

Sethu Lekshmi U, vs State of Kerala,

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SooperKanoon Citation : sooperkanoon.com/1374509

Court : Kerala

Decided On : Nov-08-2023

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : WP(C)/19301/2021

Appellant : Sethu Lekshmi U,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI WEDNESDAY,
THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA, 1945 WP(C)
NO. 15843 OF 2021 PETITIONER: G NANDAKUMAR AGED 51 YEARS
SON OF LATE PROF.R.GOPALAKRISHNA PILLAI, MANAGER N
SREEKANTAN NAIR, SHASTI POORTHY MEMORIAL UPPER
PRIMARY SCHOOL, PATHARAM, KAKKAKUNNU P.O., SOORANAD
SOUTH, KOLLAM DISTRICT,PIN-690 522

BY ADVS. JOHN JOSEPH VETTIKAD C.JOSEPH JOHNY
RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION (L)
DEPARTMENT, GOVT. SECRETARIAT ANNEX -II,

THIRUVANANTHAPURAM, PIN-695 001 2 THE DIRECTOR GENERAL OF EDUCATION, THYCAUD JAGATHY, THIRUVANANTHAPURAM-14 PIN-695 014 3 THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM, KOLLAM-ELAMPALLOOR ROAD, THEVALLY, KOLLAM-691 009 4 THE DISTRICT EDUCATION OFFICER, KOTTARAKKARA, KOTTARAKKARA-EDAKKIDOM-NEDUMONCAVU ROAD, CHANDAMUKKU, KOTTARAKKARA-691 506

5 THE ASSISTANT EDUCATIONAL OFFICER, SASTHAMCOTTAH, SASTHAMCOTTAH, KOLLAM-690 521 SRI. VENUGOPAL. GP. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.11.2023, ALONG WITH WP(C).19301/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NOS. 15843 & 19301 OF 2021 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI WEDNESDAY, THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA, 1945 WP(C) NO. 19301 OF 2021 PETITIONER: SETHU LEKSHMI U, AGED 35 YEARS W/O. JAYAPRAKASH M, UPPER PRIMARY SCHOOL TEACHER, N. SREEKANDAN NAIR SASHTIPOORTHI MEMORIAL UPPER PRIMARY SCHOOL, PATHARAM, KAKKAKUNNU P.O, SOORANADU, KOLLAM. BY ADVS. K.S.BHARATHAN ALPHIN ANTONY AADITHYAN S.MANNALI VISAKH ANTONY ABEL ANTONY CHRISTINE MATHEW RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION (L) DEPARTMENT, GOVT. SECRETARIAT ANNEX -II, THIRUVANANTHAPURAM, PIN-695 001 2 THE DIRECTOR GENERAL OF EDUCATION, THYCAUD JAGATHY, THIRUVANANTHAPURAM, PIN-695 014. 3 THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM, KOLLAM-ELAMPALLOOR ROAD, THEVALLY, KOLLAM, PIN-691 009 4 THE DISTRICT EDUCATIONAL OFFICER, KOTTARAKKARA, KOTTARAKKARA-EDAKKIDOM-NEDUMONCAVU ROAD, CHANDAMUKKU, KOTTARAKKARA, PIN-691 506. WP(C) NOS. 15843 & 19301 OF 2021 3 5 THE ASSISTANT EDUCATIONAL OFFICER, SASTHAMCOTTAH, SASTHAMCOTTAH, KOLLAM, PIN-690 521 6 G. NANDAKUMAR, AGED 52

YEARS S/O. LATE PROF. R. GOPALAKRISHNA PILLAI, MANAGER N. SREEKANTAN NAIR SHASTI POORTHY MEMORIAL UPPER PRIMARY SCHOOL, PATHARAM, KAKKAKUNNU P.O, SOORANAD SOUTH, KOLLAM DISTRICT, PIN-690 522 BY ADVS. SRI.VENUGOPAL, GP JOHN JOSEPH VETTIKAD C.JOSEPH JOHNY THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.11.2023, ALONG WITH WP(C).15843/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NOS. 15843 & 19301 OF 2021 4

T.R. RAVI, J.

----- W.P.(C)Nos.15843 and 19301 of 2021
----- Dated this the 8th day of November, 2023

JUDGMENT

W.P.(C).No.15843 of 2021 has been filed by the Manager of an aided School challenging Ext.P7 order, whereby the request made in the revision petition dated 15.03.2018, filed by the Manager has been rejected. The claim of the petitioner was that there was sufficient space in the School and sufficient number of students for 18 class rooms as per the KER specification and an additional division is liable to be allowed. Consequently, there is also a request for additional posts. The 1st respondent found that there are 18 class rooms out of which two rooms are occupied by a craft room and kitchen and this fact has already been stated in the Government order dated 19.02.2018, which has been produced as Ext.P2. It is hence ordered that 18 divisions cannot be granted.

2. W.P(C).No.19301/2021 has been preferred by a

WP(C) NOS. 15843 & 19301 OF 2021 5 teacher who was appointed in the School on 01.06.2018. In the said writ petition also the Government order dated 31.05.2021, which has been produced as Ext.P7 in W.P(C).No.15843/2021 is under challenge. The petitioner therein has also prayed for modification of staff fixation orders from the academic year 2016-2017 allowing 18 class divisions and to pass consequential orders regarding sanction of posts. There is also a prayer

for approving the appointment of the petitioner with effect from 01.06.2018.

3. Pending these writ petitions, this Court had on

09.08.2023 directed the 4th respondent DEO, Kottarakkara to conduct an inspection on the petitioner School, taking into consideration of Ext.P23 plan and to file a report as to the number of class rooms available as on that day for conducting the classes. Pursuant to the directions issued, a report has been filed wherein it is stated that on verification, it was found that there are 19 class rooms as shown in Ext.P23 and that all the rooms are fit for conducting classes. The report also says that the Headmaster's office, staff room and library are not included in the above said rooms. The WP(C) NOs. 15843 & 19301 OF 2021 6 report has in a way put an end to one of the facts on which there is a dispute, that is, regarding the number of class rooms available for teaching children. The petitioner has produced before this Court a fitness certificate issued to the School building, which also shows about the existence of five buildings.

4. The Government Pleader submitted that many of

the details that are produced before this Court were not available at the time of issuance of Ext.P7. The report now called for by the Court was also not available for consideration. In the above circumstances, I am of the opinion that the matter requires a re-look by the 1 st respondent, since there are disputed facts regarding which some evidence is available in the form of documents before this Court. In the above circumstances, these writ petitions are disposed of with the following directions: Ext.P7 is set aside. There will be direction to the 1 st respondent to re-consider the issue as directed by this Court in Ext.P6 judgment after hearing the petitioners in these two WP(C) NOs. 15843 & 19301 OF 2021 7 writ petitions. The petitioners may file additional pleadings and documents before the 1st respondent in support of their claim that there are 18 class rooms available, entitling them for 18 posts. The report submitted by the District Educational Officer pursuant to the directions issued by this Court shall also be considered while passing orders. The petitioner in W.P(C).No.19301/2021 may also produce necessary materials to show that the findings recorded in penultimate paragraph of Ext.P7 inner page 3 regarding Rule 7(2) of Chapter XXI KER are incorrect and the said aspect shall

also be looked into by the 1st respondent. Necessary orders shall be issued within three months from the date of receipt of a copy of this

judgment.

Sd/- T.R.RAVI JUDGE LEK WP(C) NOs. 15843 & 19301 OF 2021 8 APPENDIX OF WP(C) 19301/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE STAFF FIXATION PROCEEDINGS FOR THE YEAR 2015-16 ON THE BASIS OF THE UID STRENGTH AVAILABLE IN THE SCHOOL AS ON THE 6TH WORKING DAY ISSUED BY THE 5TH RESPONDENT AS PER PROCEEDINGS ORDER NO. C/2814/2016/D.DIS DATED 02.04.2016. Exhibit P2 TRUE COPY OF G.O(RT) NO. 741/2018/G.EDN. DATED 19.02.2018 ISSUED BY THE GOVERNMENT. Exhibit P3 TRUE COPY OF THE REVISED STAFF FIXATION FOR THE YEAR 2015-16 ISSUED BY THE 5TH RESPONDENT AS PER PROCEEDINGS ORDER NO. C/644(1)/2017/D.DIS DATED 26.02.2018.

Exhibit P4 TRUE COPY OF THE LETTER NO. RA 94) / Exhibit P5 TRUE COPY OF THE REPRESENTATION DATED 15.03.2018 SUBMITTED BY THE 6TH RESPONDENT BEFORE THE GOVERNMENT. Exhibit P6 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO. 12235/2020 DATED 22.06.2020. Exhibit P7 TRUE COPY OF G.O(P) NO. 2879/2021/GEN. EDN. DATED 31.05.2021. Exhibit P8 TRUE COPY OF THE PROCEEDINGS ORDER NO. B1/5911/2020 DATED 01.07.2020 OF THE 3RD RESPONDENT. Exhibit P9 TRUE COPY OF THE PROCEEDINGS ORDER NO. NSNSPMUPS/ACD/SS-1/2016 DATED 6TH JULY 2020. WP(C) NOs. 15843 & 19301 OF 2021 9 Exhibit P10 TRUE COPY OF THE PROCEEDINGS ORDER NO. NSNSPMUPS/ACD/SS-2/2016 DATED 6TH JULY 2020 OF THE 6TH RESPONDENT OF NSNSPM UPS PATHARAM. Exhibit P11 TRUE COPY OF THE PROCEEDINGS ORDER NO. B1/1004/2020/DDE DATED 29.01.2021 OF THE 3RD RESPONDENT. Exhibit P12 TRUE COPY OF THE G.O(P) NO. Exhibit P13 TRUE COPY OF SKETCH PLAN OF THE BUILDINGS OF THE 6TH RESPONDENT. Exhibit P14 TRUE COPY OF THE FITNESS CERTIFICATE DATED 30.05.2015 FOR THE YEAR 2015-2016. Exhibit P15 TRUE COPY OF THE FITNESS CERTIFICATE DATED 30.05.2016 FOR THE YEAR 2016-17. Exhibit P16 TRUE COPY OF THE

FITNESS CERTIFICATE DATED 01.06.2017 FOR THE YEAR 2017-2018. Exhibit P17 TRUE COPY OF THE FITNESS CERTIFICATE DATED 30.05.2019 FOR THE YEAR 2019-2020. Exhibit P18 TRUE COPY OF THE FITNESS CERTIFICATE DATED 26.06.2020 FOR THE YEAR 2020-2021. Exhibit P19 TRUE COPY OF THE CIRCULAR NO. H2-12666/84 DATED 15.07.1984 OF THE DIRECTOR OF PUBLIC INSTRUCTION. Exhibit P20 TRUE COPY OF THE CIRCULAR NO. J2/21/2020/G.EDN. DATED 09.10.2020. Exhibit P21 TRUE COPY OF THE LETTER NO. NSNSPMUPS/ACD/SS-1/2016 DATED 06.06.2020 ISSUED BY THE 6TH RESPONDENT TO THE 2ND RESPONDENT. WP(C) NOS. 15843 & 19301 OF 2021 10 APPENDIX OF WP(C) 15843/2021 PETITIONER EXHIBITS

Exhibit P1 THE TRUE COPY OF ORDER

NO.C/2814/2016/D.DIS DATED 02.04.2016 Exhibit P2 THE TRUE COPY OF G.O(RT) NO.741/2018/G.EDN DATED 19.02.2018 Exhibit P3 THE TRUE COPY OF THE REVISED STAFF FIXATION FOR THE YEAR 2015-2016 BY THE

5TH RESPONDENT AS PER ORDER

NO.C/644(1)/2017/D.DIS DATED 26.02.2018 Exhibit P4 THE TRUE COPY OF THE LETTER NO.RA(4)/5232/2019/DGE DATED 25.01.2020 Exhibit P5 THE TRUE COPY OF THE REVISION PETITION DATED 15.03.2018 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT Exhibit P6 THE TRUE COPY OF JUDGMENT IN WPC NO.12235/2020 DATED 22.06.2020 Exhibit P7 THE TRUE COPY OF GO(RT) NO.2879/2021/GEN.EDN DATED 31.05.2021 Exhibit P8 THE TRUE COPY OF THE SKETCH PLAN OF THE BUILDINGS Exhibit P9 THE TRUE COPY OF THE FITNESS CERTIFICATE DATED 30.05.2015 FOR THE YEAR 2015-2016 Exhibit P10 THE TRUE COPY OF THE FITNESS CERTIFICATE DATED 30.05.2015 FOR THE YEAR 2016-2017 Exhibit P11 THE TRUE COPY OF THE FITNESS CERTIFICATE DATED 01.06.2017 FOR THE YEAR 2017-2018 Exhibit P12 THE TRUE COPY OF THE FITNESS CERTIFICATE DATED 30.05.2015 FOR THE YEAR 2019-2020 WP(C) NOS. 15843 & 19301 OF 2021 11 Exhibit P13 THE TRUE COPY OF THE FITNESS

CERTIFICATE DATED 26.06.2015 FOR THE YEAR 2020-2021 Exhibit P14 THE TRUE COPY OF THE CIRCULAR NO.J2/21/2020 DATED 9.10.2020

Exhibit P15 TRUE COPY OF THE PROCEEDINGS ORDER

NO.B1/5911/2020 DATED 01.07.2020 OF THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM

Exhibit P16 TRUE COPY OF THE PROCEEDINGS ORDER

NO.NSNSPMUPS/ACD/SS-1/2016 DATED 6TH JULY 2020 OF THE PETITIONER

Exhibit P17 TRUE COPY OF THE PROCEEDINGS ORDER

NO.NSNSPMUPS/ACD/SS-2/2016 DATED 6TH JULY 2020 OF THE PETITIONER

Exhibit P18 TRUE COPY OF THE PROCEEDINGS ORDER

NO.B1/1004/2020 /DDE DATED 29.01.2021 DEPUTY DIRECTOR OF EDUCATION KOLLAM Exhibit P19 TRUE COPY OF GO(MS) NO.136/2021/G.EDN DATED 31.03.2021 Exhibit P20 THE TRUE COPY OF THE LETTER NO .NSNSPMUPS/ACD/SS-1/2016 DATED 06.06. 2020 ISSUED BY THE PETITIONER Exhibit P21 TRUE COPY OF THE CIRCULAR NO.H2-12666/84 DATED 15.7.84 OF THE DIRECTOR OF PUBLIC INSTRUCTION EXHIBIT P22 THE TRUE COPY OF THE PLAN FACILITIES AVAILABLE IN THE SCHOOL DURING 2018-2019 EXHIBIT P23 THE TRUE COPY OF THE PLAN FACILITIES AVAILABLE IN THE SCHOOL DURING 2023-2024 WP(C) NOs. 15843 & 19301 OF 2021 12 EXHIBIT P24 TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE ASSISTANT ENGINEER LSGD SOORANADU SOUTH GRAMA PANCHAYATH FOR THE PERIOD OF 2018-2019 EXHIBIT P25 TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE ASSISTANT ENGINEER LSGD SOORANADU SOUTH GRAMA PANCHAYATH FOR THE PERIOD OF 2023-2024

