

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 23RD DAY OF FEBRUARY 2023 / 4TH PHALGUNA, 1944

WP(C) NO. 33761 OF 2016

PETITIONER:

R.HELAN THILAKOM
AGED 49 YEARS, W/O.S.RATHYA RAJA SINGH,
FULL TIME INSTRUMENTAL MUSIC TEACHER,
LIGHT TO THE BLIND SCHOOL, SREENIVASAPURAM PO,
VARKALA, THIRUVANANTHAPURAM 695 145.
BY ADV SRI.N.JAMES KOSHY

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION (R) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 2 THE DISTRICT EDUCATIONAL OFFICER
ATTINGAL-695101
- 3 THE CORPORATE MANAGER
CHURCH OF SOUTH INDIA, SOUTH KERALA DIOCESE,
L.M.S.SCHOOLS, LMS COMPOUND,
THIRUVANANTHAPURAM 695 033.
BY ADV.SRI.K.M.FAISAL, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P.(C).No.33761 of 2016

Dated this the 23rd day of February, 2023

JUDGMENT

This is the sad story of a Music teacher, who was forced to fight throughout her service to get a full-time post of Music teacher, after completing five years in the part time post. I highly suspect, whether our education system is giving due importance to music. There are several studies about the benefits of music for young children. Most kids love music. We all slept when we were kids with a 'lullaby' of our mother. Mother's 'lullaby' is the first song a kid hears in his/her life. There will not be a child in this country who has not heard a 'lullaby' from her mother or the grandparents while he/she goes to sleep. If any child has lost his/her parents in his/her early age, the kith and kins or this world itself will sing a 'lullaby' for the sound sleep of that child. That is our culture and tradition. In Malayalam language "**Omanathinkal Kidavo.....**" is the famous 'lullaby' that was composed by **Irayimman Thambi** on the birth of Maharaja Swathi Thirunal of Travancore. Sree Kaithapram Damodaran Namboothiri wrote a 'lullaby' in a Malayalam film

“santhwanam” (Unni vavavo....). Music director of that song was the famous musician Mohan Sithara. The lyrics says that, for a sound sleep of my child, the sun, the stars and the three world itself should sleep. It will be better to extract that portion of the song here:

'ഉണ്ണി വാവാവോ പൊന്നുണ്ണി വാവാവോ
 ഉണ്ണി വാവാവോ വാവേ വാവാവോ
 ഒരു കണ്ണായ് സൂര്യന്മാരങ്ങ് മറുകണ്ണായ് തിരകളുരങ്ങ്
 തൃക്കൈയിൽ വെണ്ണയുരങ്ങ് മാമുണിനു ഭ്രമിയൊരങ്ങ്
 തിരുമധുരം കനവിലുരങ്ങ് തിരുനാമം നാവിലുരങ്ങ്
 എന്നുണ്ണിക്കണ്ണന്മാരങ്ങാൻ മൂലോകം മുഴുവന്മാരങ്ങ്
 മൂലോകം മുഴുവന്മാരങ്ങ്
 ഉണ്ണി വാവാവോ പൊന്നുണ്ണി വാവാവോ'

The studies show that, Music has got serious importance in child development. Some of the studies show that, it improves fine motor skills in the child because when music starts, normally kids will dance and jump. Music can have a lasting effect on their mobility and strength. Music develops language skills as song lyrics are rooted in various languages. Music can affect the emotions of the child. Singing, dancing, clapping etc. in a class room will definitely improve the self- confidence of a child. It will encourage team work. These are only some of the advantages of Music as per the studies available in the internet. Therefore, in my opinion, starting from mother’s “lullaby” in the early age, music should continue throughout the school days of the children.

Therefore, the Government should seriously think about the sanctioning of regular Music teachers' post in all schools, at least in primary section, irrespective of the student's strength or number of periods. Currently, the Music teacher's post is sanctioned based on number of students in a school, number of periods etc. If the strength of students in one school is less, then the post of Music teacher will not be sanctioned in that school. This in reality is a discrimination to the student community because if a student is studying in a school where there is less number of students they will not get the help of a Music teacher when compared to the students of another school where there is a post of Music teacher solely because the number of students in that school is high. What sin is committed by a student for denying Music solely because he/she is studying in a school with less than the required number of students? The student's strength or number periods in a school ought not have been a criteria for sanctioning at least for the post of Music teacher. Similarly additional financial liability to the state also should not be a reason for not sanctioning the post of music teachers in schools because the future of this nation is in the hands of the children. Of course, it is a policy decision to be taken by the Government and hence this court cannot give any specific direction to sanction the

post of music teacher in all schools by invoking the powers under Article 226 of the constitution of India. But the government should think about it seriously. I am sure that the government will rise to the occasion because the happiness and development of the mental health of every child is important in a welfare state. The registry will forward a copy of this judgment to the 1st respondent, the Government for taking appropriate decision in the light of the above observations.

2. Petitioner, Smt. R.Helen Thilakom, was appointed by the 3rd respondent, the Corporate Manager, as a Part Time Instrumental Music Teacher in the Light to the Blind School, Varkala under the LMS Corporate Management. She was appointed as a permanent teacher in the school as per Ext.P1 order. Ext.P1 appointment order was approved by the 2nd respondent, The District Educational Officer, Attingal, as evident by Ext.P2 order. The petitioner's appointment order was approved with effect from 02.01.1992 as Part Time Instrumental Music Teacher. A retirement vacancy of Full Time Music Teacher arose in Samuel LMS High School, Parasala due to the retirement of Smt.Renjitha Bhai under the common management of the 3rd respondent. When a vacancy arose, the petitioner requested the 3rd respondent to appoint her by promotion as per the provisions

of Rule 43, Chapter XIV(A) of the Kerala Education Rules 1959 (hereinafter referred to as, "KER"). According to the petitioner, she passed SSLC and is also a holder of Diploma named "Ganabhushanam" in Violin which is the accepted qualification to be appointed as Music Teacher in High Schools / U.P. Schools as laid down in KER. The vacancy arose on 30.03.1999. The petitioner's application to promote her to the retirement vacancy was rejected and one D.Sarojakumari from Parasala School was promoted to the existing vacancy on 12.07.1999. The petitioner challenged the promotion order and the 2nd respondent directed the 3rd respondent to appoint the petitioner in the post of Full Time Music Teacher. The Appeal filed by Sarojakumari before the Deputy Director of Education, Thiruvananthapuram was also rejected. But revision filed by Sarojakumari was allowed by the Government and the Government directed to appoint her in the retirement vacancy. Aggrieved by the same, the petitioner filed O.P. No.36789/2002 before this Court and this Court allowed the Original Petition along with O.P. No.36563/2002 filed by Sarojakumari, as per Ext.P3 judgment. Sarojakumari filed W.A.No.1621/2003 and W.A.No.1735/2003 against Ext.P3 common judgment and both the writ appeals were dismissed by this Court by upholding Ext.P3 common judgment. Therefore, the petitioner

is entitled to be promoted as Full Time Music Teacher with effect from 30.03.1999 on the date of occurrence of vacancy in Parasala High School is the submission. Hence the 1st respondent passed Ext.P5 order declaring that the petitioner is eligible for the post of Full Time Music Teacher in Samuel LMS High School, Parasala. Meanwhile Sarojakumari filed a Special Leave Petition before the Apex Court and the Apex Court admitted the case and directed the Secretary, Department of Education to produce seniority list of teachers working under the common management. Ext.P6 is the order of the Apex Court. By the time a vacancy arose in the Light to the Blind School, Varkala due to retirement of a full-time music teacher Smt.T.J. Sarasangy. By Ext.P7 order, the petitioner was promoted and appointed as Full Time Music Teacher to the said post with effect from 01.06.2011. Ext.P8 is the joining report of the petitioner dated 09.06.2011. The petitioner is working as Full Time Music Teacher in Varkala School from 01.06.2011 onwards.

3. In the meantime the 1st respondent passed an order declaring that Part Time Music Teachers working in 4 Government Blind Schools and 8 Aided Blind Schools in the State of Kerala are entitled for promotion as full-time music teacher on completion of 5 years of service, as evident by Ext.P9. The 1st

respondent modified Ext.P9 order as per Ext.P10 order dated 29.09.2015 declaring that the Part Time Music Teachers working in the 12 blind schools are entitled for promotion as Full Time Music Teachers on completing 5 years service as Part Time Music Teachers. This order was implemented with retrospective effect. On the basis of Exts.P9 and P10, the petitioner submitted an application through proper channel to the 2nd respondent to promote her as Full Time Music Teacher on completion of 5 years' service as Part Time Music Teacher. She had submitted that she was appointed on 02.01.1992 as Part Time Music Teacher and as she had completed 5 years of service on 02.01.1997, thus she is entitled for promotion as Full Time Music Teacher on 02.01.1997 as per Exts.P9 and P10. The 2nd respondent considered her request and passed an order dated 15.02.2016 stating that the petitioner is not entitled for the benefit of promotion to the full-time post because she has worked only 3 days in a week. Ext.P11 is the order. Against Ext.P11, the petitioner submitted a representation before the 1st respondent as evident by Ext.P12. The 1st respondent also rejected the claim of the petitioner by stating that she is not entitled for the benefit of Ext.P10 Government Order because she has worked in the school only for 3 days per week up to 31.05.2011 and therefore, she is not

entitled for getting the benefits of Full Time Teacher as per Ext.P10. Ext.P13 is the order. It is the case of the petitioner that Exts.P11 and 13 orders are unsustainable and nowhere in the two Government Orders it is stated that a Part Time Music Teacher who has only worked 3 days per week is not entitled for the benefits of the Government Order. It is also the case of the petitioner that the 2nd respondent passed an order dated 17.09.2016 giving Ext.P10 benefit to one V.M. Aliyamma who was junior to the petitioner who is working in the Light to the Blind School, Varkala as evident by Ext.P14. Ext.P15 is the certificate issued by the Headmaster, Light to the Blind, Varkala certifying that the petitioner is working in the school as Part Time Instrumental Music Teacher from 02.01.1992 with 9 periods in a week. It is clear from Ext.P15 that she is working 9 periods in a week as per workload allotted by the Manager to a Part Time Music Teacher. It is the further case of the petitioner that Smt.V.M.Aliyamma who got promotion as per Ext.P14 was also working 9 hours per week during the period of her service. It is also submitted that from Exts.P9 and P10, a teacher appointed as Part Time Music Teacher in the 12 Blind Schools are entitled for promotion as Full Time Music Teacher on completion of 5 years' service in the post of Part Time Instrumental Music Teacher

retrospectively. It is also the case of the petitioner that there is no condition in the said Government Orders that the teacher shall work in the school with minimum number of periods or on all days. Aggrieved by Exts.P11 and P13, this writ petition is filed.

The prayers in this writ petition are extracted hereunder:

- I) issue a writ of certiorari or other appropriate writ, order or direction to quash Exhibits-P11 and P13 orders;
- ii) Issue a writ of mandamus or other appropriate writ, order or direction directing the respondents to grant the benefits of Exhibit-P10 Government order to the petitioner with effect from 02.01.1997;
- iii) Issue a writ of mandamus or other appropriate writ, order or direction directing the respondents to promote the petitioner as full time music teacher with effect from 02.01.1997 and to grant all service benefits thereon such as grade promotion, salary increase, arrears of salary etc in terms of Exhibit-P10 Government order;
- iv) To declare that the petitioner is entitled for getting promotion as full time music teacher with effect from 02.01.1997 on the basis of Exhibit-P9 and P10 Government orders;

AND

- v) Grant such other reliefs as are deem just and necessary in the facts and circumstances of the case.

(SIC)

4. Heard Advocate N.James Koshy, the learned counsel for

the petitioner and Advocate K.M.Faisal, the learned Government Pleader.

5. The counsel for the petitioner submitted that the petitioner is entitled the benefit of Exts.P9 and P10 Government Orders and therefore, she is entitled to be promoted as Full Time Music Teacher with effect from 02.01.1997. The counsel also submitted that nowhere in Exts.P9 and P10 it is stated that a teacher who worked only 3 days in a week is not entitled the benefit of Exts.P9 and P10. The counsel also took me through Exts.P14 and P15 to substantiate the case of the petitioner. The counsel further took me through Ext.P16 which shows that the benefit of Ext.P10 Government Order was given to one Jayamma Philip, Instrumental Music Teacher whose case is similar to that of the petitioner. The Government Pleader supported the impugned orders in this case.

6. This Court considered the contentions of the petitioner and the Government Pleader. A perusal of Exts.P9 and P10 orders of the Government will show that Part Time Teachers who completed 5 years of service in the schools mentioned in those orders are entitled full time post. As rightly pointed out by the counsel for the petitioner, nowhere in Exts.P9 and P10 it is stated that the teachers who worked only 3 days in a week are not

entitled the benefit of Full Time Teacher. Moreover, a perusal of Ext.P14 will show that another teacher in the same school in which the petitioner is working was given the full-time benefit, after Exts.P11 and P13 orders. In addition to that, Ext.P16 also shows that a similarly situated teachers like the petitioner was given the benefit of Exts.P9 and P10 orders. There is no stipulation in Ext.P9 or in Ext.P10 to the effect that, a part time teacher who worked for 5 days in a week alone is entitled to the full-time benefit. There is no dispute in the fact that the petitioner was working as a part time teacher. Under such circumstances, in my opinion, there is no justification in denying the benefit of Exts.P9 and P10 orders to the petitioner. The Government Pleader took me though the counter affidavit filed by the 2nd respondent. The only contention raised in the counter affidavit is that the petitioner has only worked for 3 days per week. But a perusal of Ext.P15 certificate issued by the Headmaster, Light to the Blind School, Varkala will show that the petitioner was working in the school as Part Time Instrumental Music Teacher from 02.01.1992 with 9 periods in a week. There is no dispute on these aspects. Under such circumstances, in my opinion, the petitioner is entitled to the benefits of Exts.P9 and P10 orders. It is submitted by the counsel for the petitioner that the petitioner is

going to retire on 31.03.2023. If that is the case, the 1st respondent can be directed to pass consequential orders forthwith so that the petitioner can retire from service as a Full Time Teacher with retrospective effect for which post she was fighting during her entire service.

7. In Carnatic Music, the term 'Mangalam' indicates the wrapping up a concert with an auspicious ending with an auspicious ragam. Usually chosen ragas for "Mangalam' by musicians are like "Sourashtram", "Sree Ragam", "Madhyamavathi", "surutti" etc. Let the petitioner, who is going to retire from service as a music teacher this year, retire with full of joy and also by reciting a beautiful "Mangalam" in any of the ragam like "Sorashtram" or "Sree Ragam" or "Madhyamavathi", or "surutti" at her farewell function from the school.

Therefore, this writ petition is allowed in the following manner:

1. Exts.P11 and P13 are set aside. It is declared that the petitioner is entitle the benefit of Ext P10 order.
2. The 1st respondent is directed to pass consequential order to grant the benefit of Ext.P10 Government Order to the petitioner and to promote the petitioner as Full Time Music Teacher with effect

from 02.01.1997, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

3. Respondents 1 to 3 will take necessary steps to disburse all service benefits such as grade promotion, salary increase, arrears of salary etc to the petitioner in terms of Ext.P10 Government Order, as expeditiously as possible, at any rate, within a period of three months from the date on which the promotion is effected by the 1st respondent as directed above.
4. Registry will forward a copy of this judgement to the first respondent for considering the issue mentioned in the 1st paragraph of this judgement.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

APPENDIX OF WP (C) 33761/2016

PETITIONER EXHIBITS

- P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 2.1.1992 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- P2 TRUE COPY OF THE ORDER NO. K.DIS.R3/10654/96 DATED 2.1.1997 ISSUED BY 2ND RESPONDENT WITH COPY TO THE PETITIONER
- P3 TRUE COPY OF COMMON JUDGMENT DATED 25.7.2003 IN OP NO.36789/2002 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM
- P4 TRUE COPY OF THE COMMON JUDGMENT DATED 6.7.2015 IN WA NO.1621/2003 OF THE HON'BLE HIGH COURT OF KERALA
- P5 TRUE COPY OF ORDER GO(RT)NO.5599/05/G.EDN. DATED 1.12.2005 ISSUED BY 1ST RESPONDENT WITH COPY TO THE PETITIONER.
- P6 TRUE COPY OF THE ORDER DATED 24.8.2009 IN SLP NO.24680 AND 24681 OF THE HON'BLE SUPREME COURT OF INDIA
- P7 TRUE COPY OF PROMOTION/APPOINTMENT ORDER DATD 1.6.2010 ISSUED BY THE 3RD RESPONDENT
- P8 TRUE COPY OF THE JOINING REPORT OF THE PETITIONER DATED 9.6.2011 ISSUED BY THE HEADMASTER, LIGHT TO THE BLIND, VARKALA
- P9 TRUE COPY OF THE ORDER NO. G.O.(MS) NO.404/2012/GENL. EDN. DATED 21.12.2012 ISSUED BY THE 1ST RESPONDENT.
- P10 TRUE COPY OF THE ORDER GO(MS) NO.261/2015/GENL.EDN DATED 29.9.2015 ISSUED BY THE 1ST RESPONDENT
- P11 TRUE COPY OF THE ORDER B5/260/2016 DATED 15.2.2016 ISSUED BY THE 2ND RESPONDENT TO THE HEADMASTER, LIGHT OT THEBLIND, VARKALA
- P12 TRUE COPY OF THE REPRESENTATION DATED 8.3.2016 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
- P13 TRUE COPY OF THE ORDER NO.4/R2/2016/G.EDN DATED 23.7.2016 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- P14 TRUE COPY OF THE ORDER NO.B5/3144/2016/K

DIS DATED 17.9.2016 ISSUED BY THE 2ND
RESPONDENT WITH COPY TO THE HEADMASTER,
LIGHT TO THE BLIND, VARKALA

P15

TRUE COPY OF THE CERTIFICATE
NO.LBV/265/2016 DATED 30.8.2016 ISSUED BY
THE HEADMASTER , LIGHT TO THE BLIND,
VARKALA IN FAVOUR OF PETITIONER

Exhibit P16

TRUE COPY OF THE ORDER NO.B6/3112/ KDIS
DATED 9/5/2016 ISSUED BY THE DISTRICT
EDUCATIONAL OFFICER, KANJIRAPPILLY