

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Con. Case (C). No. 745 of 2014 (S)

AGAINST THE NON-COMPLIANCE OF THE ORDER IN WP(C) 16033/2010
OF THE HIGH COURT OF KERALA, DATED 02-12-2010

PETITIONER: PETITIONER:

SHYJA P.S., AGED 50 YEARS
W/O. P.A. MURALEEDHARAN,
NON VOCATIONAL TEACHER IN BIOLOGY,
GOVERNMENT VOCATIONAL HIGHER SECONDARY SCHOOL,
AMBALAVAYAL, WAYANAD, (NOW REVERTED AS U.D. CLERK)
G.V.H.S.S., KAITHARAM.

BY ADVS. SRI. ELVIN PETER P.J.
SRI. T.G. SUNIL (PRANAVAM)
SRI. K.R. GANESH

RESPONDENT: RESPONDENT:

MOHANAN
DIRECTOR, VOCATIONAL HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SRI. RAJESH VIJAYAN

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- ANNEXURE A1: TRUE COPY OF G.O.DATED 17.3.1992 ISSUED BY THE GOVERNMENT.
- ANNEXURE A2: TRUE COPY OF THE ORDER DATED 15.3.1998 ISSUED BY THE RESPONDENT.
- ANNEXURE A3: TRUE COPY OF THE SPECIAL RULES FOR THE KERALA VOCATIONAL HIGHER SECONDARY EDUCATION STATE SERVICE, ISSUED AS PER G.O. DATED 12.3.2004.
- ANNEXURE A4: TRUE COPY OF THE JUDGMENT DATED 2.7.2009 IN W.P.(C)NO.35802/2007 OF THE HIGH COURT.
- ANNEXURE A5: TRUE COPY OF THE JUDGMENT DATED 2.7.2009 IN W.P.(C)NO.12135/2005 ETC. OF THE HIGH COURT.
- ANNEXURE A6: TRUE COPY OF G.O. DATED 1.3.2010 ISSUED BY THE GOVERNMENT.
- ANNEXURE A7: TRUE COPY OF THE CIRCULAR DATED 8.3.2010 ISSUED BY THE RESPONDENT.
- ANNEXURE A8: TRUE COPY OF THE ORDER DATED 2.12.2010 IN W.P. (C) NO.16033/2010 ISSUED BY THE HIGH COURT.
- ANNEXURE A9: TRUE COPY OF THE JUDGMENT DATED 23.12.2010 IN W.A.NO.2127/2010 OF THE HIGH COURT.
- ANNEXURE A10: TRUE COPY OF THE ORDER DATED 29.1.2014 OF THE KERALA ADMINISTRATIVE TRIBUNAL IN T.A.NOS.2282,3286,3926,4238,4286,5130,5142,5677,5679, 5684,6333, 6342, 6343, 6344, 6361, 6362 & 6885/2012.
- ANNEXURE A11: TRUE COPY OF THE ORDER DATED 1.3.2014 ISSUED BY THE RESPONDENT REVERTING THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

Cont. Case (C) No.745 of 2014 (S)

Dated this the 11th day of February, 2015

JUDGMENT

The petitioner, while working as U.D.Clerk in the Vocational Higher Secondary Education Department, was provisionally appointed as Non-Vocational Teacher in Biology in the 10% quota reserved for ministerial staff, as per Annexure A2 order dated 15.3.1998. Later, Special Rules were framed by the Government (Annexure A3 - G.O.(P)80/2004/Gl.Edn. Dated 12th March, 2004) as "Kerala Vocational Higher Secondary Education State Service Rules 2004". As per category 6 of Rule 3 of the Special Rules, the method of appointment in the category of Non-Vocational Teacher is provided as follows:

"6. Non Vocational Teacher (i) By transfer from the category of Non Vocational Teachers (Junior) in the concerned discipline in the subordinate service of the Department.

(ii) In the absence of qualified hands under item (i) above, by direct recruitment;

Note:- 1. 10% of the total posts of Non Vocational Teachers in each discipline shall be reserved

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for appointment by transfer from qualified ministerial staff in the subordinate service of the department.

2. The direct recruitment to the various categories shall be made on statewide basis.”

The petitioner claims to be retained in service as Non-Vocational Teacher as per the appointment under Note 1 to category 6 in Rule 3 of the Special Rules quoted above.

2. The Government issued G.O.(Rt)No.914/10/GI.Edn. dated 1.3.2010 (Annexure A6) whereby the Director, Vocational Higher Secondary Education was directed to take urgent steps to revert the candidates then continuing on temporary basis, on the basis of the Government Orders referred in Annexure A3, to the ministerial cadre and to appoint the candidates recruited through the Kerala Public Service Commission as Non-Vocational Teachers. Annexure A6 order was challenged by the petitioner in W.P.(C) No.16033 of 2010. Similarly situated persons also filed several other Writ Petitions. Originally, interim stay was granted in those Writ Petitions, which was later modified as per Annexure A8 order dated 2.12.2010, which reads as follows:

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“Interim order was granted in these Writ Petitions. The continuance of the interim order as such is opposed by the contesting respondents. It is submitted that the Writ Petitioners could at best aspire for appointment in the 10% quota earmarked for ministerial staff, as per the special rules as in force in 2004. The interim stay granted would affect the appointment of direct recruitees to the post of Non Vocational Teacher (Junior), submits the learned Government Pleader and the learned counsel for the contesting respondents. It is therefore necessary to modify the interim order. The interim order is modified and the stay is confined only to the extent of retaining the ministerial staff, who were appointed as Non Vocational Teachers, to the 10% quota under the special rules as in force in 2004. The question of retention of those ministerial staff who were appointed as Non Vocational Teachers should be considered on the basis of seniority and the qualification prescribed by the special rules.”

3. One of the writ petitioners in the batch of Writ Petitions challenged Annexure A8 order in W.A.No.2127 of 2010. The Division Bench practically confirmed Annexure A8 order and disposed of the Writ Appeal making some clarifications, as per Annexure A9 judgment dated 23.12.2010.

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4. The petitioner filed the Contempt Petition alleging that Annexure A11 order No.E2/2861/2014 (1) dated 1.3.2014 issued by the Director, Vocational Higher Secondary Education, reverting the petitioner to the ministerial category is in violation of Annexure A8 interim order granted in favour of the petitioner.

5. The batch of Writ Petitions, other than W.P.(C) No.16033 of 2010, were transferred to the Kerala Administrative Tribunal. The Tribunal as per Annexure A10 order dated 29.1.2014 made absolute Annexure A8 interim order. The transferred applications were accordingly disposed of directing the Government to consider the matter and comply with the directions contained in the judgment. It is submitted by the learned Government Pleader that thereafter the Government passed an order which is against the contentions of the petitioner, but that order was not challenged by the petitioner. The learned counsel for the petitioner contended that the Writ Petition filed by the petitioner is pending before this Court and the order passed by the Government as directed by the Kerala Administrative Tribunal was not after hearing the petitioner as she was not a party

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there. It is submitted that the petitioner reserves her right to challenge the order passed by the Government if it becomes necessary.

6. In the Contempt Petition, an affidavit dated 22nd August 2014 and an additional affidavit dated 21.11.2014 have been filed by the respondent. In the additional affidavit it is stated thus:

“4. It is submitted that in reply affidavit, the petitioner has averred that the cadre strength of Non Vocational Teacher (Sr.) in Biology is 158 and 10% quota is 18 is factually wrong. The strength of Non Vocational Teacher (Sr.) in Biology is 40 and Non Vocational Teacher (Jr.) in Biology is 118. As the total posts in the category of Non Vocational Teacher (Sr.) is 40, 10% of 40 posts ie., 4 posts in Non Vocational Teacher in Biology were reserved as per the above said method of appointment through Kerala Public Service Commission. Accordingly, 4 candidates were advised for appointment by KPSC and they were appointed by the department and all of them have joined duty, the last of them in January, 2013 itself. Hence, there is no vacancy in the category to accommodate the petitioner and similarly placed persons as the 10% quota for ministerial staff in Non Vocational Teacher (Sr.) has

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already been filled up as stated earlier. The interim order in W.P.(C) No.16033/2010 was passed on 21.10.2010 and during that period, there were vacancies to accommodate the petitioner and similarly placed persons. As the department had to promote 4 eligible Non Vocational Teacher in Biology (Jr.), the feeder category to the existing 4 vacancies in the Non Vocational Teacher (Sr.), wherein the petitioner and 3 others were placed provisionally, in accordance with the provisions laid down in the Special Rules consequent on convening of the Departmental Promotion Committee in this regard and as there were no open vacancies to accommodate the promotees, the applicant and three other similarly placed persons whose services in their teaching posts were not regularized were reverted to the ministerial posts. Hence, the petitioner's stand in the reply affidavit controverting the stand taken by the Government in the affidavit that the Government has already committed contempt of Court by violating the interim order is not correct. The action of the respondent was absolutely in order because in their provisional appointment it was specifically stated that they have no preferential claim in the future..."

7. Learned Government Pleader also brought to my notice that a note is appended to Rule 4 which states that for appointment

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under Rule 3(5) and Rule 3(6)(ii)(b) the qualified persons in the ministerial staff in the subordinate service of the Department shall qualify an eligibility test conducted by the Kerala Public Service Commission. Learned Government Pleader submitted that the petitioner has not qualified the eligibility test conducted by the Kerala Public Service Commission and therefore, she cannot aspire for being appointed in the 10% category reserved for ministerial staff. To a query by the Court, the learned counsel appearing for the petitioner submitted that the petitioner has not qualified the eligibility test conducted by the Kerala Public Service Commission. Since the petitioner has not qualified the eligibility test as provided in Note 2 to Rule 4 of the Special Rules, it cannot be said that the respondent has committed contempt of Court and that Annexure A8 order passed by this Court was violated.

The Contempt of Court Case is, accordingly, dismissed.

(K.T.SANKARAN)
Judge

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