

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 04TH DAY OF MARCH 2021 / 13TH PHALGUNA, 1942

WP(C).No.2649 OF 2021(E)

PETITIONER:

AMBIKA P, AGED 30 YEARS
LPST (MALAYALAM), AUPS, BOVIKKANA, MULIYAR P.O.,
KASARGOD-671542.

BY ADVS.

SRI.KALEESWARAM RAJ
SRI.VARUN C.VIJAY
KUM.A.ARUNA
KUM.THULASI K. RAJ
SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR OF GENERAL EDUCATION, DIRECTORATE OF GENERAL EDUCATION, JAGATHY, THIRUVANANTHAPURAM-695014.
- 3 DEPUTY DIRECTOR OF EDUCATION, OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, KASARGOD-671123.
- 4 DISTRICT EDUCATIONAL OFFICER, OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, KASARGOD-671121.
- 5 ASSISTANT EDUCATIONAL OFFICER, OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER, KASARGOD-670318.
- 6 MANAGER, AUPS, BOVIKKANA, MULIYAR P.O., KASARGOD-671542.
- 7 HEADMISTRESS, AUPS, BOVIKKANA, MULIYAR P.O., KASARGOD-671542.

BY ADV. SRI.MURALI PALLATH

SRI.P.M.MANOJ-SR.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 4th day of March 2021

The petitioner, who is stated to be working as a Lower Primary School Teacher (LPST) in Malayalam in “AUPS”, Bovikkana, Kasaragod District, has approached this Court aggrieved by Ext.P4, which is a communication issued by the jurisdictional Assistant Educational Officer (AEO) to the Manager of the school, directing him not to pay or disburse salary to the petitioner citing certain objections with respect to the approval of her appointment, which had been validly granted earlier.

2. The petitioner says that Ext.P4 is egregiously improper, since no instructions could have been issued by the AEO to the Manager not to pay salary to her, because she has been statutorily approved by the competent educational Authority, evident from Ext.P1; and therefore, that even if there were any objections against such approval, it had to be addressed by the Authorities having jurisdiction in the manner and order the mandate of the Kerala Education Rules (KER). He submitted that since the AEO is not empowered, by the provisions of the Kerala Education Act or the Kerala Education Rules (KER) to either vary, modify or set aside the

approval granted to her, he has no jurisdiction to issue Ext.P4 interdicting payment of salary to her. She, therefore, prays that Ext.P4 be set aside.

3. Sri. Murali Pallath, learned counsel appearing for the 6th respondent – Manager, adopted the submissions of the petitioner, as argued by her learned counsel - Sri. Varun.C.Vijay and supplemented it by saying that the objections in Ext.P4 are wholly untenable, since his client has already set apart one vacancy to be filled up by a protected teacher. He reiteratingly submitted that since the petitioner's approval had been already granted by the competent educational Agency, the AEO had no jurisdiction nor was he competent to issue Ext.P4 directing the Manager to withhold the salary payable to the petitioner. He, therefore, prayed that this writ petition be ordered as prayed for by the petitioner.

4. In response, the learned Senior Government Pleader - Sri. P. M. Manoj, initially sought time to file counter pleadings, but conceded that Ext.P3 order granting approval to the petitioner's appointment is still in force. He, nevertheless argued that since the said approval had been granted without noticing certain vital facts, the AEO was within competence to issue Ext.P4 and therefore,

prayed that this writ petition be dismissed.

5. I am afraid I cannot find favour with the afore submissions of the learned Senior Government Pleader because it is too well settled – for requirement of restatement – that once the approval of the appointment of a teacher in a school is granted by the competent Educational Authority, it can be varied, modified or vacated only in the manner as is provided and mandated under the provisions of the Kerala Education Act and the KER. In fact, the learned Senior Government Pleader, to a pointed question from this Court, conceded that the power to do so is vested only with the Director of General Education (DGE), under the provisions of Rule 8A, Chapter XIVA of the KER, and he prayed that, if this Court is so inclined, then liberty may be reserved to the said Authority to take appropriate action against the petitioner in terms of law.

6. I notice that when this matter was admitted on 02.02.2021, interim order had been granted, after noticing the provisions of the KER to the effect that as long as the approval of the appointment of the petitioner continues, she shall be paid salary untrammelled by Ext.P4. The said position continues even today.

7. As I have already indicated above, there can be little

doubt that as long as the approval of the petitioner, granted by Ext.P3, continues, same will hold the field and will have to be honoured by all the Authorities under the Kerala Education Act and KER. If any of them require modification or variation to the approval so granted, they will have to invoke and pursue remedies as are available under the Act and KER, and the AEO cannot unilaterally issue a communication like Ext.P4 interdicting the payment of salary to the petitioner. This is not merely improper, but grossly irregular and illegal, since the only Authority, who can vary, modify or vacate the approval granted to the petitioner is the DGE, under the aforementioned provisions of the KER.

In the afore circumstances, I allow this writ petition and set aside Ext.P4; however, with a consequential direction to the competent educational Authorities to take steps if they are so desirous, for varying, modifying or vacating the approval granted to the petitioner through Ext.P3, which however, shall be done only after following due procedure and affording necessary opportunities to the petitioner.

sd/-

DEVAN RAMACHANDRAN

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER DATED
06.06.2019 ISSUED BY THE 6TH RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE DECLARATION DATED
06.07.2019 SUBMITTED BY THE 6TH RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE ORDER NO.C/6110/2019 DATED
04.01.2020 ISSUED BY THE 5TH RESPONDENT.

EXHIBIT P4 TRUE COPY OF THE ORDER NO.C/6110/2019(1)
DATED 23.11.2020 ISSUED BY THE 5TH
RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//
P.A. TO JUDGE