

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937**

**WP(C).No. 28804 of 2014 (A)**  
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**PETITIONER(S):**  
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**SHAHIDA K., AGED 40 YEARS,  
W/O MUHAMMED ALI, KUPPANATHU HOUSE, PALEMADU P.O  
MALAPPURAM 679311**

**BY ADV. SRI.K.A.MANZOOR ALI**

**RESPONDENT(S):**  
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- 1. STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, EDUCATION DEPARTMENT  
STATE SECRETARIAT, THIRUVANANTHAPURAM 695001**
- 2. THE HEADMASTER,  
MMMLP SCHOOL, EAST KALKULAM  
MALAPPURAM DISTRICT 675625**
- 3. THE MANAGER, MMMLP SCHOOL,  
EAST KALKULAM  
MALAPPURAM DISTRICT 675625  
(ALSO MKMM LP SCHOOL, VELUMPIAMPADAM) 676505**
- 4. THE DEPUTY DIRECTOR OF EDUCATION,  
THIRUVANANTHAPURAM 695001**

**ADDL.RESPONDENTS:**

**5.THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM 676 505.**

**6.SAIFUNNISA, ARABIC TEACHER, MMMLP SCHOOL,  
EAST KALKULAM, MALAPPURAM DISTRICT 676505.**

**ADDL.RESPONDENTS:**

**7.DISTRICT EDUCATION OFFICER, WANDOOOR.**

**8.ASSISTANT EDUCATIONAL OFFICER, NILAMBUR.**

**ADDL.RESPONDENTS 7 AND 8 ARE IMPEADED AS PER ORDER DT.  
25.2.2015 IN I.A.NO.2662/2015.**

**R2,R3 & 6 BY ADV. SRI.V.RAJASEKHARAN NAIR  
R BY GOVERNMENT PLEADER SMT.M.J.RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**WP(C).No. 28804 of 2014 (A)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1: TRUE COPY OF THE ORDER OF APPOINTMENT DATED 26-08-2002  
AND THE PROCEEDINGS OF THE ASSISTANT EDUCATIONAL OFFICE,  
NILAMBUR**

**EXHIBIT P2: TRUE COPY OF THE ORDER G.O(RT) NO 371/14/G.EDN DATED 24-01-  
2014 OF THE 1ST RESPONDENT**

**EXHIBIT P3: COPY OF THE G.O.(RT) NO.4541/14/G.EDN. DATED 25.10.2014 OF THE  
1ST RESPONDENT.**

**EXHIBIT P4: COPY OF THE DECISION REPORT IN 2009 3 KLT 650.**

**EXHIBIT P5: COPY OF THE ORDER DATED 2.5.2015 PASSED BY THE ASSISTANT  
EDUCATIONAL OFFICER, NILAMBUR.**

**EXHIBIT P5(A): COPY OF THE ORDER DATED 27.4.2014 PASSED BY THE  
DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

**RESPONDENT(S)' EXHIBITS:       NIL.**  
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**//TRUE COPY//**

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**

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**W.P.(C).NO.28804 OF 2014 (A)**  
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**Dated this the 16<sup>th</sup> day of July, 2015**

**J U D G M E N T**

The petitioner is a person who has got approved appointment as LG Arabic teacher for two spells, namely, 1.9.2000 to 31.9.2001 and 1.1.2002 to 31.8.2015 in the MKMM LP School. It would appear that the 3<sup>rd</sup> respondent Manager of MMM LP School purchased the MKMM LP School, and the change of management, including change of ownership, was approved by the Director of Public Instructions [DPI]. It is stated that at the time of purchase of the School, the 3<sup>rd</sup> respondent did not opt to maintain the two schools as separate units for the purposes of the Kerala Education Rules [KER]. Thereafter, to a vacancy that arose in the MMM LP School, on 1.6.2010, the 3<sup>rd</sup> respondent appointed the 6<sup>th</sup> respondent. This was challenged by the petitioner, who was of the view that inasmuch as the petitioner was a Rule 51 A claimant in the MKMM LP School before the merger of the two schools, she was entitled to the appointment in the vacancy that arose with effect from 1.6.2010. By Ext.P2 order dated 24.1.2014, the 1<sup>st</sup> respondent directed the 3<sup>rd</sup> respondent Manager to appoint the

petitioner to the said vacancy. It would appear that, thereafter, by Ext.P3 order dated 25.10.2014, the Government reviewed Ext.P2 order and directed the 3<sup>rd</sup> respondent to appoint the 6<sup>th</sup> respondent to the said vacancy which arose with effect from 1.6.2010. By the said order, it was also directed that the petitioner would be appointed in the next arising vacancy in the MKMM LP School. In the writ petition, the petitioner impugns Ext.P3 order inter alia on the ground that the 1<sup>st</sup> respondent did not have the power to pass Ext.P3 order, reviewing its earlier order [Ext.P2], since the review power of the 1<sup>st</sup> respondent is confined only to orders passed as an original authority and not in respect of orders passed on revision. It is also pointed out that, prior to passing Ext.P3 order, the 1<sup>st</sup> respondent did not afford the petitioner an opportunity of being heard. The provisions of Rule 36A of Chapter XIVA of KER are also relied upon by the petitioner. It is also stated that, during the pendency of the writ petition, and taking note of the fact that there was no interim order against the operation of Ext.P3 order, the 3<sup>rd</sup> respondent effected a mutual transfer of the 6<sup>th</sup> respondent and one Sri.Mohammed Ali. The approval to the said mutual transfer was also granted by the Director of Public Instructions [DPI] by Ext.P5(a) order, which also directed

the lower authorities to implement Ext.P3 order.

2. I have heard the learned counsel for the petitioner, learned Standing counsel for the 3<sup>rd</sup> respondent as also the learned Government Pleader for the official respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find force in the contention of the petitioner that Ext.P3 order passed by the 1<sup>st</sup> respondent, which effectively reviews Ext.P2 order passed by the 1<sup>st</sup> respondent on an earlier occasion, is one without jurisdiction. It has been held by this Court in the decision reported in **Anilkumar v. State of Kerala [2009 (3) KLT 650 (F.B.)]** produced as Ext.P4 along with the writ petition that the review power of the Government under Rule 93 of Chapter XIVA of the KER is available only in respect of orders passed by the Government as an original authority and not against orders passed by the Government in revision proceedings. It is also evident that, before passing Ext.P3 order, the petitioner was not afforded an opportunity of being heard. Resultantly, I am of the view that Ext.P3 order cannot be legally sustained. Accordingly, I

quash the same, leaving it open to the 6<sup>th</sup> respondent and the 3<sup>rd</sup> respondent to work out their remedies against Ext.P2 order before an appropriate forum, if they so choose. I also make it clear that the subsequent proceedings by the educational authorities with regard to the legality of the transfer effected by the 3<sup>rd</sup> respondent, as evidenced by Ext.P5(a) order of the DPI, shall also be governed by the directions issued in this judgment and the said authority shall pass consequential orders based on the findings in this judgment.

The writ petition is allowed as above.

**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

prp