

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 32441 of 2014 (E)

PETITIONER :

**SANTERES BABY, AGED 38 YEARS,
S/O.E.K. BABYKUTTY,
HIGH SCHOOL ASSISTANT (MALAYALAM),
M.T.D.M HIGH SCHOOL, THONDERNAD,
WAYANAD DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM -695 014.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
PUNALUR, KOLLAM DISTRICT - 691 305.**
- 4. THE CORPORATE MANAGER,
SOCIETY OF THE ORDER OF SACRED TRANSFIGURATION,
MOUNT TABOR, PATHANAPURAM, KOLLAM DISTRICT - 689 695.**
- 5. SMT. BIJI GEORGE,
HIGH SCHOOL ASSISTANT (MALAYALAM),
MOUNT TABOR HIGH SCHOOL, PATHANAPURAM,
KOLLAM DISTRICT - 689 695.**

**R1 TO R3 BY SR GOVERNMENT PLEADER SRI.V.VIJULAL
R4 BY SRI.KURIAN GEORGE KANNANTHANAM, SENIOR ADVOCATE
ADV. SRI.TONY GEORGE KANNANTHANAM
R5 BY ADV. SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-03-2015, ALONG WITH WP(C).NO.32974 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

sts

WP(C).No. 32441 of 2014 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- TRUE COPY OF THE APPLICATION DATED 04/06/2012 OF THE PETITIONER

EXHIBIT-P1(A)- TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P1.

EXHIBIT-P2- TRUE COPY OF THE APPLICATION DATED 01/03/2013 OF THE PETITIONER.

EXHIBIT-P2(A)- TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P2

EXHIBIT-P3- TRUE COPY OF THE APPEAL DATED 15/07/2013 BEFORE THE 2ND RESPONDENT.

EXHIBIT-P4- TRUE COPY OF THE JUDGMENT IN W.P(C).NO.19445/2013-E DATED 22/10/2013.

EXHIBIT-P5- TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 04/01/2014

EXHIBIT-P5(A)- TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT-P5

EXHIBIT-P6- TRUE COPY OF THE JUDGMENT IN W.P(C)1150/2014 DATED 08/08/2014

EXHIBIT-P7- TRUE COPY OF THE G.O(RT)NO.5258/2014/G.EDN. DATED 26/11/2014 OF THE GOVERNMENT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.32441/2014 & 32974/2014**  
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Dated this the 5th day of March, 2015

J U D G M E N T

W.P.(C).No.32441/2014 is filed by SanTERS Baby working as HSA (Malayalam) in M.T.D.M. High School, Thondernad in Wayanad District under the Corporate Management of the Society of the Order of Sacred Transfiguration, Pathanapuram. His grievance is that overlooking his claim for transfer to Pathanapuram from Wayanad, a junior namely, Biji George was accommodated at Pathanapuram by transferring her from Wayanad to Pathanapuram. The Director of Public Instruction passed an order to transfer SanTERS Baby to Pathanapuram. Thereafter, the Corporate Management approached the Government and the Government

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passed an order to post SanTERS Baby at Pathanapuram without disturbing Biji George. SanTERS Baby approached this Court to implement the above order.

2. W.P.(C).No.32974/2014 is filed by Corporate Management challenging the aforesaid government order, ordering transfer of SanTERS Baby.

3. The case of the Corporate Management is that Biji George was not transferred to Pathanapuram on the other hand she has been retained at Pathanapuram to maintain the ratio of 1:40. Further it is submitted that there were two seniors to the petitioner and the petitioner could not have made any claim when Biji George was accommodated at Pathanapuram. It is submitted that subsequently the seniors were transferred to Pathanapuram and there are no vacancies now.

4. There is no dispute to the fact that SanTERS Baby is senior to Biji George. The Management appears to have three schools in Pathanapuram. The Government while passing the order did not interfere with the

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retention of Bijl George at Pathanapuram. The question whether Bijl George was transferred or retained under 1:40 ratio had not been adverted to by the Government. The two teachers who were senior to the petitioners were subsequently transferred to Pathanapuram. If Bijl George was in fact transferred to Pathanapuram, those teachers' right was in fact to claim for transfer in the place of Bijl George and to one of the subsequently arisen vacancy, so as to leave the third vacancy to the petitioner. Thus, the petitioners' claim is essentially in respect of subsequently arisen vacancy.

5. Therefore, the matter requires reconsideration by the Government after adverting to the nature of retention of Bijl George at Pathanapuram. It is to be noted that the petitioner is working more than six years in Wayanad. Considering the facts and circumstances, Ext.P11 produced in W.P.(C). No.32974/2014 is set aside. There shall be a direction to the Government to reconsider the matter after

W.P.(C).Nos.32441/2014 & 32974/2014

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hearing the Corporate Manager, SanTERS Baby, Biji George and the other two teachers who were senior to the petitioners within a period of three months and take appropriate decision in this matter. The writ petitions are disposed of. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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