

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 32579 of 2011 (V)

PETITIONER(S):

- * **KUMBALATH RAJENDRAN,
MANAGER, S.V.P.M HIGH SCHOOL, VADAKKUMTHALA
KARUNAGAPALLY. (SUBSTITUTED)
(THE PETITIONER IS SUBSTITUTED AS V.RAJEEV,
SON OF K.R.VASUDEVAN PILLAI, AGED 52 YEARS, PRESIDENT,
SREE BHAGAVATHY TEMPLE, PANAYANARKAVU, MANAGER,
S.V.P.M. HIGH SCHOOL, VADAKKUMTHALA,
KARUNAGAPPALLY.**
 - * **SUBSTITUTED AS PER ORDER DATED 06/09/2012 IN IA NO.11815/2012)**
- BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM - 695 014.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
CIVIL STATION, KOLLAM - 691 001.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
CIVIL STATION, KOLLAM - 691 001.**
- 5. G.P. RUGMINIKUTTY AMMA,
JAYALAKSHMI BHAVANAM, KULANGARA BHAGOM,
CHAVARA - 691 583, KOLLAM DISTRICT.**

**R1 TO R4 BY GOVERNMENT PLEADER SMT.LOWSY A.
R5 BY ADVS. SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 32579 of 2011 (V)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE JUDGMENT IN W.P(C) 19090 OF 2003 V.

EXHIBIT-P2-TRUE COPY OF THE G.O(RT) 3853/2009/G.EDN. OF THE GOVERNMENT.

EXHIBIT-P3-TRUE COPY OF THE JUDGMENT IN W.A NO. 1491 OF 2010.

EXHIBIT-P4-TRUE COPY OF THE ORDER IN R.P 561 OF 2011.

EXHIBIT-P5-TRUE COPY OF THE COMMUNICATION NO. B5/13144/2010
OF THE 4TH RESPONDENT.

EXHIBIT-P6-TRUE COPY OF THE COMMUNICATION NO. B5/2550/2011
OF THE 4TH RESPONDENT.

EXHIBIT-P7-TRUE COPY OF THE REPLY OF THE PETITIONER.

EXHIBIT-P8-TRUE COPY OF THE REPLY OF THE PETITIONER.

EXHIBIT-P9-TRUE COPY OF THE ORDER NO.R.DIS.3522275/G4 OF THE REGIONAL
DEPUTY DIRECTOR OF PUBLIC INSTRUCTION ALONG WITH THE
CONSTITUTION.

EXHIBIT-P10-TRUE COPY OF THE LETTER OF THE MANAGER.

EXHIBIT-P10(a)-TRUE COPY OF THE MINUTES OF THE MEETING.

EXHIBIT-P11(b)- TRUE COPY OF THE APPLICATION FOR CHANGE OF MANAGEMENT.

EXHIBIT-P110(c)-TRUE COPY OF THE DECLARATION UNDER RULE 8 OF CHAPTER III
KER.

EXHIBIT-P11-TRUE COPY OF THE MINUTES OF THE COMMITTEE MEETING HELD ON
7.5.2012.

RESPONDENT(S)' EXHIBITS:

EXHIBIT R5(a): TRUE COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT IN
WP(C) NO.29763/2009.

EXHIBIT R5(b): TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN COC.NO.520/2012
BEFORE THE HON'BLE COURT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

~~~~~  
**W.P.(C).No.32579 of 2011**  
~~~~~

Dated this the 23rd day of January, 2015

J U D G M E N T

This writ petition is filed by the present Manager of Sardar Vallabhai Patel Memorial High School, Vadakkumthala feeling aggrieved by Exts.P5 and Ext.P6 orders of recovery from him, by the District Educational Officer.

2. The above school is managed and owned by the Vadakkumthala Panayannar Kavu Devaswom. The matter is relating to recovery of a sum of Rs.2,34,300/- towards the monetary loss caused to the fifth respondent on account of pay and allowance and *ad hoc* bonus for the period from 1/06/1986 to 31/05/1996 and to recover the same from the Manager, personally and from his assets. This was ordered by Ext.P2 order, G.O.(Rt). No.3853/2009/G.Edn., dated 15/09/2009. At the relevant time one Kuttan Pillai was the Manager. The aforesaid

government order is passed pursuant to the judgment of this Court in W.P.(C).No.19090/2003. It is to be noted that the Manager, aggrieved by the direction of the learned Single Judge, filed an appeal as W.A.No.1491/2010, wherein the Division Bench dismissed the appeal and directed that the Management Devaswom will be liable to pay the dues, which will be a charge on its assets and the direction to recover the dues payable to the teacher personally and from the assets of the Manager has been set aside. Thereafter, a review petition was filed by the Devaswom as R.P.No.561/2011. The review petition was allowed to the extent the person on whom the liability to pay the arrears of salary to the teacher is the person who is liable in accordance with the provisions of the KER. Therefore, the case of the present Manager is that the personal liability is on Kuttan Pillai and not upon the assets of the Devaswom.

3. It is also to be noted that in the order in the review petition, this Court has categorically stated that the person legally liable to pay the dues

-:3:-

to the teacher means, the Manager is liable to pay the dues. Admittedly, the Devaswom is not the Manager though the school belongs to them.

4. The learned counsel for the petitioner relying on the dictum laid down by this Court in **Vijeesh C.V. v. State of Kerala and Others [2014 (4) KHC 716]** submits that the Manager, who has succeeded the office cannot be made liable for the alleged misdeeds of the previous Manager. I am also in respectable agreement with the law declared in **Vijeesh C.V.'s** case (supra). Any mischief, if identifiable with an individual, the responsibility is also on such individual. The Manager owes a duty not only to the Devaswom but also to the teacher as well. This duty is to act in responsible manner as prescribed under the Education Act and Rules. The dereliction of such duty is a wrong, personally committed by the individual, who officiated as the Manager. The learned Single Judge in the earlier proceedings has indicated that the person responsible is personally liable to pay the monetary loss sustained by the teacher.

W.P.(C).No.32579/2011

-:4:-

5. In that view of the matter, the impugned orders, to the extent it orders recovery of the amount due to the teacher from the petitioner is quashed as such. The authorities are free to proceed against the personal assets of Kuttan Pillai in accordance with law for recovery.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms