

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

MONDAY, THE 18TH DAY OF NOVEMBER 2019 / 27TH KARTHIKA, 1941

WA.No.242 OF 2019

AGAINST THE JUDGMENT IN WP(C) 32141/2016(P) OF HIGH COURT OF
KERALA DATED 7/1/2019

APPELLANT/WRIT PETITIONER:

C.V.FRANCIS,
AGED 56 YEARS
S/O LATE C.T.VARKEY, CHERIYIL HOUSE,
KODOTHUMMEL, KANIYAMPATTA P.O.673 122, NOW
WORKING AS HSA (MATHEMATICS), SARVODAYA HIGHER
SECONDARY SCHOOL, EACHOME,
ANJUKUNNU P.O.670 721, WAYANAD.

BY ADVS.
SRI.A.JAYASANKAR
SRI.MANU GOVIND
SRI.S.SABARINADH

RESPONDENTS/RESPONDENTS IN WRIT PETITION:

- 1 THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GENERAL
EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 2 DIRECTOR OF PUBLIC INSTRUCTION,
OFFICE OF DIRECTORATE OF PUBLIC INSTRUCTION,
THYCAUD, THIRUVANANTHAPURAM 695 014.

- 3 DIRECTOR OF HIGHER SECONDARY EDUCATION,
THE DIRECTORATE OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGER,
THIRUVANANTHAPURAM 695 001.
- 4 DEPUTY DIRECTOR OF EDUCATION,
WAYANAD, CIVIL STATION, KALPETTA NORTH,
WAYANAD 673 122.
- 5 DISTRICT EDUCATIONAL OFFICER,
WAYANAD, CIVIL STATION, KALPETTA NORTH,
WAYANAD-673 122.
- 6 NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS,
GATE NO 4, 1ST FLOOR JEEVAN TARA BUILDING 5,
SANSAD MARG, PATEL CHOWK, NEW DELHI-110001
REPRESENTED BY ITS SECRETARY.
- 7 JESUIT EDUCATIONAL AND CHARITABLE
SOCIETY OF WAYAND,
CHRIST HALL, MALAMARAMBA P.O.
KOZHIKODE-673 009, REPRESENTED BY ITS CHAIRMAN
AND CORPORATE MANAGER SRI.BABY CHALIL S.J.
- 8 SARVODAYA HIGHER SECONDARY SCHOOL,
EACHOME, ANJUKUNNU, P.O. 670 721,
WAYANAD, REPRESENTED BY ITS MANAGER.
- 9 SRI. WILSON P.A,
NOW WORKING AS HEADMASTER, SARVODAYA HIGHER
SECONDARY SCHOOL, EACHOME,
ANJUKUNNU P.O.-670 721, WAYANAD.

R1-5 BY GOVERNMENT PLEADERS MT.RAJI T. BHASKAR
R6 BY SRI.KRISHNADAS P.NAIR, CGC
R7-8 BY ADV. AMAL GEORGE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-11-
2019, THE COURT ON 18-11-2019 DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 18th day of November 2019

Shaffique, J.

The petitioner before the learned Single Judge is the appellant herein. Petitioner is working as HSA (Mathematics) and he had a service of 29 years and two months. According to the petitioner, he is the senior-most among the teachers and was qualified and eligible to be appointed as Headmaster. However, by Ext.P5 order, the Manager of the School appointed the 9th respondent, who is junior to the petitioner as the Headmaster. Petitioner further submits that the school was established and managed by Sri.N.K.Kunhikrishnan Nair, who belonged to Hindu-Nair community. He transferred the ownership and management to the 7th respondent society, Jesuit Educational and Charitable Society of Waynad. They obtained a minority status from the National Commission for Minority Educational Institutions as per Ext.P2 dated 26/9/2009. Smt.P.V.Shobhana, who was the Headmistress, retired from the school on 31/3/2015, on superannuation. The post of Headmaster became vacant on

01/04/2015. The Manager invited applications from qualified teachers. An interview was conducted on 28/3/2015 and the 9th respondent was appointed as the Headmaster, who was junior to the petitioner by 11 years going by the date of appointment. Petitioner contended that Ext.P1 has been passed in violation of Rule 44 of Chapter XIV A of KER. Petitioner also challenged Ext.P3 order passed by the 6th respondent declaring the 8th respondent school as a minority institution. Learned Single Judge however held that though the school was established by a person of another community, when it is subsequently purchased by a minority institution, the benefit of minority institution has to be extended to the present Management also, in which event, it shall be open for the Management to appoint any qualified teacher from the persons among the minority as Headmaster.

2. Learned counsel for the appellant placed reliance on the judgment of the Division Bench of this Court in **A.Raju v. Manager, Nalloor, Narayana L.P. Basic School, Farook** (2019 (5) KHC 1) wherein while setting aside the judgment of the learned Single Judge, Division Bench held that the appointment of the Headmaster without going into the question of seniority is not

maintainable and the school will not get the benefit of Article 30(1) of the Constitution of India, as the school was not established by a minority institution.

3. Apparently, the issues projected in the above writ petition had been considered and decided in the judgment in **A.Raju** (supra). This case also rests on the very same factual situation. However, learned counsel for the contesting respondent attempted to salvage the case by contending that when the entire property has been transferred in favour of the school management, and the school management had invested substantial amounts, it has the effect of establishing the school as well. Reference was also made to S.2(5) of the Kerala Education Act, 1958 wherein “minority schools” had been defined as meaning, “schools of their choice established and administered, or administered, by such minorities as have the right to do so under Clause (1) of Art.30 of the Constitution”.

4. Having heard the learned counsel on either side and having perused the records, we do not think that a different view is possible in the case, especially in the light of the law laid down by this Court in **A.Raju** (supra). That was also a case in which the

school established by Nallur Narayana Menon in the year 1936 was sold by his son to a person belonging to a minority community, who later on obtained minority status. In that case, the Division Bench held that such an institution cannot get the benefit of a minority institution in terms of Art.30(1) of the Constitution. The factual situation arising in the case is similar to that in **A.Raju's case** (supra). We do not think that a different view is possible.

In the result, this appeal is allowed. Judgment of the learned Single Judge is set aside and the writ petition stands allowed quashing Exts.P7 and P8 and directing the Management to consider the claim of the petitioner in the light of Chapter XIVA Rule 44 of KER. We also set aside Ext.P3 order declaring the 8th respondent school as a minority institution.

Sd/-

A.M. SHAFFIQUE

JUDGE

Sd/-

T.V. ANILKUMAR

JUDGE

Rp

True Copy
PS to Judge