



2023:KER:68854

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA, 1945

OP (CAT) NO. 47 OF 2023

ORDER DATED 05.12.2022 IN OA 180/00632/2021 OF CENTRAL

ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENTS IN OA:

- 1 THE COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN, 18, INSTITUTIONAL
AREA, SHAHEED JEET SINGH MARG, NEW DELHI - 110 016
- 2 THE ASSISTANT COMMISSIONER (ESTT. II & III),
KENDRIYA VIDYALAYA SANGATHAN, 18, INSTITUTIONAL
AREA, SHAHEED JEET SINGH MARG, NEW DELHI - 110 016
- 3 THE DEPUTY COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN, ERNAKULAM REGION,
KOCHI - 682 020
- 4 THE PRINCIPAL, KENDRIYA VIDYALAYA NO.2, NAVAL BASE,
KOCHI, PIN - 682 004
- 5 THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
INDIA, MINISTRY OF EDUCATION, NEW DELHI - 110 001

BY ADVS.SHRI.T.V.VINU, CGC

RESPONDENT/APPLICANT IN OA:

NITHYA R. WARRIAR, AGED 39 YEARS
D/O K. RAGHUNANDANAN, TRAINED GRADUATE TEACHER
(ENGLISH), KENDRIYA VIDYALAYA NO.2, NAVAL BASE,
KOCHI, PIN- 682 004, RESIDING AT: "KRISHNAKRIPA",
A.P. VARKEY ROAD, THIRUVANKULAM P.O, KOCHI 682 305

BY ADV T.N.SREEKALA

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 08.11.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“CR”****JUDGMENT****SHOBA ANNAMMA EAPEN, J.**

Being a single mother is not an easy task; handling two times the stress and work, giving out two times the love, navigating life’s challenges with grace. Sometimes, the strength of motherhood is greater than natural laws.

2. Here is a case, where a single mother, a Trained Graduate Teacher (English), who was working at Kendriya Vidyalaya No.2, Naval Base, Kochi, on promotion to the post of Post Graduate Teacher (English), was transferred to Kendriya Vidyalaya-II, ONGC, Agartala, which is about 2200 km away from Kochi. Challenging this, she approached the Central Administrative Tribunal; and the Tribunal, after elaborate consideration of the issue, directed the authorities concerned to consider the matter afresh and to consider whether she can be posted in Kerala or any other convenient place in any neighboring State. Aggrieved by this, the Union of India and the officials of the Kendriya Vidyalaya Sangathan have come up before this Court.

3. For convenience, the parties are referred to as they



are arrayed in the original application.

4. The applicant was initially posted at Shivaganga in Tamil Nadu on 10.08.2009. After a few postings, she was posted at Kendriya Vidyalaya-II, Naval Base, in August, 2018. While so, she was promoted to the post of Post Graduate Teacher (English). She was included in the list of approved candidates. All the selected candidates were directed to accept the offer by 09.02.2019 and join by 25.02.2019. The applicant, on promotion, was posted at Kendriya Vidyalaya-II, ONGC, Agarthala, which is about 2200 km away from the present destination, and by Annex.A7(a), she accepted the promotion. The applicant got divorced in 2018 by mutual consent and she is having an 11-year-old boy child. By an agreement between the parties, visitorial rights have been granted to the husband during a fixed period in a month. The applicant, being a single parent, has to take care of the minor child and is worried of violation of visitorial rights granted to the father, if she is transferred to a distant place. Reiterating the difficulties, though Annex.A9 and Annex.A11 representations were given to the respondents, they were dismissed by Annex.A15. In the meantime, on the basis of the requests received from several candidates, modified lists were



published by the respondents, however, the request of the applicant was not considered, which resulted in the applicant approaching the Tribunal with the original application.

5. Learned Central Government Counsel submitted that the applicant did not join in the promoted post and refused to accept the promotion offered and thus, she has forfeited her right, pursuant to which, the offer of promotion stands automatically withdrawn. It was further submitted that her grievance cannot be considered sympathetically as the interest of the organization has a top priority over the interest of an individual.

6. The applicant is a young divorced lady teacher having a minor son of 11 years. If the transfer order is enforced, the divorced mother, having a minor son, will be forced to be posted in a far off station in Agarthala, which is more than 2200 kms away from her present station in Kochi. She is also bound by a compromise decree drawn up by the Family Court concerned, wherein the father of the child is given visitorial rights over the child. There was no factual dispute regarding the compromise decree granting visitorial rights to the father. The matter also has to be looked into from the point of view of the young child, who certainly has the



right to life guaranteed under Article 21 of the Constitution of India, which also includes the right to family life, inclusive of the right to get love and affection of both his parents. If that be so, it is well settled that in a matter relating to fundamental right to life, perspectives of proportionality principles could also come into play in appropriate cases. From the point of view of the fundamental right of the child, the State authority may take one of those means, which may be least injurious to the right to life of the child. It is true that it is a novel approach, but, certainly, merely because this is novel, it may not dissuade this Court to appreciate the matter not only from the perspective of the applicant, who is a young mother, but also from the point of view of the child in question and the right to life guaranteed to him to get the love and affection of both his parents. If the transfer order is implemented, the applicant will be forced to stay with the child in a station, which is more than 2200 km away from the present station, and the right of the child to get visitation of his father may be seriously and detrimentally affected. The father is based at Kochi. The applicant, being a single mother, has to manage her work and take care of her minor child at a time. It is high time that the position of such mothers had to



be recognized. Though there is no protective legislation to protect the working women and the single mother against compelling family responsibility, the court cannot ignore the involvement of fundamental rights as against the State. Childhood needs special care and assistance. Single mothers experience the challenges of attempting to fulfill the roles of two parents as a sole person and they often play multiple roles, facing unique challenges in parenting and providing care for their families. Support systems, time management and resilience are crucial for their well being. Single mothers exhibit extraordinary strength in balancing work, household responsibilities and nurturing of their children. Their sacrifices often go unnoticed, yet they shape the future by instilling values, imparting wisdom and providing a foundation for their children to thrive. The children have to face unique circumstances and they often demonstrate remarkable strength, understanding and deep appreciation for the sacrifices made by their single mother.

7. Learned counsel for the applicant placed reliance on the guidelines and norms referred to in Annex.A12 circular dated 07.06.2019, which, according to the applicant, would stipulate that an employee even after promotion may be



posted in the same station, if vacancies are available, so that the employee and the spouse can maintain their family life. Even if it is in relation to service matters, once there are other implications like the one involved with the child, the State authorities concerned are bound to deal with the situation in a compassionate manner so as to respect the rights of not only the employee concerned but also that of the child in question in a case like this. If that be so, there may not be any necessity for the court to always urge or admonish the State authorities to behave in a proportionate and reasonable manner in matters affecting fundamental rights and it may be better in the interest of things that the State authorities themselves proactively adopt a compassionate perspective in a case of this nature. In this case, by the transfer order, it is not only the matter of posting of the employee/mother of the child, but the rights of the child also come into play and the rights of the child cannot be pressed into a situation like this, where the litigation is essentially leading to the promotion and posting of the mother of the child.

8. According to the learned Central Government Counsel, the modification of the list was done as regards the teachers who have already joined the place wherein they were



originally posted; and subsequent modification is permissible only in respect of such teachers, who have joined the place pursuant to the original order. No such rule or regulation is available in regard to the subsequent modification of posting. The Kendriya Vidyalaya might have followed to allow such teachers, who have joined the original place of posting, to shift to some other place. There is no hard and fast rule, which should be allowed to only such teachers who have joined the original place of posting. The respondents, having permitted such teachers to shift to different places subsequently after 25.02.2019, cannot be heard to say that the applicant had forfeited her right for promotion merely for the reason that she has not joined the original place of posting.

9. Nowadays, issues like the rights of children, who are affected by the transfer of single parent/mother, appear to be insensitive. The mother cannot be compelled to choose between her motherhood and employment. The applicant is a single, working mother of an 11-year-old child. On transfer to a place, which is 2200 km away from the present station, the difficulty that may cause in giving the opportunity to the child to see his father as agreed by her in the agreement entered



into at the time of obtaining divorce, cannot be ignored at this time. The Tribunal also, after consideration of the entire issue, was of the opinion that the applicant deserves a sympathetic approach and hence, directed the respondents to consider Annex.A21 afresh having regard to the contentions that she is a single parent and that if she is posted at a very distant place, the father of the child may lose his opportunity to exercise his visitorial rights. The Tribunal also directed to consider her for a posting in Kerala and if there is no vacancy, for being posted in any convenient place in any of the neighbouring States. We do not find any reason to interfere with the impugned order passed by the Tribunal.

The original petition is, accordingly, dismissed, making the interim order dated 23.05.2023 absolute.

Sd/-

A. MUHAMED MUSTAQUE
JUDGE

Sd/-

SHOBA ANNAMMA EAPEN
JUDGE

bka/-

**APPENDIX OF OP (CAT) 47/2023**

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE MEMORANDUM BEARING FILE NO. 11-E-11065 (TGT)/6/2021-ESTT-II, DATED 09.11.2021, ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A2 TRUE COPY OF THE ORDER OF THE HON'BLE TRIBUNAL IN O.A.NO.180/471/2021 DATED 05.10.2021
- Annexure A3 TRUE COPY OF THE NOTIFICATION NO. F.11055-1/2016-KVS (HQ)/RPS/LDE-TEACHING POSTS/145, DATED 09.04.2018 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A4 TRUE COPY OF THE RELEVANT PAGES THE PROVISIONAL SELECT PANEL FOR PROMOTION FROM THE POST OF TGT TO PGT, PUBLISHED BY THE 1ST RESPONDENT IN O.A.
- Annexure A5 TRUE COPY OF THE JUDGMENT OF THE LEARNED FAMILY COURT, ERNAKULAM DATED 15.02.2018 IN O.P NO. 1637/2017
- Annexure A6 TRUE COPY OF THE RELEVANT PAGES OF THE ORDER NO. F.11055/PGT/LDCE/2018-19/KVS (HQ)/ESTT-II, DATED 05.02.2019 ISSUED BY THE 2ND RESPONDENT IN O.A.
- Annexure A7 TRUE COPY OF REPRESENTATION DATED 06.12.2019 SUBMITTED TO THE 1ST RESPONDENT IN O.A.
- Annexure A7(a) TRUE COPY OF THE E-MAIL COMMUNICATION DATED 09.02.2019
- Annexure A8 A TRUE COPY OF THE ORDER NO. F . 11055/PGT/LDCE/2018-19/KVS (HQ)/ESTT.II, DATED 25.02.2019 ISSUED BY THE 2ND RESPONDENT IN O.A.
- Annexure A9 A TRUE COPY OF THE REPRESENTATION DATED 26.02.2019 SUBMITTED TO THE 1ST RESPONDENT IN O.A.



- Annexure A10 TRUE COPY OF THE E-MAIL COMMUNICATION DATED 29.05.2019 FROM THE 2ND RESPONDENT IN O.A.
- Annexure A11 TRUE COPY OF THE REPRESENTATION DATED 31.05.2019 ADDRESSED TO THE 2ND RESPONDENT IN O.A.
- Annexure A12 TRUE COPY OF THE SAID LETTER BEARING NO.F.NO.11055/TGT/LDCE/2018-19/KVS (HQ) ESTT.II. DATED 07.06.2019, ISSUED BY FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A13 TRUE COPY OF THE E-MAIL DATED 10.06.2019
- Annexure A14 TRUE COPY OF THE MODIFICATION OF PROMOTION ORDER NO.F.NO.11055/PGT/LDCE/2018-19/KVS, DATED 26.06.2019, ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A14 (a) TRUE TRANSLATION OF THE RELEVANT PORTION OF ANNEXURE A14
- Annexure A15 TRUE COPY OF THE MEMORANDUM F.NO. 11055/PGT/LDCE/2018-19/KVS, DATED 26.06.2019, ISSUED FROM THE OFFICE OF THE 1RD RESPONDENT IN THE O.A.
- Annexure A15 (a) TRUE TRANSLATION OF ANNEXURE A15
- Annexure A16 TRUE COPY OF THE ORDER NO. F.11055/TGT/LDCE/2018-19/KVS (HQ) /ESTT.II, DATED 22.07.2019
- Annexure A16 (a) TRUE TRANSLATION OF RELEVANT PORTION OF ANNEXURE A16
- Annexure A17 TRUE COPY OF THE REPRESENTATION DATED 29.08.2019, ADDRESSED TO THE 1ST RESPONDENT IN O.A.
- Annexure A18 TRUE COPY OF THE MODIFICATION OF POSTING ON PROMOTION ODER NO.F.NO.1-1/2019/KVS (HQ) /ESTT.II, DATED 31.08.2019, ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A18 (a) TRUE TRANSLATION OF RELEVANT PORTION OF



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ANNEXURE A18

- Annexure A19 TRUE COPY OF THE REPRESENTATION DATED 12.12.2020 ADDRESSED TO THE 3RD RESPONDENT IN O.A.
- Annexure A20 TRUE COPY OF THE COMMUNICATION NO . F 31014/04/2020-24/KVS RO (EKM, DATED 23.12.2020, BY THE 3RD RESPONDENT IN O.A.
- Annexure A21 TRUE COPY OF THE REPRESENTATION DATED 30.09.2021 SUBMITTED BY THE APPLICANT TO THE 1ST RESPONDENT IN O.A.
- Annexure A22 TRUE COPY OF THEV MEMORANDUM NO. F.11055/PGT/RESERVE/2013/KVS (HQ) (ESTT.II)/3561-3625, DATED 04.04.2014, ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A23 TRUE COPY OF THE MEMORANDUM NO. F11055/PGT/RESERVE/2013/KVS (HQ) (ESTT.II), DATED 04.04.2014, ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure A24 TRUE COPY OF THE MEMORANDUM NO F.11055 / PGT/LDCE/2018-19/KVS (HQ) /ESTT-II/3649-89, DATED 24.07.2020, ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT IN O.A.
- Annexure R1 A TREU PHOTOCOPY OF THE LETTER BY THE APPLICANT DATED 11.02.2019
- Exhibit P1 TRUE COPY OF THE O.A. NO.180/00632/2021, DATED 20.11.2021 FILED BEFORE THE TRIBUNAL BY THE RESPONDENT HEREIN
- Exhibit P2 TRUE COPY OF THE REPLY STATEMENT DATED 16.12.2021 IN IN O.A.NO.180/00632/2021
- Exhibit P3 TRUE COPY OF ORDER DATED 05.12.2022 IN O.A.NO.180/00632/2021 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
- Exhibit P4 A TRUE COPY OF THE MEMORANDUM NO.F.31055/OA 632/2021/KVS (EKMR) DATED 06.11.2023 ISSUED BY THE 3RD PETITIONER