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

**PRESENT**

**THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

**MONDAY, THE 21ST DAY OF DECEMBER 2020 / 30TH AGRAHAYANA, 1942**

**WP(C).No.17322 OF 2017(C)**

**PETITIONER:**

**J.RANI ELIZABETH**
**AGED 43 YEARS**
**L.P.S.A, ST. FRANCIS XAVIER'S HIGH SCHOOL,PARISAKKAL,**
**PALAKKAD.678001.**

**BY ADVS.**
**SRI.ELVIN PETER P.J.**
**SRI.K.R.GANESH**
**SRI.T.G.SUNIL (PRANAVAM)**

**RESPONDENTS:**

1 **STATE OF KERALA**
**REPRESENTED BY THE SECRETARY TO GOVERNMENT,GENERAL EDUCATION DEPARTMENT,SECRETARIAT, THIRUVANANTHAPURAM.**

2 **THE DIRECTOR OF PUBLIC INSTRUCTION**
**THIRUVANANTHAPURAM. 695001.**

3 **THE DEPUTY DIRECTOR OF EDUCATION**
**PALAKKAD.678001.**

4 **THE DISTRICT EDUCATIONAL OFFICER**
**PALAKKAD.678001.**

5 **THE MANAGER**
**ST.FRANCIS XAVIER'S HIGH SCHOOL,PARISAKKAL,**
**PALAKKAD.678001.**

**R1 BY GOVERNMENT PLEADER**
**R5 BY ADV. SRI.PRADEEP KRISHNA**

**OTHER PRESENT:**

**SRI P.M MANOJ GP**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# JUDGMENT

This writ petition is filed seeking the following prayers:-

> *"i) To issue a writ of certiorari or any other writ, order or direction calling for the records leading to Ext.P13 and quash the same.*
>
> *ii) To issue an order declaring that no recovery can be made from the salary paid to the petitioner after having discharged her duties as L.P.S.A on the basis of the staff fixation order issued by the 4th respondent.*
>
> *iii) To declare that Ext.P13 order directing recovery of salary paid to the petitioner for the academic year 2015-2016 is absolutely illegal, arbitrary, unfair, unreasonable, discriminatory and violative of Article 14 and 21 of the Constitution of India and the same is therefore, void and nonest."*

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that Ext.P13 revised staff fixation order, which directs the recovery of salary paid to the petitioner, was challenged by Smt.N.T. Filomina, Lower Grade Hindi Teacher in W.P.(C) No.17325/2017. The said writ petition has been heard and disposed of by judgment dated 06.02.2020. Ext.P13 herein, which

was Ext.P13 in the said writ petition had been set aside to the extent it applies to the petitioner in that writ petition. It was also declared that no recovery of salary can be effected from the petitioner on the basis of revision of staff fixation for the academic year 2015-2016. The learned counsel for the petitioner submits that the petitioner's salary is also being sought to be recovered on the basis of the very same order and on the very same grounds that the building where the classrooms were housed did not have a fitness certificate for the relevant period. It is submitted that the reasoning of this Court in the said judgment is squarely applicable in this case as well.

4. Having considered the contentions advanced on either side and having perused the materials on record as well as the judgment in W.P.(C) No.17325/2017, I find that the law laid down in the judgment is squarely applicable to the petitioner's case as well.

5. In the above view of the matter, I am of the opinion that the directions contained in the judgment should govern the petitioner as well. In the result, Ext.P13 order is set aside to the extent it applies to the petitioner. It is declared that no recovery

of salary can be effected from the petitioner on the basis of revision of staff fixation for the academic year 2015-2016. It is made clear that this shall be without prejudice to the right of the respondents to recover any loss caused to the Government from the Manager of the school.

This writ petition is ordered accordingly.

Sd/-

**ANU SIVARAMAN**

**JUDGE**

Bng/22.12.2020

# APPENDIX

**PETITIONER'S EXHIBITS:**

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| **EXHIBIT P1** | **TRUE COPY OF THE ORDER DATED 2.6.1997 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.** |
| **EXHIBIT P2** | **TRUE COPY OF THE APPROVED PLAN OF THE ST.XAVIER'S H.S PARISAKKAL.** |
| **EXHIBIT P3** | **TRUE COPY OF THE APPLICATION FOR FITNESS CERTIFICATE FOR THE PRE-KER AND POST-KER BUILDINGS OF THE SCHOOL SUBMITTED BY THE 5TH RESPONDENT.** |
| **EXHIBIT P4** | **TRUE COPY OF HE FITNESS CERTIFICATE FOR THE ACADEMIC YEAR 2014-15 ISSUED BY THE ASST. ENGINEER, LSGD DEPARTMENT.** |
| **EXHIBIT P5** | **TRUE COPY OF THE STAFF FIXATION ORDER DATED 15.7.2014 ISSUED BY THE 4TH RESPONDENT.** |
| **EXHIBIT P6** | **TRUE COPY OF THE APPLICATION FOR FITNESS CERTIFICATE FOR THE ACADEMIC YAR 2015-16 FOR THE PRE-KER AND POST-KER BUILDINGS OF THE SCHOOL SUBMITTED BY THE 5TH RESPONDENT.** |
| **EXHIBIT P7** | **TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE ASST.ENGINEER, LSGD DEPARTMENT FOR THE POST -KER BUILDING.** |
| **EXHIBIT P8** | **TRUE COPY OF THE STAFF FIXATION ORDER DATED 27.4.2016 ISSUED BY THE 4TH RESPONDENT.** |
| **EXHIBIT P9** | **TRUE COPY OF THE APPLICATION DATED 30.3.2016 SUBMITTED BY THE 5TH RESPONDENT FOR FITNESS CERTIFICATE.** |
| **EXHIBIT P10** | **TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE ASST. ENGINEER FOR THE ACADEMIC YEAR 2016-17 FOR THE POST-KER AND THE NEWLY CONSTRUCTED 2ND FLOOR OF POST-KER BUILDING.** |
| **EXHIBIT P11** | **TRUE COPY OF THE APPLICATION SUBMITTED BY THE 5TH RESPONDENT FOR FITNESS CERTIFICATE FOR THE ACADEMIC YEAR 2016-17 FOR THE POST-KER BUILDING INCLUDING NEW CONSTRUCTION.** |

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| **EXHIBIT P12** | **TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE ASST. ENGINEER, LSGD FOR THE CONDUCTING CLASSES IN THE POST-KER BUILDING OF THE SCHOOL.** |
| **EXHIBIT P13** | **TRUE COPY OF THE ORDER DATED 30.3.2017 ISSUED BY THE 4TH RESPONDENT.** |

**RESPONDENTS EXHIBITS:**

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|---|---|
| **EXHIBIT R4(A)** | **THE TRUE COPY OF THE LETTER OF KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS DATED 05.01.2016 AND THE PETITION BY ONE SRI.NATARAJAN** |
| **EXHIBIT R4(B)** | **THE TRUE COPY OF THE LETTER DATED 25.01.2016** |
| **EXHIBIT R4(C)** | **THE TRUE COPY OF THE LETTER DATED 06.02.2016** |
| **EXHIBIT R4(D)** | **THE TRUE COPY OF THE LETTER DATED 25.02.2017** |