

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 10TH DAY OF NOVEMBER 2021 / 19TH KARTHIKA, 1943

CON.CASE(C) NO. 1760 OF 2021

AGAINST THE JUDGMENT IN WP(C) 2649/2021 OF HIGH COURT OF KERALA, ERNAKULAM

PETITIONER/PETITIONER:

AMBIKA P
AGED 30 YEARS
W/O. PRADEEP K, LPST (MALAYALAM), AUPS, BOVIKKANA, MULIYAR P.O, KASARGOD 671
542
RESIDING AT KANIYADUKAM, POINACHI, THEKKIL P.O, KASARGOD 671 541

BY ADVS.
KALEESWARAM RAJ
VARUN C.VIJAY
THULASI K. RAJ

RESPONDENT/RESPONDENT NO.2, AND 5:

- 1 JEEVAN BABU K, I.A.S
DIRECTOR OF GENERAL EDUCATION, DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM 695 014
- 2 SRI. AUGUSTINE BERNARD MONTHERO

AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER
ASSISTANT EDUCATIONAL OFFICER, OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
KASARGOD 671 123

SMT. SURYA BINOY- SR. G.P

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 10.11.2021, ALONG
WITH Con.Case(C).1230/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Con.Case.No.1230 of 2021 &
Con.Case.No.1760 of 2021

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 10TH DAY OF NOVEMBER 2021 / 19TH KARTHIKA, 1943

CON.CASE(C) NO. 1230 OF 2021

**AGAINST THE ORDER/JUDGMENT IN WP(C) 2649/2021 OF HIGH COURT OF KERALA,
ERNAKULAM**

PETITIONER/PETITIONER:

AMBIKA P.
AGED 30 YEARS
LPST (MALAYALAM), AUPS, BOVIKKANA, MULIYAR P.O., KASARGOD - 671 542
RESIDING AT KANIYADUKAM, POINACHI, THEKKIL P.O., KASARGOD - 671 541.

BY ADVS.
KALEESWARAM RAJ
VARUN C.VIJAY
MAITREYI SACHIDANANDA HEGDE

RESPONDENT/RESPONDENT NO.5:

SRI.AUGUSTINE BERNARD MONTHERO
FATHER'S NAME AND AGE ARE NOT KNOWN TO THE PETITIONER , ASSISTANT
EDUCATIONAL OFFICER, OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
KASARGOD - 671 123.

BY ADVS.
GOVERNMENT PLEADER
K.JAJU BABU (SR.)
M.U.VIJAYALAKSHMI
BRIJESH MOHAN
ANTONY THOMAS
ALISHA CHALAKAL

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 10.11.2021,
ALONG WITH Con.Case(C).1760/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 10th day of November, 2021.

These two contempt of Court Cases have been filed by the same petitioner.

2. The petitioner alleges that, in spite of the specific directions of this Court in the judgment dated 04.03.2021, the benefits eligible to her have not been disbursed until now. She makes various other allegations and assertions against the respondents in these matters, but the crux of it is that they have deliberately flouted the orders of this Court, by circumventing it and issuing subsequent orders, which have the effect of diluting the said directions.

3. When I had earlier considered CoC.No.1230/2021 on 04.10.2021, a submission was made that the judgment has not been complied with because

there were certain Audit Objections raised.

4. The matter was, thereafter, considered on 11.10.2021, when this Court took umbrage to the conduct of the respondent, who is the jurisdictional Assistant Educational Officer (AEO) and asked him to file an affidavit.

5. Subsequently, on 21.10.2021, after hearing the matter in detail, an interim order was issued, which, for the purpose of full reading, is extracted below:

When this Court notices obstinate belligerence from the respondent answering a contempt charge, it will certainly have to be taken with the seriousness it deserves.

2. On the first day when this Contempt Case was considered by this Court, respondent took the stand that the judgment had not been complied with because of certain 'Audit objections'. Thereafter, on 24.09.2021, the learned Senior Government Pleader submitted that the judgment is being complied with and I, therefore, adjourned this

matter to 04.10.2021, asking the respondent to be present in person, if the directions were not put into effect by them.

3. On 04.10.2021, the learned Senior Government Pleader sought two weeks time to comply with the judgment, but on 11.10.2021, the respondent - who was present in person, took a different stand that he was awaiting orders from the 'Higher Authorities'. In the order dated 11.10.2021, this Court had made its displeasure known very clearly.

4. However, the respondent now avers in his affidavit, dated 20.10.2021, that the judgment was received by him on 07.04.2021, but had chosen not to comply with it, instead, preparing a letter to the Director of General Education (DGE) on 16.04.2021, seeking modification of the approval of the petitioner's appointment. He says that since the '*State went into a lock-down in May 2021*' (sic), said letter was issued only on 08.06.2021; and that he '*repeatedly requested the DGE to vary the approval of the petitioner*' (sic), but that '*despite these efforts only on 04.10.2021 did the 2nd respondent (DGE) conveyed his directions*' (sic).

5. Before I tread forward, I must analyse Annexure A4 also, which

is an order issued by the respondent on 16.05.2021, in the context of the averments made by him in the aforementioned counter affidavit. Annexure A4 was issued on 16.05.2021, asking the petitioner to repay her salary, when admittedly, he had prepared a letter to the DGE on 16.04.2021, but which was sent only on 08.06.2021, seeking that her approval be varied. The reason for the delay in addressing the letter to the DGE until 08.06.2021 is averred to be on account of the lock-down from 'early May 2021'. However, this does not transpire to have stopped the respondent from issuing Annexure A4 on 16.05.2021.

6. The pattern now adopted by the respondent, *prima facie*, indicates that he was avoiding compliance of the directions of this Court by making sure that approval of the petitioner's appointment was varied on account of 'his efforts' and that the DGE has issued such an order on 04.10.2021. However, he has chosen not to answer how he issued Annexure A4 much prior to the order of the DGE and certainly, this exposes a very deleterious trend which this Court is now seeing often, of officers avoiding implementation of judgments.

7. To make matters worse, even though the respondent was obligated

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to remain present in person today, he has chosen not to do so and no application to condone his absence has been filed.

8. *Prima facie*, therefore, this Court finds the respondent to be in contempt of orders of this Court. In spite of repeated opportunities, the respondent has chosen to respond to this Court in a very casual and lackadaisical manner.

I, therefore, direct the respondent to remain personally present before this Court on 10.11.2021, on which day I propose to frame charges against him and continue the proceedings.

6. The afore order discloses the angst of this Court; and it is in the background of the same that these matters are listed today.

7. The respondents in these two cases are present in person and I have interacted with them, as also with the Secretary of the General Education Department, who was present in connection with another matter.

8. Before I tread into the general issues, I must

record that *prima facie*, the conduct of the respondent in CoC.No.1230/2021 leaves much to be desired.

9. That so said, Sri.Jaju Babu – learned Senior Counsel, instructed by Sri.Brijish Mohan – learned counsel for the respondent in CoC.No.1230/2021 made a valiant attempt to explain why his client acted in the manner as recorded in afore interim order, saying that he was scared because he had been issued with Ext.R1(a) communication by the Deputy Director of Education (DDE) on 27.03.2021, fixing personal liability on him. The learned Senior Counsel, however, very fairly conceded that even if such an order has been issued, the AEO should not have buckled under pressure since the judgment of this Court would have certainly protected him. He then explained that since his client is an officer in the lower cadre of the hierarchy, he was swayed by the directions of the DDE and that it was only in such circumstances that he acted in the manner

recorded in the afore interim order of this Court. He, thereafter, submitted that his client tenders his unqualified and unconditional apology for the inconvenience caused to this Court and that his intention was never to disobey the directions in the judgment.

10. Though I have heard the learned senior counsel in detail on the afore lines, as I have stated above, the conduct of the respondent in CoC.No.1230/2021 cannot find favour in law. He was certainly not expected to run behind the order of approval of the appointment of the writ petitioner and to have the same varied, particularly when, in the judgment in question, I had directed him to act as per the said approval.

11. The afore being so, normally, I would have been persuaded to continue further action, but accepting the submissions of Sri.Jaju Babu – learned Senior Counsel, I deem it apposite to accept the apology tendered by the

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respondent in CoC.No.1230/2021 and not to frame charges against him, as was indicated by this Court in the afore extracted interim order. However, I must certainly place on record the extreme displeasure of this Court in the manner in which he has acted and I caution him that any such conduct from his side in future, will certainly be treated in a different manner and dealt with the seriousness it warrants.

12. Needless to say, I cannot find Annexure R1(a) in CoC.No.1230/2021 to be, in any manner, capable of acceptance; and therefore, order that no further action shall be pursued on its bars; and I record that this has been conceded to by the learned Senior Government Pleader.

13. As far as CoC.No.1760/2021 is concerned, the petitioner has approached this Court alleging that the respondents therein have violated the judgment by issuing

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Annexure III order without hearing her. However, the merits of the said order cannot be assessed or evaluated by this Court, because the petitioner certainly has a remedy of challenging the same appropriately, as per the provisions of the Kerala Education Act and Rules.

I, therefore, close CoC.No.1760/2021 and leave full liberty to the petitioner to challenge Annexure III order in terms of law; however, recording that the 1st respondent, the Director General of Education has undertaken before this Court that he will make sure that all the benefits eligible to the petitioner, as per new order, will be disbursed to her not later than one month from today.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

Raj/09.11.2021.

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Con.Case.No.1760 of 2021

APPENDIX OF CON.CASE (C) 1760/2021

PETITIONER ANNEXURE

Annexure I	CERTIFIED COPY OF THE JUDGMENT DATED 04-03-2021 IN WP(C) NO. 2649/2021
Annexure II	TRUE COPY OF THE ORDER DATED 04-10-2021 ISSUED BY THE 1ST RESPONDENT
Annexure III	TRUE COPY OF THE ORDER DATED 07-10-2021 ISSUED BY THE 2ND RESPONDENT.
Annexure IV	TRUE COPY OF THE HEARING NOTICE DATED 22-10-2021 ISSUED BY ADDITIONAL DIRECTOR GENERAL OF EDUCATION (ACADEMICS) THIRUVANANTHAPURAM

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APPENDIX OF CON.CASE (C) 1230/2021

PETITIONER ANNEXURE

Annexure I	TRUE CERTIFIED COPY OF THE JUDGMENT DATED 04/03/2021 IN WP(C) 2649/2021.
Annexure II	TRUE COPY OF THE POSTAL RECEIPT DATED 05/04/2021.
Annexure III	TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED 07/04/2021.
Annexure IV	TRUE COPY OF THE NOTICE DATED 16/05/2021.

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