



2023/KER/73764

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

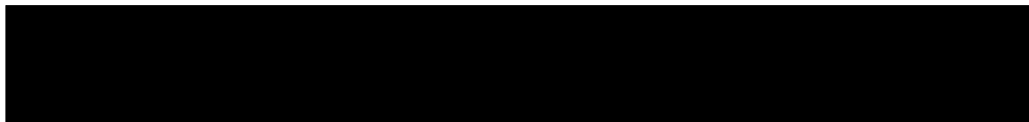
THURSDAY, THE 23RD DAY OF NOVEMBER 2023 / 2ND AGRAHAYANA, 1945

WA NO. 2001 OF 2023

AGAINST THE JUDGMENT IN WP(C) 28547/2023 OF HIGH COURT OF KERALA

APPELLANT/RESPONDENT NO.2 :-

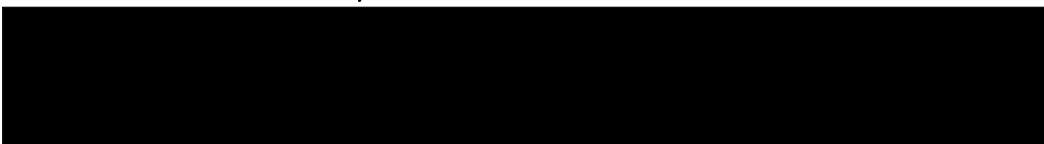
THE CORPORATE MANAGER, AGED 57 YEARS



BY ADVS.
LIJU.V.STEPHEN
INDU SUSAN JACOB
P.M.HRIDYA

RESPONDENTS/PETITIONER AND RESPONDENT 1 AND 3 :-

1 BEENA HILKUSHI S.R, AGED 49 YEARS



2 THE ADDITIONAL DIRECTOR OF GENERAL EDUCATION (ACADEMIC)
OFFICE OF THE DIRECTOR OF GENERAL EDUCATION, JAGATHY,
VAZHUTHAKKAD, THIRUVANANTHAPURAM,
KERALA, INDIA, PIN - 695014

3 SOUMYA,



BY SRI.A.J.VARGHESE, SR.GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23.11.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal arises from the judgment of the learned Single Judge interfering with the transfer order approved by the Educational Authority of a teacher regarding transfer from one school to another under Corporate Managers. The transfer order did not mention the reason for the transfer. Under the Kerala Educational Rules (KER) transfer can be only effected in accordance with Rule 10 of Chapter XIV. It is appropriate to refer Rule 10 of Chapter XIV.

"10. Transfers:- Where more than one school is under the same Educational Agency, the Educational Agency may transfer any teacher from one school to another and in deciding on these transfers the principles followed in Government Schools shall be observed to the extent possible. The principles of transfer shall be as follows:-

- (1) The chief and for most criterion for transfer of Headmaster [and teacher] shall be the seniority.
- 2) Every Headmaster [and teacher] shall



be allowed to exercise choice of 3 or more schools.

(3) Exceptions to the seniority criterion shall be the bare minimum. Exception shall include close relatives of Jawans, Intercast marriage, Physically handicapped, other grounds for special consideration, compassionate grounds, persons who have only one year of service left for retirement etc,

(4) Cases coming under administrative interest shall include unsuitability, allegations of corruption, misuse of official position, disciplinary action, incompetence, and consistent poor performance.

(5) Cases of deviation from the seniority norms shall be appealable before the Director of Public Instruction, who shall decide the case.

(6) All exceptions to the general rule of seniority put together may not exceed 25% transfers.

(7) Mutual transfers on request shall not be entertained.

(8) The number of transfers shall be limited to twice or thrice a year."

2. According to the Manager, the reason for the transfer is on account of the misbehaviour of the teacher. In the counter affidavit filed, it is



stated that on the basis of the complaint from the students such action was resorted by the Manager and the transfer falls under the sub-clause 4 of Rule 10.

3. Since it is a case coming under the clause 4, we are only examining the legality of action with reference to Sub-rule 4 of Rule 10.

4. The learned counsel for the respondents referring to the judgment of the Apex Court in **Union of India and Others v. Janardhan Debanath and Another** [2004 KHC 951] submits that it is a matter for the employer to consider transfer depending upon the administrative necessities and sometimes it is used as a solution for the problems faced by the administration. Therefore, it is submitted that the transfer effected is legally justifiable.

5. We at the outset must state that the judgment of the Apex Court is not applicable in this matter as this transfer has to be in accordance with statutory rule, when the statute prescribes a certain procedure to be followed the



transfer has to be effected only by following such procedure mentioned therein. Therefore, we are examining this case with reference to sub-rule 4.

6. According to the learned counsel for the Manager, sub rule (4) does not prescribe any procedure to be followed for conducting an enquiry for effecting the transfer. We disagree with the arguments of learned counsel for the Manager. Principles of natural justice is not an empty formality. If a transfer is effected with reference to sub-rule 4 of Rule 10, it results in civil consequences stigmatizing a teacher by categorizing her that of misbehaviour, misuse of official position, incompetency or low performance etc., that demand compliance of principles of natural justice by initiating an enquiry by the Manager giving fullest opportunity to the teachers to rebut any allegations.

7. In a recent judgment of this Court in **State of Kerala v. P.K.Radhakrishna** [2023 (6) KLT 256], we observed that the principles of natural



justice will have to read into the statutory provisions to obviate any prejudice or bias that likely to arise in such proceedings. In that view of the matter, we are of the opinion that impugned judgment also be sustained.

This Writ Appeal, thus dismissed.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE