

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 31ST DAY OF MARCH 2023 / 10TH CHAITHRA, 1945

WP(C) NO. 20761 OF 2021

PETITIONER/S:

- 1 THE MANAGER
SREE DHARMA PARIPALANA YOGAM (S.D.P.Y.) SCHOOLS,
PALLURUTHY, KOCHI - 682 006.
- 2 SREEVIDYA V.
U.P.S.T., S.D.P.Y.K.P.M.H.S., EDAVANAKKAD,
EDAVANAKKAD P. O., ERNAKULAM.
- 3 MARY SHILNA FRANK
U.P.S.T., S.D.P.Y.K.P.M.H.S., EDAVANAKKAD,
EDAVANAKKAD P. O., ERNAKULAM.
- 4 LAKSHMI C. R.
U.P.S.T., S.D.P.Y.K.P.M.H.S., EDAVANAKKAD,
EDAVANAKKAD P. O., ERNAKULAM.
- 5 SIMMI THATTAKATH
U.P.S.T., S.D.P.Y.K.P.M.H.S., EDAVANAKKAD,
EDAVANAKKAD P. O., ERNAKULAM.
- 6 JISHA AGITHAN
AGED 37 YEARS
W/O. ROBIN, H.S.T.(MALAYALAM), S.D.P.Y.K.P.M.H.S.,
EDAVANAKKAD, EDAVANAKKAD P. O., ERNAKULAM, RESIDING
AT KANNETH HOUSE, MOOTHAKUNNAM P. O., NORTH PARAVUR,
ERNAKULAM - 683 516, PHONE - 8943474506.
- 7 TEENA MOHANAN M.
H.S.T.(HINDI), S.D.P.Y.K.P.M.H.S., EDAVANAKKAD,
EDAVANAKKAD P. O., ERNAKULAM.
- 8 SHANU A. J.
H.S.T.(MATHS), S.D.P.Y.K.P.M.H.S., EDAVANAKKAD,

EDAVANAKKAD P. O., ERNAKULAM.

- 9 DIVYA P. SUDHAN
H.S.T. (PHYSICAL SCIENCE), S.D.P.Y.K.P.M.H.S.,
EDAVANAKKAD, EDAVANAKKAD P. O., ERNAKULAM.

BY ADVS.
K.P.SATHEESAN (SR.)
K.SUDHINKUMAR
S.K.ADHITHYAN
SABU PULLAN
P.MOHANDAS (ERNAKULAM)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM - 695 014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, CIVIL
STATION, KAKKANAD, ERNAKULAM - 682 030.
- 4 THE DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DISTRICT EDUCATIONAL OFFICE, PARK
AVENUE ROAD, ERNAKULAM, KOCHI - 682 011.

BY ADV ADVOCATE GENERAL OFFICE KERALA

BY SMT.NISHA BOSE, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31.03.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P.(C) No. 20761 of 2021

Dated this the 31st day of March, 2023

JUDGMENT

The above writ petition is filed with following prayers :

- i) "to issue a Writ of certiorari or such other appropriate writ, order or direction quashing Ext P12 order No.B2/5087/19/D Dis, dated 11.7.2019 issued by the 4th respondent to the extent of declining the sanctioning of additional divisions and posts for the academic year 2018-19 as it is arbitrary, illegal and void;*
- ii) to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext P15 order No.B2/45256/2019 dated 19.7.2019 issued by the 4th respondent declining the sanctioning of additional divisions and posts for the academic year 2019-20 as it is arbitrary, illegal and void;*
- iii) to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext P18 order G.O(RI)No.4106/2021/G Edn.dated 16.9.2021 issued by the 1st respondent since the request for sanctioning additional*

divisions and posts for the academic years 2018-19 and 2019-20 are rejected without appreciating the actual facts and position;

iv) to issue a Writ of Mandamus or order or direction to the 4th respondent to revise Ext P12 and P15 staff fixation orders after conducting a proper verification in the school regarding the student strength, facilities and other amenities provided for the academic years 2018-2019 and 2019-20;

v) to issue a Writ of Mandamus or order or direction to the 4th respondent to approve the appointment of petitioners 2 to 9 in the respective posts since they have been engaging the classes from the date of their appointments;

vi) to declare that the school is entitled to get eight additional divisions and ten new posts from the academic year 2018-19 onwards based on the student strength and also the facilities provided;

vii) to issue such other appropriate Writ, Order or direction as is deemed just and necessary in the circumstances of the case.

viii) to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext P19 order No.DEO EKM/7592/2021-B2 dated 8.12.2022 issued by the 4th respondent as it is arbitrary and illegal.”[SIC]

2. The 1st petitioner is the Manager of SDPY schools. The petitioners 2 to 9 are the teachers appointed by the 1st petitioner in the said school during the academic year 2018-19.

It is the case of the petitioners that as per the increase of the number of students, the school is entitled to get eight additional divisions and ten new posts from the academic year 2018-19. But the same was not sanctioned by the 4th respondent stating that the class rooms are not sufficient to accommodate the additional divisions. It is stated that the reasoning was incorrect. It is also stated that on reverification the 4th respondent rejected the request stating that some of the classrooms have deficiency of 2 cms height than what is required in KER. But, it is stated by the petitioners that the appeal against the denial of the approval of the appointment of petitioners 2 to 9 was rejected by the 3rd respondent. According to the petitioners, subsequently the Panchayat gave fitness certificate in October, 2019. Even though the class rooms were ready and functioning from July 2018 onwards. Since the 3rd respondent rejected the appeal, the 1st petitioner filed revision before the Government. Now, the 1st respondent also rejected the same. Hence, this writ petition is filed.

3. Heard the learned counsel for the petitioners and the

learned Government Pleader.

4. The counsel for the petitioners takes me through Ext.P16 which is the order issued by the 3rd respondent by which exemption is granted regarding the height and permission is granted to continue classes in 15 class rooms. Ext.P16 is dated 13.05.2020. Exts.P13 and P14 will show that the classes were started in the new school from 07.07.2018. The submission of the petitioners is that without a well equipped classrooms, the classes would not have been started. Exts.P13 and P14 itself will show that classes were started in 2018 is the submission. The reasoning for rejecting Ext.P18 by the Government is unsustainable is the contention.

5. I am of the opinion that there is some force in the argument of the petitioners. The matter is to be reconsidered by the Government. Admittedly, there is exemption order as evident by Ext.P16. There is no dispute to the fact that the classes were functioning in the newly constructed building from 2018 onwards. Ext.P13 is the notice showing the date of inauguration of the classrooms by a member of Legislative

Assembly. The inauguration news is published in a newspaper also, as evident by Ext.P14. It is true that Exts.P13 and P14 alone may not be sufficient, but the Government can get further report from the local authority concerned to show whether the application for fitness certificate was submitted in 2018 itself by the 1st petitioner. The Government can also obtain a report from the 3rd respondent to verify whether the classes were started in July 2018 itself. After getting such a report, the Government can reconsider the matter in the light of Ext.P16. Based on the above decision, Ext.P15 also will be reconsidered, if necessary.

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

- 1) Exts.P18 and P19 are set aside.
- 2) The 1st respondent is directed to reconsider the matter after getting a report from the 3rd respondent about the date on which actually classes are started in the new building and also after giving an opportunity of hearing to the petitioners, as expeditiously as possible, at any rate,

within four months from the date of receipt of a stamped certified copy of this judgment. Based on the decision of the 1st respondent, the 3rd respondent will reconsider Ext.P15, if necessary.

- 3) The Government will also get a report from the local authority before taking any decision as directed above, about the date on which the application for fitness certificate is submitted and whether there was any delay on the part of the local authority for entertaining that application.
- 4) The petitioners will produce a stamped certified copy of this judgment along with the copy of this writ petition before the 1st respondent for compliance.

SD/-
P.V.KUNHIKRISHNAN
JUDGE

APPENDIX OF WP(C) 20761/2021

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 2ND PETITIONER BY THE 1ST PETITIONER DATED 26.07.2018.
Exhibit P2	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 3RD PETITIONER BY THE 1ST PETITIONER DATED 19.09.2019.
Exhibit P3	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 4TH PETITIONER BY THE 1ST PETITIONER DATED 16.07.2018.
Exhibit P4	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 5TH PETITIONER BY THE 1ST PETITIONER DATED 19.09.2019.
Exhibit P5	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 6TH PETITIONER BY THE 1ST PETITIONER DATED 08.08.2018.
Exhibit P6	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 7TH PETITIONER AS U.P.S.A. DATED 02.08.2018.
Exhibit P7	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 7TH PETITIONER AS H.S.T. (HINDI) DATED 06.06.2019.
Exhibit P8	TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 8TH PETITIONER BY THE 1ST PETITIONER DATED 16.07.2018.
Exhibit P9	TRUE COPY OF THE ORDER ISSUED TO THE 9TH PETITIONER BY THE 1ST PETITIONER DATED 16.07.2018.
Exhibit P10	TRUE COPY OF THE ORDER NO.B2/21220/2021 DATED 09.07.2021 ISSUED BY THE 4TH RESPONDENT IN RESPECT OF THE 2ND

PETITIONER.

- Exhibit P10(a) TRUE COPY OF THE ORDER NO.B2/16063/2019
DATED 03.01.2020 ISSUED BY THE 4TH
RESPONDENT IN RESPECT OF THE 3RD
PETITIONER.
- Exhibit P10(b) TRUE COPY OF THE ORDER NO.B2/15841/2019
DATED 04.01.2020 ISSUED BY THE 4TH
RESPONDENT IN RESPECT OF THE 4TH
PETITIONER.
- Exhibit P10(c) TRUE COPY OF THE ORDER NO.B2/16064/2019
DATED 03.01.2020 ISSUED BY THE 4TH
RESPONDENT IN RESPECT OF THE 5TH
PETITIONER.
- Exhibit P10(d) TRUE COPY OF THE ORDER NO.B2/16238/2020
DATED 03.2020 ISSUED BY THE 4TH RESPONDENT
IN RESPECT OF THE 6TH PETITIONER.
- Exhibit P10(e) TRUE COPY OF THE ORDER NO.B2/15844/2019
DATED 05.01.2020 ISSUED BY THE 4TH
RESPONDENT IN RESPECT OF THE 7TH
PETITIONER.
- Exhibit P10(f) TRUE COPY OF THE ORDER NO.B2/15839/2019
DATED 03.01.2020 ISSUED BY THE 4TH
RESPONDENT IN RESPECT OF THE 8TH
PETITIONER.
- Exhibit P10(g) TRUE COPY OF THE ORDER NO.B2/15840/2019
DATED 03.01.2020 ISSUED BY THE 4TH
RESPONDENT IN RESPECT OF THE 9TH
PETITIONER.
- Exhibit P11 TRUE COPY OF THE ORDER NO.B2/211473/2020
DATED 14.09.2020 ISSUED BY THE 3RD
RESPONDENT IN RESPECT OF THE 3RD
PETITIONER.
- Exhibit P12 TRUE COPY OF THE ORDER
NO.B2/5087/19/D.DIS. DATED 11.07.2019

ISSUED BY THE 4TH RESPONDENT.

- Exhibit P13 TRUE COPY OF THE INVITATION LETTER IN WHICH THE LOCAL MLA PRESIDED OVER THE FUNCTION DATED 07.07.2018.
- Exhibit P14 TRUE COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHOOMI DAILY DATED 08.07.2018.
- Exhibit P15 TRUE COPY OF THE ORDER NO.B2/45256/2019 DATED 19.07.2019 ISSUED BY THE 4TH RESPONDENT.
- Exhibit P16 TRUE COPY OF THE ORDER NO.B2/237/2020/D.D.E./D.DIS. DATED 13.05.2020 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P17 TRUE COPY OF THE REVISION PETITION FILED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT DATED 22.06.2020.
- Exhibit P18 TRUE COPY OF THE ORDER G.O.(RT) NO.4106/2021/G.EDN. DATED 16.09.2021 ISSUED BY THE 1ST RESPONDENT.
- Exhibit -P19 TRUE COPY OF THE ORDER NO. DEO EKM/7592/2021-B2 DATED 8-12-2022 ISSUED BY THE 4TH RESPONDENT