

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 28326 of 2015 (M)

PETITIONER:

**BINCY THOMAS, AGED 36 YEARS
UPPER PRIMARY SCHOOL ASSISTANT
ST.THERESA'S HIGH SCHOOL, MANAPPURAM P.O., CHERTHALA
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.V.VARGHESE
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM -695 001.**
- 2. DISTRICT EDUCATIONAL OFFICER
CHERTHALA, ALAPPUZHA DISTRICT
PIN-688 524.**
- 3. ASSISTANT EDUCATIONAL OFFICER
ERNAKULAM- 682 011.**
- 4. CORPORATE MANAGER
SACRED HEART CORPORATE EDUCATIONAL
AGENCY OF CMI SCHOOLS
KALAMASSERY, RAJAGIRI P.O., ERNAKULAM
PIN-683 104.**

BY GOVERNMENT PLEADER SMT. M.J. RAJASREE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 28326 of 2015 (M)

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APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 - COPY OF THE G.O(RT)NO.2423/2013/G.EDN DATED 13.06.13.
- EXHIBIT P2 - COPY OF THE LETTER NO.F-1189/2013 DATED 18.07.2012 OF THE 3RD RESPONDENT.
- EXHIBIT P3 - COPY OF THE G.O(RT) NO.1130/15/G.EDN DATED 21.03.15.
- EXHIBIT P4 - COPY OF THE ORDER NO.SH12/2015 DATED 04.04.15 OF THE 4TH RESPONDENT.
- EXHIBIT P5 - COPY OF THE LETTER NO.F1089/2015 DATED 19.06.15 OF THE RESPONDENT.
- EXHIBIT P6 - COPY OF THE ORDER NO.SH42/2015 DATED 15.07.15 OF THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.28326 of 2015-M

Dated this the 26th day of November, 2015.

JUDGMENT

The petitioner was aggrieved with the adjustment made in, the posting of Teachers in the 4th respondent School, when admittedly there was a division fall in the academic year 2011-2012. After protracted litigation, Ext.P3 order was passed by the Government. The petitioner's leave from 02.06.2011 to 30.06.2011 in the St. Mary's U.P. School, Thevara, under the 4th respondent Corporate Manager, was directed to be regularised. The petitioner had been on leave on medical grounds between 03.06.2011 to 08.07.2011, which was directed to be treated as 'leave without allowances' [LWA] on Medical Certificate.

2. The petitioner had produced a Medical Certificate showing that she had undergone an abortion. As per the Rules, even for abortion, an employee is to be paid wages for leave not extending six weeks. The present litigation was necessitated, only

because the petitioner had been entitled to wages on the basis of the Medical Certificate and the order at Ext.P3 directed the same to be treated as LWA on Medical Certificate.

3. The difficulty expressed by the learned counsel is that at this point of time, none would issue a Medical Certificate, showing any other reasons, since the medical exigency; was occasioned years back. Further, any new Certificate obtained would also be a false Certificate, since the petitioner had undergone an abortion and had taken leave for that purpose alone. In any event, the learned counsel for the petitioner submits on instructions that the the petitioner is willing to give up her claim for wages and the petitioner's above period may be regularised as LWA.

4. There should be no difficulty for the same and merely because the Medical Certificate is one, which entitles the petitioner to wages during the period; need not determine the 3rd respondent from treating it as LWA on medical grounds; especially when the petitioner concedes to that position. The learned Government Pleader on instructions submits that a clarification from the Finance Department was sought. In the nature of the concession made by the petitioner, this Court is of

the opinion that no such clarification is required.

5. On the aforesaid findings, it is directed that since the petitioner has produced a valid Medical Certificate, whatever be the reason, on the petitioner's concession, in consonance with Ext.P3 order, the period between 03.06.2011 to 08.07.2011 shall be treated as LWA on medical grounds. The petitioner's appointment shall be regularised as per Ext.P6, and leave regularised as LWA on medical grounds.

The petitioner's salary shall be disbursed regularly from that of December, 2015 on the due date of such salary and the petitioner shall also be paid the arrears of salary within a period of three months from the date of receipt of the certified copy of this judgment.

The writ petition is disposed of. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/26/11/15