

(2021) 01 KL CK 0553

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28047 Of 2019

Sony P. Alex

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0553

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : Peter Jose Christo, Mathew B. Kurian, K.T. Thomas, V.A. Muhammed, M.H. Shajahan Rawther

Judgement

1. The petitioner effectively challenges her transfer to St.Augustine's High School, Ernakulam, through Ext.P2 proceedings of the 7th respondent -

Corporate Manager, asserting that there are teachers junior to her under the Management, who ought to have been subjected to such transfer; and

further that she is being put to irreparable detriment because, on account of her transfer, the approval has been held up for the reason that the

vacancy in the transferred school is not an establishment one.

2. The petitioner, at the time when this writ petition was filed, also alleged that her salary from June, 2019 had not been paid, but when this matter was

called today, her learned counsel - Sri.Peter Jose Christo, submitted that the petitioner has been appointed to another regular vacancy, as is evident

from Ext.P9 and that she is now getting salary from 19.11.2019.

3. The petitioner, resultantly, says that the period between June 2019 and 19.11.2019 remains unapproved and therefore, that the Manager ought to

adjust her lien against one of the posts available, which are now being occupied

by Junior Teachers. The petitioner thus prays that she be declared to be entitled to be posted in one of the established vacancies of HST (Maths) in any of the Schools under the Corporate Management, by retrenching or deploying or transferring any of her junior teachers, namely respondents 8 to 10.

4. In response, the learned counsel appearing for respondents 8 to 10 - Sri.M.Sajjad, submitted that a counter affidavit has been filed on record, wherein, it is stated affirmatively that they are not the junior - most HSTs in Maths under the Management and therefore, that no reliefs can be sought against them.

5. The learned Government Pleader - Sri.Sunil Kumar Kuriakose, submitted that the decision at the first instance in these matters will have to be taken by the Manager since, as is evident from Ext.P7, the District Educational Officer (DEO) had already informed him that the action of having transferred the petitioner to St.Augustine's School is untenable and therefore, that she will have to be accommodated to an established vacancy forthwith. The learned Government Pleader, therefore, prayed that the Manager be directed to issue appropriate orders in terms of the claim of the petitioner, conceding that the petitioner's contentions have merit in law.

6. I have considered the afore submissions and have examined the materials available on record.

7. It is indubitable that if the petitioner is not the junior most HST in Maths under the management, then her transfer to St.Augustine's High School, Ernakulam, a post which was not established, is inequitable and unlawful. In fact, this is exactly what has been found by the DEO in Ext.P7 order, wherein, the Manager has been directed to accommodate the petitioner to an established vacancy immediately. The Manager appears to have, thereafter, done so, as is manifest from Ext.P9, but the petitioner now says that when she was so, accommodated, her service remains unapproved with effect from June, 2019, consequent to Ext.P2 transfer order.

8. Obviously, therefore, if there are other junior HSTs (Maths) under the management, the petitioner is entitled to the reliefs sought for in this writ petition, but this is essentially a question of fact, which will have to be first assessed by the Manager himself before this Court can pass any affirmative orders.

9. I am, therefore, of the firm opinion that the Manager must act, taking into account the claims of the petitioner, as also the contra claims of

respondents 8 to 10 and to issue an appropriate proceedings in terms of law, adverting to the findings of the DEO in Ext.P7 order.

Resultantly, this writ petition is ordered, with a direction to the 7th respondent - Corporate Manager to hear the petitioner, as well as respondents 8 to

10, and to take a decision on the claims made by the former in this writ petition, particularly deciding whether respondents 8 to 10 are the junior most

HSTs in Maths under the management or if there are any other teacher, who is junior to them also.

Needless to say, after the afore enquiry, the Manager will issue necessary orders, adverting to Ext.P7 observations of the DEO, Ernakulam, as

expeditiously as is possible but not later than two months from the date of receipt of a copy of this judgment.

It, of course, goes without saying that if the Manager finds in favour of the petitioner through the afore exercise, all consequential and corollary orders

shall be issued by him and necessary concurrences shall also be granted by the Educational Authorities without any avoidable delay.