

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

WP(C).No.20138 OF 2019(N)

PETITIONER:

SIMMY MARIAM JOSE  
AGED 37 YEARS  
PHYSICAL EDUCATION TEACHER, ST.MARY'S M.M.GIRLS  
HIGHER SECONDARY SCHOOL, ADOOR, PATHANAMTHITTA  
DISTRICT. (VALIYAPARAMBIL HOUSE, MYLAPRA P.O.,  
PATHANAMTHITTA DISTRICT)

BY ADVS.  
SRI.K.SASIKUMAR  
SRI.P.S.RAGHUKUMAR  
SRI.S.ARAVIND  
SHRI.REJU PRASAD  
SMT.PRIYA CAROL

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL  
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR OF PUBLIC INSTRUCTIONS,  
THIRUVANANTHAPURAM-695014.
- 3 DEPUTY DIRECTOR OF EDUCATION,  
PATHANAMTHITTA-689101.
- 4 DISTRICT EDUCATIONAL OFFICER,  
PATHANAMTHITTA-689101.
- 5 HEADMISTRESS,  
ST.MARY'S M.M.GIRLS HIGHER SECONDARY SCHOOL, ADOOR,  
PATHANAMTHITTA DISTRICT-691523.
- 6 ADDL. R6. PRINCIPAL SECRETARY,  
FINANCE DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001.

(ADDITIONAL R6 IS IMPEADED AS PER ORDER DATED  
26/08/2019 IN IA NO.01/2019 IN WPC NO.20138/2019)

R1-4 BY GOVERNMENT PLEADER

SRI. SURESH BABU (SPL. GOVERNMENT PLEADER)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
29.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

### **JUDGMENT**

The petitioner says that she is working as a Physical Education Teacher in "St.Mary's M.M. Girls Higher Secondary School", Pathanamthitta and that she has approached this Court impugning Exts.P9, P10 & P13 orders, as per which, the benefits claimed by her, based on Ext.P6 Government Order, have been rejected saying that she could not have exercised a re-option, since she had not done so within the time-frame prescribed earlier.

2. The learned counsel for the petitioner, Sri.K.Sasikumar, submits that the reason stated by the Authorities in the impugned orders are untenable, because even if the petitioner is not entitled to make a re-option, as has been stated in Ext.P13, she should have been given the benefit of Ext.P6 Government Order based on the dates recorded therein. The learned counsel submitted that even without giving her the benefit of Ext.P6,

the impugned orders have been issued holding that she could not have exercised a re-option beyond the time granted earlier.

3. In response, the learned Special Government Pleader - Shri.C.M.Suresh Babu, submitted that a counter affidavit has been filed on record, wherein, it has been explained that the Government implemented the 9<sup>th</sup> Pay Revision and modified the pay and allowances as per Ext.P3 Order; and that accordingly, the pay of Upper Primary School Assistants were included in a higher scale of pay. He submitted that the petitioner consequently exercised option on 01.06.2010 and that this Option Form was accepted by the Headmaster on 15.07.2011, leading to her pay being revised.

4. The learned Special Government Pleader added that, in the meanwhile, the Government modified the scales of pay of teachers in General Education/Higher Secondary Education/Vocational Higher Secondary Education as per

the 9<sup>th</sup> Pay Revision, vide Ext.P6 Government Order and that the scale of pay of Upper Primary School Assistants, including Physical Education Teachers, were resultantly revised.

5. The learned Special Government Pleader further submitted that as per the Pay Revision order, the re-option allowed in the case of change of pay scale was granted with retrospective effect and that the petitioner ought to have exercised the same within three months from the date of issue of the said order, but that she did not do so; asserting that Ext.P8, which is dated 05.07.2013, can only be seen to be a fabricated one.

6. The learned Special Government Pleader continued to submit that the 4<sup>th</sup> respondent - District Educational Officer(DEO), Pathanamthitta, verified her service book and has affirmed that she has not submitted the option within the time limit prescribed and that the said Officer has not returned the

re-option statement of the School regarding the 2009 Pay Revision, but only the option regarding the petitioner's Higher Grade proposal, which is Ext.P9. He concluded by saying that the petitioner submitted a proposal to the office of the 3<sup>rd</sup> respondent, but that as per Ext.P10 order issued by the Director of General Education, she was directed to approach the Government and that she did so through Exts.P11 and P12 representations, which were turned down by Ext.P13, making it clear that since she had not made her re-option within the stipulated time, her request could not be entertained. He, therefore, prayed that this writ petition be dismissed.

7. Even though there is some force in the submissions of the learned Special Government Pleader with respect to the opportunity of a teacher, including the petitioner, to exercise re-option, if she had not exercised the same within the time frame, the question is not

merely whether her re-option should be accepted, but whether her benefits as recorded in Ext.P6 - reckoning the dates recorded therein - should be granted to her.

8. The petitioner's specific case is that, in spite of the Government Order modifying the revised scale of pay in the cadre of Physical Education Teachers to Rs.13210-22360 from Rs.11620-20240, with effect from 01.07.2009, same has not been extended to her until now. These aspects, however, have not been adverted to by any of the Authorities in the impugned orders and I am, therefore, of the view that Government must reconsider the petitioner's claim, taking note of the afore submissions.

In the afore circumstances, I order this writ petition and set aside Ext.P13; with a consequential direction to the competent Secretary of the Government to rehear the petitioner based on the contentions as afore - either physically or through video conferencing

- leading to an appropriate order thereon, as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

While completing the afore exercise, Government will keep in mind that the contention of the petitioner is not based on her re-option alone, but also that the benefits under Ext.P6, on the basis of the dates recorded therein, have not been made available to her and this will also be addressed in the resultant order.

Sd/-

**DEVAN RAMACHANDRAN**

**JUDGE**

**MC/1.2.2021**

**APPENDIX****PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	A TRUE COPY OF THE APPOINTMENT ORDER DATED 05.06.06.
EXHIBIT P2	A RELEVANT EXTRACT OF THE SERVICE BOOK OF THE PETITIONER SHOWING THE ORDER OF DEPARTMENTAL APPROVAL.
EXHIBIT P3	A TRUE RELEVANT EXTRACT OF GO(P) NO.85/2011/FIN. DATED 26.02.2011.
EXHIBIT P4	A TRUE COPY OF THE FORM OF OPTION DATED 15.07.2011.
EXHIBIT P5	A TRUE COPY OF THE STATEMENT OF FIXATION OF PAY IN THE REVISED SCALE.
EXHIBIT P6	A TRUE COPY OF THE GO(P) NO.168/2013/(147)/FIN., DATED 11.04.2013.
EXHIBIT P7	A TRUE COPY OF THE LETTER DATED 06.07.13 FORWARDED BY THE PRINCIPAL SECRETARY (FINANCE) GOVERNMENT OF KERALA TO THE ACCOUNTANT GENERAL, KERALA.
EXHIBIT P8	A TRUE COPY OF THE REVISED OPTION DATED 5.7.2013.
EXHIBIT P9	A TRUE COPY OF THE LETTER DATED 25.02.15 ISSUED BY THE 4TH RESPONDENT RETURNING THE RE-OPTION APPLICATION AND OTHER RECORDS.
EXHIBIT P10	A TRUE COPY OF THE LETTER DATED 6.03.18 FORWARDED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT THE COPY TO THE PETITIONER.
EXHIBIT P11	A TRUE COPY OF THE REPRESENTATION DATED 23.04.2018 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXHIBIT P12	A TRUE COPY OF THE REPRESENTATION DATED 25.02.2019 FORWARDED BY THE PETITIONER TO THE 1ST RESPONDENT.
EXHIBIT P13	A TRUE COPY OF THE ORDER DATED 23.5.2019 ISSUED BY THE 1ST RESPONDENT.