched from the school. The Government considered Ext.P7 report of the 4th respondent and issued Ext.P6 order for including the 5th respondent as one among the persons in the list of

retrenched teachers as per the teachers package issued in 2011 ignoring her resignation two days prior to her normal retrenchment from the school. The circumstances which led to the submission of resignation by the 5th respondent and her inability to secure an employment as she was overaged as also the humanitarian consideration were weighed with the Government for issuing Ext.P6 order. Accordingly, she was appointed as a Cluster Co-ordinator in BRC, Ottappalam.

5. Learned counsel for the petitioner submits that during the enquiry conducted by the 4th respondent on the matter and before submitting Ext.P7 report before the Government, the petitioner was not given an opportunity of being heard. The 5th respondent raised allegations against the petitioner in respect of Ext.P1 resignation and references were made in Exts.P7 and P6 regarding the alleged compulsion from the side of the petitioner for the

5th respondent to resign from the school of the petitioner. In such a circumstance, the 4th respondent should have heard the petitioner after issuing notice to him. Since that was not done, Ext.P7 is unsustainable in law as it violates the principles of natural justice. In turn, Ext.P6 is also unsustainable in law for the very same reason. It is the right of the Manager to effect appointment of teachers in his school. If the resignation of the 5th respondent is condoned and she is treated as a retrenched teacher, subsequently, the Manager will be compelled to appoint her in his school when a vacancy arises there. Therefore, Ext.P6 affects the statutory right of the petitioner to appoint teachers of his choice in accordance with law. This situation also entitled the petitioner to a hearing before preparing a report in the nature of Ext.P7 or passing an order like Ext.P6. Since the 5th respondent resigned from the post on 12-7-2005 before her actual retrenchment, she cannot be treated as a

retrenched teacher for the purpose of including in the teacher package. In view of these facts, the learned counsel prays for quashing Ext.P6.

6. Learned counsel for the 5th respondent, on the contrary, submits that the contentions so raised on behalf of the petitioner are not legally sustainable for various reasons. Even though it is a fact that the compulsion from the part of the petitioner was the reason for submitting Ext.P1 resignation letter by the 5th respondent, that was not the reason for entering the findings and arriving at the conclusion by the 4th respondent in Ext.P7. Moreover, the matters really weighed with the Government for including the 5th respondent in the teacher package were not the allegations raised against the petitioner. It is specifically noted in Ext.P6 that even without a resignation the 5th respondent could have gone from the school of the petitioner and joined the Karimpuzha Higher Secondary

School as a High School Assistant. The resignation was not at all a necessity for that purpose. The situation that the post in which the 5th respondent was working in the petitioner's school would be lost by way of division fall was there at the time of giving Ext.P1 letter. The 5th respondent was also under the bona fide belief that, after relieving from the petitioner's school, she would get appointment in Karimpuzha Higher Secondary School. Such circumstances, in fact, compelled her to give a letter as requested by the petitioner, contends the learned counsel. On a consideration of the entire facts and circumstances narrated in Exts.P7 and P6, it goes without saying that the allegation of compulsion exerted by the petitioner for obtaining a resignation letter was not in fact weighed with the 4th respondent to make the recommendation in Ext.P7 and the 1st respondent to accept the recommendation and issuing Ext.P6 order including the 5th respondent in the teacher

package as a retrenched person. Of course, behind the back of the petitioner, the allegation should not have been made in Ext.P7 or Ext.P6. But, that itself is not a good ground for interfering with Ext.P7 or Ext.P6. The observations made against the petitioner in Ext.P6 and Ext.P7 can be ignored. Since the weight and strength of the findings entered by the 4th respondent in Ext.P7 or by the 1st respondent in Ext.P6 will not be lost for other valid reasons, they are bound to exist. Accepting the argument of the learned counsel for the petitioner, without affecting the validity of Ext.P7 and Ext.P6, this Court ignores the observations made against the petitioner in Exts.P7 and P6. Therefore, Exts.P7 and P6 independently exist for good reasons stated in them. Only for the reason that some observations were made against the petitioner, Ext.P7 or Ext.P6 need not be found to be bad for violation of principles of natural justice. Even if the petitioner was heard, no

change would have been effected either in Ext.P7 or in Ext.P6. Therefore, the violation of principles of natural justice for the reason that the petitioner was not heard before preparing Ext.P7 or passing Ext.P6 cannot be sustained.

7. Rule 3 in Chapter I of the Kerala Education Rules, 1959 (for short, KER) grants ample power to the Government to dispense with or relax the requirements of any rule under KER for dealing with a case in a just and equitable manner. Here is a person who is qualified to be appointed as a High School Assistant (Malayalam) joined as an Upper Primary School Assistant on 1-8-2003. That appointment was approved. But, it was quite certain that divisions will fall by the end of the academic year 2004-05. In fact, it really happened as evident from Ext.R5(a) produced along with the counter affidavit filed by the 5th respondent. It can be seen from Ext.R5(a) that the posts of

Upper Primary School Assistants were reduced for want of effective strength of pupils. It was quite possible to know on 12-7-2005 before the normal date of retrenchment namely, 14-7-2005 that there would be division fall. In fact, as evident from Ext.R5(a) that happened also. In such a circumstance, the 5th respondent wanted to relieve herself from that school on 12-7-2005 and accepting the offer joined Karimpuzha Higher Secondary School on the next day. It was not necessary for her to tender resignation for this purpose. A mere relieving of her from the petitioner's school would have been sufficient for joining the other school. Moreover, had she continued for two more days in the petitioner's school, her retrenchment would have taken place. The petitioner cannot aspire for a fresh appointment any more. She is overaged, even though highly qualified. All these facts weighed with the Government for treating her as retrenched from the petitioner's school condoning two

days intervened in between 12-7-2005 and 15-7-2005. Resignation will result in loss of past service. She cannot have any claim under the KER if resignation is upheld. These circumstances were sufficient reasons for invoking Rule 3 in Chapter I of the K.E.R. by the Government for dealing with the case of the 5th respondent in a just and equitable manner. This Court does not find fault with such an action taken by the Government. Here comes the argument of the petitioner that if Ext.P6 order continues and, subsequently, if vacancies arise in his school, he will be compelled to appoint the petitioner.

8. The chances of arising vacancy in the petitioner's school on the basis of strength of pupils is very very remote. Ext.R5(c) issued by the Public Information Officer of the Assistant Educational Office, Cherplacherry, shows this fact. The pupil strength of the petitioner's school from 2005-06 to 2013-14 is given in Ext.R5(c). It reads as

follows:

2005-06 - 181	2010-11 - 81
2006-07 - 133	2011-12 - 76
2007-08 - 117	2012-13 - 71
2008-09 - 106	2013-14 - 63
2009-10 - 91	

The petitioner's school is a primary school which has standards I to VII. If that be so, considering the strength of 63 pupils during the academic year 2013-14, this school can be treated to be an uneconomic one. At present, there is no evidence to show as to whether this school has been declared to be an uneconomic one or not. Therefore, by way of increase in divisions, it appears, the chances of appointment of teachers is very very remote. Be that as it may.

9. The power of the Government to invoke Rule 3 in Chapter I of the KER is not dependent upon the power of the manager to appoint teachers. Rules can be relaxed or

can even be dispensed with for the purposes set out in Rule 3. For invoking that power and issuing an order like Ext.P6, the Government need not wait for the arguments to be advanced by the manager. When the Government exercises that power invoking Rule 3 and issues an order in the nature of Ext.P6, the manager is bound to respect and obey that order. Therefore, for this reason also, the question of violation of principles of natural justice does not arise. Such an argument raised by the petitioner is liable to be rejected and hence, I do so.

This writ petition is devoid of any merits. Therefore, it is dismissed.

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

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//True copy//

P.S. (Hr. Gr.) To Judge

ks.

**BABU MATHEW P. JOSEPH
JUDGE**