

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
Monday, the 6th day of June 2022 / 16th Jyaishta, 1944
WP(C) NO. 17406 OF 2022(A)**

PETITIONERS:

1. THE MANAGER, KPM HIGHER SECONDARY SCHOOL, CHERIYAVELLINALLOOR, OY00R VIA, KOLLAM DISTRICT-691 516.
2. GULAB KHAN.K., UPSA LANGUAGE TEACHER, KPM HIGHER SECONDARY SCHOOL, CHERIYAVELLINALLOOR, OY00R VIA, KOLLAM DISTRICT-691 516.

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXE II, THIRUVANANTHAPURAM-695 001.
3. THE DIRECTOR OF GENERAL EDUCATION, JAGATHY, THIRUVANANTHAPURAM-695 014.
4. THE DISTRICT EDUCATIONAL OFFICER, KOTTARAKARA, KOLLAM DISTRICT-691 506.
5. THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, HUMAN RESOURCE DEPARTMENT (EDUCATION & LITERACY), SASTRI BHAVAN, NEW DELHI-110 001.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim order or injunction restraining the Respondents from enforcing or giving effect to Exhibit P-1, pending final decision of the Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.V.A.MUHAMMED & M.SAJJAD, Advocates for the petitioners, SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL for the R1 to R4 and of SRI.C.G.SUNIL for R5, the court passed the following:

RAJA VIJAYARAGHAVAN V, J.

W.P.(C) Nos.17406, 17413 & 17542 of 2022

Dated this the 6th day of June, 2022

ORDER

I have heard Sri.V.A.Muhammed and Sri.K.Mohanakannan, the learned counsel appearing for the petitioners and Sri.Ashok M.Chериан, the learned Additional Advocate General.

2. The petitioners have filed these writ petitions being aggrieved by certain provisions of the amendment introduced to the Kerala Education Rules. Ext.P1 is the copy of the impugned amendment.

3. As per the amendment vide Rule 2(7)(a)(iii), Rule 12(3) has been inserted in Chapter XXIII of the KER as per which it is stipulated that the additional division or additional post would be effective only from the 1st of October of each year. Vide Rule 2(7)(a) of Ext.P1, amendments have been brought in making the effective date of the staff fixation order as 15th of July of each year. The counsel points out that the commencement of the academic year is on the 1st of June and if the provisions of the amendment are given effect to, it may lead to a situation wherein there would be dearth of teachers from June 1st to the 14th of July and for students in additional divisions, no

teacher will be available up to the 1st of October. According to the learned counsel, implementation of Ext.P1 would result in getting teachers for one set of students from the 1st of June and an additional set from the 1st of October.

4. It is further submitted that by Rule 2(a)(ii) of Ext.P1, a new Rule is introduced in Chapter VI as Rule 15A by which the Headmaster/ Vice-Principal has to take immediate follow-up action regarding the long absentees in consultation with the local authority in terms of Section 9 of Act 35 of 2009. As per the amendment, the mere absence of a student on the day of the visit of the educational officer would lead to the conclusion that the admission is a bogus one. When the salutary objective of Act 35 of 2009 was to ensure the retention of students in the school, one way or the other, the amendment requires the class teachers to remove the pupils from the rolls.

5. The learned counsel would then refer to the Schedule to Act 35 of 2009 which deals with norms and standards for a school and it is submitted that, minimum number of working days/instructional hours are to be provided in an academic year. Reference is also made to Government Order No.QIP(2)/29920/15/DPI to highlight the fact that the time schedule for various periods from 10 am to 4 pm/ 4.30 pm has also to be adhered to.

According to the learned counsel, the provisions of the amendment would disable the schools from imparting instructions in the manner prescribed. Finally it is submitted that it was without taking note of the impact of the various provisions that Ext.P1 was notified.

6. From the explanatory note to Ext.P1, I find that the Government felt it necessary to take measures to curb the practice of creating additional divisions with bogus admissions and forged attendance and to achieve the said object, it has been decided to sanction additional divisions and posts only after a thorough verification in the manner decided by the Government and to sanction additional divisions and posts only with effect from 1st of October of the year. However, the impact of sanctioning additional divisions and posts only on the 1st of October appears to have been ignored.

7. The learned Additional Advocate General sought an adjournment to place on record a counter-affidavit. It is further submitted that the Government has taken note of the issues highlighted by the petitioners and is actively considering whether the provisions conflict with the central enactment and to take corrective measures if warranted.

Prima facie, I am of the view that the petitioners have made out a good case on merits. There appears to be considerable merit in the submission of the learned counsel that the provisions are inconsistent with the Right of Children to Free and Compulsory Education Act, 2009 and also the various provisions of the Kerala Education Act, 1958 and the Rules, 1959 and is likely to cause serious hardship to all the stakeholders. In that view of the matter, as an interim measure, the respondents are interdicted from enforcing or giving effect to Exhibit P1 for a period of one month.

Post on 10.06.2022.

Hand over.



Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

avs

APPENDIX OF WP(C) 17406/2022

Exhibit P1

**TRUE COPY OF THE GO(P) NO.5/2022/G.EDN DATED
18.04.2022.**

