

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP.No. 5556 of 2002 (J)

PETITIONER(S) :

**YOOSEPH A.K., AGED 33 YEARS,
S/O.SOOP, AYILAKKANDY HOUSE, CHENOLI POST,
PERAMBRA-673 525, KOZHIKODE DISTRICT.**

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S) :

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO THE DEPARTMENT OF HIGHER EDUCATION,
SECRETARIATE, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.**
- 3. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOZHIKODE.**
- 4. SUB TREASURY OFFICER, THIRUVAMBADY,
KOZHIKODE DISTRICT.**
- 5. MANAGER, MUHAMED ABDULRAHIMAN,
MEMORIAL ORPHANAGE COLLEGE, MUKKOM, MANASSERY,
KOZHIKODE DISTRICT.**
- 6. PRINCIPAL, MAMO COLLEGE, MANASSERY,
MUKKOM - 673 602.**

**R1 TO R4 BY SR.GOVERNMENT PLEADER SRI.VIJU THOMAS
R5 & R6 BY ADVS. SRI.M.S.UNNIKRISHNAN
SMT.S.KARTHIKA
SRI.M.R.ANISON
SMT.K.P.GEETHAMANI**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF ORDER NO.G.O.(MS)NO.171/97/H.EDN.
DATED 08.12.1997.
- EXHIBIT P2: TRUE COPY OF ORDER NO.E1-11000/98 DATED 27.06.2000 OF
THE 3RD RESPONDENT.
- EXHIBIT P3: TRUE COPY OF REPRESENTATION DATED NIL ADDRESSED TO
THE HON'BLE EDUCATION MINISTER.
- EXHIBIT P4: TRUE COPY OF THE REPRESENTATION DATED NIL FORWARDED
TO THE HON'BLE EDUCATION MINISTER.
- EXHIBIT P5: TRUE COPY OF THE REPLY LETTER NO.E1/7489/2002
DATED 03.02.2004 OF THE 3RD RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE ORDER NO.E1-7489/02 DATED 25.02.2004 OF
THE 3RD RESPONDENT.
- EXHIBIT P7: TRUE COPY OF THE JUDGMENT DATED 13.07.2004 OF
THE HON'BLE COURT IN C.C.C.NO.589/04.
- EXHIBIT P8: TRUE COPY OF THE APPLICATION DATED 16.10.2000 SUBMITTED
BY THE PETITIONER BEFORE THE 3RD RESPONDENT THROUGH
THE COLLEGE.
- EXHIBIT P9: TRUE COPY OF THE APPOINTMENT ORDER NO.G1-4/1/03
DATED 02.08.2003 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P10: TRUE COPY OF THE ORDER NO.CA-II/F3/3156/03 DATED 10.02.2004
ISSUED BY THE 6TH RESPONDENT, PRINCIPAL
- EXHIBIT P11: TRUE COPY OF THE ORDER NO.G.O.(MS)NO.114/02/H.EDN.
DATED 05.09.2002 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P12: TRUE COPY OF THE TIME TABLE FOR THE SUBJECT ENGLISH IN
THE 5TH RESPONDENT COLLEGE FOR THE ACADEMIC
YEAR 2001-2002.
- EXHIBIT P13: TRUE COPY OF THE TIME-TABLE FOR THE SUBJECT ENGLISH IN
THE 5TH RESPONDENT COLLEGE FOR THE ACADEMIC
YEAR 2002-2003.
- EXHIBIT P14: TRUE COPY OF THE TIME-TABLE FOR THE SUBJECT ENGLISH IN
THE 5TH RESPONDENT COLLEGE FOR THE ACADEMIC
YEAR 2003-2004.

- EXHIBIT P15: TRUE COPY OF THE ORDER NO.PA 1(2)105168/02
DATED 16.04.2004 ISSUED BY THE 2ND RESPONDENT TO
THE 6TH RESPONDENT PRINCIPAL OF THE COLLEGE.**
- EXHIBIT P16: TRUE COPY OF THE ORDER G.O.(PT)NO.820/04/H.EDN.
DATED 19.06.2004 ISSUED BY THE 1ST RESPONDENT.**
- EXHIBIT P17: TRUE COPY OF THE REPRESENTATION DATED 21.03.2006
SUBMITTED BY ME TO THE 2ND RESPONDENT.**
- EXHIBIT P18: TRUE COPY OF ORDER AD.B3,12929/2000/HSE DATED 17.07.2004
ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P19: TRUE COPY OF THE STATEMENT DATED 10.06.1998 ISSUED BY
THE 3RD RESPONDENT.**
- EXHIBIT P20: TRUE COPY OF THE MINUTES OF THE PROCEEDINGS OF
THE STAFF SELECTION COMMITTEE OF THE 5TH
M.A.M.O.COLLEGE, MANASSERY.**
- EXHIBIT P21: TRUE COPY OF GOVERNMENT ORDER G.O.(MS)90/2002/H.EDN
DATED 23.07.2002.**
- EXHIBIT P22: TRUE COPY OF THE ORDER GA-II/F3/3156/03 DATED 31.07.2004
ISSUED BY THE GENERAL AND ACADEMIC BRANCH II OF
UNIVERSITY OF CALICUT.**
- EXHIBIT P23: TRUE COPY OF NOTE NO.GA II/F3/3156/03 DATED 03.11.2004.**
- EXHIBIT P24: TRUE COPY OF LETTER DATED 31.10.2003 OF THE PRINCIPAL OF
THE 5TH RESPONDENT COLLEGE.**
- EXHIBIT P25: TRUE COPY OF LETTER NO.G1/04 DATED 25.02.2004
THE PRINCIPAL THE 5TH RESPONDENT COLLEGE.**
- EXHIBIT P26: TRUE COPY OF LETTER NO.G1-4/1/03 DATED 24.03.2004 OF
THE PRINCIPAL OF THE COLLEGE.**
- EXHIBIT P27: TRUE COPY OF LETTER NO.G1/6/7/2000(1) DATED 09.03.2004 OF
THE PRINCIPAL OF THE COLLEGE TO THE GOVT. PLEADER.**
- EXHIBIT P28: TRUE COPY OF REMARKS DATED 10.09.2013 MADE BY
THE ACCOUNTS OFFICER IN THE OFFICE OF THE DIRECTORATE
OF COLLEGIATE EDUCATION.**
- EXHIBIT P29: TRUE COPY OF ORDER NO.28227/D2/4/H.EDN DATED 16.01.2014
ISSUED BY THE 1ST RESPONDENT.**

OP.No. 5556 of 2002 (J)

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R3(A): A TRUE COPY OF THE LETTER
 NO.SPL.CELL/280/2002/COLL.EDN. DATED 26.06.2002.**

**EXHIBIT R5(A): TRUE COPY OF THE LETTER DATED 30.06.2005 SUBMITTED
 BY THE PETITIONER.**

**EXHIBIT R5(B): TRUE COPY OF THE RELIEVING ORDER 30.06.2005 ISSUED
 BY THE 5TH RESPONDENT.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

O.P. No. 5556 of 2002

Dated this the 9th day of November, 2015

J U D G M E N T

The petitioner's case is that he has passed MA (English) and B.Ed in 1st class and thereafter passed the service course conducted by the UGC (NET) as well as the Government of Kerala (SLET) and therefore, fully qualified to be appointed as Lecturer in a regular college. The petitioner alleges that a properly constituted Staff Selection Committee of the 5th respondent college, after conducting interview of 12 candidates including the petitioner on 04.01.1997 as per Ext.P20 minutes of interview, selected him for the post of Lecturer in English in the 5th respondent college. In the leave vacancy of one Muhammed Ashraf in English subject, the petitioner was initially appointed with effect from 06.01.1997 and thereafter, permanently in the relieved vacancy of the very same teacher with effect from 02.06.1997 as per

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Ext.P19 statement of the 3rd respondent. As per Ext.P2 order, the 3rd respondent has deleted the clause normally endorsed in the order of appointment of Junior Lecturers as “service of teachers shall be liable to be terminated when Pre-Degree is delinked” in respect of the petitioner. Therefore, according to the petitioner, on delinking Pre-Degree, it is not necessary to deploy the petitioner provided if there is post and number of periods available. Ext.P1 GO states about payment of salary till deployed. From 06.01.1997 to July, 2001, salary was paid and thereafter, due from August, 2001; it is alleged. As per Ext.P9, college has subsequently appointed the petitioner as Lecturer with effect from 02.06.2002 and as per Ext.P22 order, the university approved the appointment. Therefore, the petitioner has approached this Court praying for regularization of service and for payment of salary from August, 2001 onwards.

2. In the counter affidavit filed by respondents 2 & 3, it was contended that the Junior Lecturers, who do not

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want deployment, can continue at their own risk; and here, the petitioner chose to remain in the college at his own risk and there was no sufficient workload in English in the 5th respondent college during the relevant period. It was also contended that the Junior Lecturers are not permitted to conduct classes in degree level and their appointments were for teaching in Pre-Degree classes only.

3. Later, the 3rd respondent filed another counter affidavit on 12.10.2012 along with Ext.R3(a) letter, contending that the petitioner has chosen to remain in the college under the pretext that there is vacancy at the degree level at his own risk. It was further contended that there was no sufficient workload; and therefore, the petitioner cannot contend that he had actually worked in the college.

4. The 3rd respondent again filed a counter affidavit on 16.02.2013, reiterating the above contentions.

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5. Respondents 5 & 6, who are the Manager and Principal of the College, filed a counter affidavit, contending that the petitioner continued in the college at his own risk and there was no need to accommodate the petitioner in the respondent college; and after de-linking of Pre-Degree, there was no work for the petitioner in the college. It was further contended that he has no right to continue in the college for the reason that he is possessing the qualification to hold the teaching post.

6. Arguments have been heard.

7. It is evident from Ext.P9 order of appointment as well as Ext.P20 minutes of interview, Exts.P24 to P27 letter of the Principal of the College to the university and the Director of Higher Education, that though the petitioner's appointment initially was as Junior Lecturer, his selection was in the post of Lecturer in English in the 5th respondent college and he was fully qualified to be appointed. It can be seen from Ext.P22 that the Vice Chancellor of the university has accorded sanction for

approval of the appointment of the petitioner as Lecturer with effect from 02.06.2002. Earlier, the petitioner's appointment as Junior Lecturer was approved as per Order No.D1-11000/98 dated 10.06.1998 of the Deputy Director. In the letters referred to above, the Principal of the College has stated that the petitioner is fully qualified to be appointed as a regular Lecturer; and there are excess 7 hours available in the English Department during the relevant period, 2001-02 to 2003-04. Ext.P21 Government Order makes it clear that surplus teachers would be accommodated against even when there is an excess one hour. As per Ext.P23 note of the Registrar of the University, it can be seen that the request of the Director of Collegiate Education to reconsider the approval of appointment of the petitioner accorded by the Vice Chancellor in Ext.P22 was rejected by the syndicate and the same was communicated.

8. The learned counsel for the petitioner relies on Exts.P12 to P14 time tables and Ext.P19 statement of the

3rd respondent, who is the Deputy Director of Collegiate Education, to show that there were sufficient number of periods available in English during the academic years, 2001-02 to 2003-04; and the petitioner had actually taken classes in the 5th respondent college in degree level also.

9. As pointed out earlier, the appointment of the petitioner was approved by the university; and both the Departments of the Government issued sanction to release salary. However, the 1st respondent, without application of mind, has passed Ext.P29 rejecting salary for the above period stating that there was no sufficient workload and this Court had declined salary in CO(C) No.589/2004. The said contempt case arose out of the interim order dated 24.02.2003 in CMP No.9756/2002 of this Court to pay salary to the petitioner. As per Ext.P5, the 3rd respondent informed that action was being taken to disburse the salary. However, later, the case was contested. Therefore, this Court, as per Ext.P7, closed the same with liberty to pursue his remedy in the pending

OP. Ext.P11 GO states that Junior Lecturers can be retained in regular colleges if there are vacancies. Ext.P16 GO states that salary has to be paid up to December, 2003. Ext.P21 states that surplus teachers can be accommodated even when there is an excess of one hour. As per Ext.P8 letter of option dated 16.10.2000 itself, the petitioner had expressed his readiness to be deployed. It is also evident from Ext.P18 of the 2nd respondent that the petitioner had expressed his readiness to be deployed.

10. The petitioner was fully qualified to be appointed as Lecturer in the regular college and his appointment was approved by the university and he has actually worked for the period from 01.06.1997 to 30.06.2006. Therefore, his appointment for the above period has to be regularized and salary has to be paid from August, 2001 onwards by adjusting the period of leave without pay. It is settled law that if the appointment is in accordance with law, the approval

cannot be denied. Here, the university has approved the petitioner's appointment. Therefore, the petitioner is entitled for salary for the period, during which, he had actually worked.

Therefore, the original petition is disposed of as follows;

- Respondents 1 to 3 are directed to regularize the service of the petitioner for the period from 06.01.1997 to 30.06.2005 by excluding the period of leave without allowance and to pay salary from 01.08.2001 to 30.06.2005 for 23 months within a period of one month from the date of receipt of a copy of this judgment.
- If the respondents fail to do so within the aforesaid time, they shall be liable to pay interest at the rate of 12% per annum from the date on which the amount would have been payable till the date on which the amount is actually paid.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-