

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 34547 of 2010 (P)

PETITIONER(S):

**JISHA C
LPSA, W/O. O.K.SUHAS, AGED 29 YEARS
MADAYI SOUTH L.P.SCHOOL, P.O.PAYANGADI RAILWAY
STATION, KANNUR DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION
(P3) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, THIRUVANANTHAPURAM-14.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR, KANNUR DISTRICT-670 003.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
MADAYI, P.O.PAYANGADI, KANNUR DISTRICT-670 303.**
- 5. THE ASSISTANT EDUCATIONAL OFFICER,
MADAYI, KANNUR DISTRICT-670 304.**
- 6. THE MANAGER,
MADAYI SOUTH L.P.SCHOOL, P.O.PAYANGADI RAILWAY
STATION-670 358, KANNUR DISTRICT.**
- 7. THE HEADMISTRESS,
MADAYI SOUTH L.P.SCHOOL, P.O.PAYANGADI RAILWAY
STATION, KANNUR DISTRICT-670 358.**

R1 BY ADV. GOVERNMENT PLEADER

R BY GOVERNMENT PLEADER SMT. T.R.RAJESH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1: TRUE COPY OF THE APPOINTMENT ORDER, DATED 13.07.04
- EXT. P2: TRUE COPY OF THE RELEVANT PAGE OF THE SERVICE BOOK.
- EXT. P3: TRUE COPY OF THE 6TH WORKING DAY STRENGTH DATED
09.07.08
- EXT. P4: TRUE COPY OF THE ORDER NO. E/4092/08/D.DIS. OF THE
ASSISTANT EDUCATIONAL OFFICER DATED 22.11.08
- EXT. P5: TRUE COPY OF THE G.O. (RT) NO. 4277/10/G.EDN. OF THE
GOVERNMENT DATED 04.10.10
- EXT. P6: TRUE COPY OF THE ORDER NO. C/2024/10 OF THE ASSISTANT
EDUCATIONAL OFFICER DATED 16.10.10

RESPONDENTS' EXHIBITS :

- EXT.R1(A) COPY OF THE ORDER NO.D.DIS.E/4092/E/4052/08 DATED
22.11.08
- EXT.R1(B) COPY OF THE ORDER NO.D.DIS/C/2626/08 DATED 28.7.08.
- EXT.R1(C) COPY OF THE G.O(RT) NO.3040/04/G.EDN. DTD.16.7.04.

/TRUE COPY/

PA. TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.34547 of 2010 - P

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Dated this the 22nd day of September, 2015

J U D G M E N T

The petitioner is a teacher, who has been appointed as per Ext.P1, but whose services was retrenched on account of the revision in staff fixation, effected by the A.E.O. The issue arose in the academic year 2008-09, when there was originally sanctioned 9 divisions; which fell by one to 8 as per Ext.P4.

2. The contention of the petitioner is that the students who are found to have no birth certificates where in fact children of natives of Andhra Pradesh, who had settled in the area and who did not have proper birth certificates issued to them. It is stated that they had produced medical certificates and affidavits of the parents, sworn before the Notary Public, as

to the age of these students. The petitioner also relies on the Circular No. H1/10426/14 dated 21.06.2006 to contend that the Government had granted exemption with respect to the admissions of students who did not have birth certificates.

3. The learned Government Pleader would point out that this Court sitting in the extra ordinary jurisdiction under Article 226 of the Constitution of India may not go into the facts, which have been examined by three authorities as is evidenced in Exts.P4, P5 and P6 orders.

4. Essentially, the division fall was due to Ext.P4. The A.E.O had inspected the school on three occasions on 15.09.2008, 13.10.2008 and 12.11.2008. The shortage in attendance at the two earlier instances have been specifically noticed in Ext.P4 order. An examination of the records of the school also indicated that the birth certificates of many of the students, who were found absent on the date of inspection were

not kept in the school. On the third inspection on 12.11.2008, the attendance had comparably improved, however, the A.E.O found that the students present did not even have working knowledge of Malayalam and were children of Gypsies who seasonally come to the area from Andhra Pradesh. It was in such circumstance that Ext.P4 order was passed reducing the division by one. The second order was challenged in appeal and revision, which were confirmed by Exts.P5 and P6 orders.

5. As was stated by the learned Government Pleader, it may not be possible for this Court to re-examine the facts as found in the impugned orders. Further it is to be noticed that despite the petitioner having specifically stated that the children were natives of Andhra Pradesh, none of the details are made available. The medical certificates and affidavits were almost produced before the lower authorities or before this Court. Further the Circular relied on by the petitioner does not speak of

exemption altogether and only permits admissions to be made, even when the birth certificates are not produced. In fact the prescription as to production of birth certificates as per the G.O (Rt) No.3040/04/G.Edn. dated 16.07.2004 has not at all been interfered with by the Circular. Nor can it be done, since the Circular has been issued by the Director of Education, while the prescription has been made by the Government Order.

6. The Circular only permits admissions to be made, however with the production of the birth certificates to be effected within three months from the date of admission. Even the Circular mandates by clause 5 that in such circumstances a separate register has to be maintained, showing the entire details of the students, who have been so admitted along with the details of the parents. The petitioner does not have a contention that any such separate register was made. However the recovery sought for by Ext.P6 against the teacher cannot be

made. Hence Ext.P6 is set aside, but however leaving open the remedy to Government to effect recovery from whoever is responsible, in accordance with law.

In such circumstance, the writ petition is devoid of merit and the writ petition would stand dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.