

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

OP (KAT) .No. 209 of 2015 (Z)

AGAINST THE ORDER IN TA 6883/2012 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED 18-02-2015

PETITIONER(S)/APPLICANTS 1,3,5,6,7,8,12,14,15 AND 16:

1. K.M.ISMAIL AGED 55 YEARS
SON OF K.E.MUSTAFA
ASSISTANT LECTURER(NOW WORKING AS TEACHER
IN CIVIL ENGINEER)
GOVERNMENT POLYTECHNIC COLLEGE, PALAKKAD DISTRICT
KERALA.

2. N.S.DEVALAL
WORK SHOP INSTRUCTOR(NOW WORKING AS
LECTURER IN ELECTRONICS)
GOVERNMENT POLYTECHNIC COLLEGE, VECHOOCHIRA
PATHANAMTHITTA DISTRICT, KERALA.

3. P.G.JAYAPRAKASH
LECTURER IN ELECTRONICS
GOVERNMENT POLYTECHNIC COLLEGE, TIRURANGADI
MALAPPURAM DISTRICT, KERALA.

4. K.ASHRAF ALI
WORK SHOP INSTRUCTOR (ELECTRONICS)
GOVERNMENT POLYTECHNIC COLLEGE
PERINTHALMANNA (NOW WORKING AS WORKSHOP FOREMAN
GOVERNMENT TECHNICAL HIGH SCHOOL, SULTHAN BATHERY
WAYANAD DISTRICT).

5. M.MADHUSOODANAN
LECTURER IN CIVIL ENGINEERING
GOVERNMENT POLYTECHNIC COLLEGE
KOZHIKODE (NOW WORKING AS LECTURER IN CIVIL ENGINEERING
GOVERNMENT POLYTECHNIC COLLEGE, THOTTADA
KANNUR DISTRICT).

6. A.SASI
ASSISTANT LECTURER IN CIVIL ENGINEERING
KERALA GOVERNMENT POLYTECHNIC COLLEGE
KOZHIKODE. (NOW WORKING AS LECTURER IN CIVIL ENGINEERING
UPTC, KANNUR).

7. C.MOHANAN NAIR
LECTURER IN ELECTRONICS
GOVERNMENT POLYTECHNIC COLLEGE, PUNALUR
KOLLAM (NOW WORKING AS LECTURER IN ELECTRONICS ENGINEERING
GOVERNMENT POLYTECHNIC COLLEGE, ATTINGAL, TRIVANRUM).

8. J.BABU
WORKSHOP INSTRUCTOR (ELECTRONICS)
GOVERNMENT POLYTECHNIC COLLEGE
NEYYATTINKARA (NOW WORKING AS DEMONSTRATOR
GOVERNMENT POLYTECHNIC COLLEGE, NEYYATTINKARA
TRIVANDRUM).

9. C.S.ANILAL
WORKSHOP INSTRUCTOR (ELECTRONICS)
CENTRAL POLYTECHNIC COLLEGE
TRIVANDRUM (NOW WORKING AS INSTRUCTOR GRADE II (ELECTRONICS) RIT
PAMPADY, KOTTAYAM DISTRICT).

10. A.HANEEFA
ASSISTANT LECTURER IN ELECTRONICS (HIGHER GRADE)
GOVERNMENT WOMEN'S POLYTECHNIC COLLEGE, KAYAMKULAM
(NOW WORKING AS LECTURER IN ELECTRONICS).

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENT(S)/RESPONDENTS 1,2 AND APPLICANTS 2,4,9,10,11 AND 13:

1. THE STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF TECHNICAL EDUCATION
VIKAS BHAVAN, TRIVANDRUM-695 033, KERALA.

3. SRI.M.T.THOMAS
WORKSHOP INSTRUCTOR(CIVIL)
RAJIV GANDHI INSTITUTE OF TECHNOLOGY, P.O.VELLOOR
PAMPADY, KOTTAYAM-686003.

4. SRI.P.AJAYAKUMAR
ASSISTANT LECTURER ELECTRONICS
GOVERNMENT POLYTECHNIC COLLEGE, TIRURANGADI
MALAPPURAM-676 306, KERALA.

5. SRI.P.GEORGE JACOB
WORKSHOP INSTRUCTOR(ELECTRICAL)
TECHNICAL HIGH SCHOOL, PAMPADY
KOTTAYAM DISTRICT-686 502.

6. SRI.T.K.BHASKARAN
LECTURER IN ELECTRICAL ENGINEERING
MAHARAJAS TECHNOLOGICAL INSTITUTE, THRISSUR-680 001.

7. SRI.K.CHANDRASEKHARAN
LECTURER IN ELECTRICAL ENGINEERING (RETIRED)
GOVERNMENT POLYTECHNIC COLLEGE, PUNALUR
KOLLAM DISTRICT-691 305.

8. SRI.P.S.SATHEESAN
LECTURER IN ELECTRICAL ENGINEERING
CENTRAL POLYTECHNIC COLLEGE, VATTIYURKAVU
TRIVANDRUM-695 013, KERALA.

R BY GOVERNMENT PLEADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 209 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS :

P1- TRUE COPY OF THE G.O.(MS.)NO.136/94/H.EDN. DATED 5.10.1994 OF THE GOVERNMENT.
P2- TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 16.1.1997.
P3- TRUE COPY OF THE CIRCULAR DATED 5.4.1997 OF THE 2ND RESPONDENT.
P4- TRUE COPY OF THE COMMUNICATION ISSUED BY THE GOVERNMENT DATED 8.5.2009.
P5- TRUE COPY OF THE JUDGMENT IN O.P.NO.16951/1997 DATED 5.12.1997.
P6- TRUE COPY OF THE ORDER DATED 16.3.1998 IN CMP NO.373/1998 IN W.A.NO.141/1998.
P7- TRUE COPY OF THE ORDER DATED 8.9.1998 IN CMP NO.4158/1998 IN W.A.NO.141/1998.
P8- TRUE COPY OF THE ORDER DATED 14.3.2000 OF THE GOVERNMENT.
P9- TRUE COPY OF THE JUDGMENT IN W.A.NO.141/1998 DATED 18.9.2003.
P10- TRUE COPY OF THE JUDGMENT IN O.P.NO.13708/2000 DATED 11.1.2006.
P11- TRUE COPY OF THE JUDGMENT IN O.P.NO.8300/2001 DATED 29.6.2006.
P12- TRUE COPY OF THE NOTICE DATED 30.04.2008 OF THE GOVERNMENT.
P13- TRUE COPY OF THE LETTER DATED 8.8.2008 OF THE 2ND RESPONDENT.
P14- TRUE COPY OF THE REPLY DATED 23.8.2008.
P15- TRUE COPY OF THE REPLY DATED 17.10.2008.
P16- TRUE COPY OF THE REPLY DATED 19.12.2008.
P17- TRUE COPY OF THE G.O.(RT.)NO.539/09/H.EDN. DATED 15.4.2009 OF THE GOVERNMENT.

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.**

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O.P. (KAT) No. 209 of 2015  
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Dated, this the 22nd day of July, 2015

JUDGMENT

Ramachandra Menon, J.

The grievance is against the interference declined by the Kerala Administrative Tribunal by passing Annexure A3 judgment in T.A. No. 6883 of 2012, whereby the claim put up by the applicants to spare them from satisfying the alleged liability to refund the salary already drawn by them during the period they were sent for higher studies (B.Tech in the concerned branch) at the instance of the department, was turned down.

2. The factual position revealed from the proceedings shows that the petitioners herein, who were working as Assistant Lecturers, Workshop instructors etc. in different branches of Engineering in the Department of Collegiate Education (Polytechnic stream) and were Diploma holders, were selected to be deputed to undergo Degree course under the World Bank Assisted Technician Education Project, in view of the stipulation made by the AICTE as per the norms, to

have Degree for the teachers. The petitioners were accordingly identified and selected and they were sent for B.Tech under deputation. The Government had insisted certain stipulations to be satisfied for giving effect to the said project and also as to the acquisition of Degree. The heartburn started, when a stipulation was issued subsequently, about one year after their joining the course, that they had to execute a bond to repay entire salary, if the candidates who were identified and sent for B.Tech did not complete the course successfully, acquiring the degree within the time as specified therein.

3. The case of the petitioners is that, they found it difficult to satisfy the stipulation and since there was no other alternative, they made applications before the Government/authority so as to enable them to go back, which was initially not acted upon. Pursuant to the interference made by this Court, the applications preferred by the petitioners were considered and they were permitted to go back, subject to the rider that they had to reimburse the salary already drawn by them during the period they have undergone the course, with interest, as specified therein. It is brought to the notice of this Court that there were several litigations in this regard and that O.P. No. 8300 of 2001 projecting almost similar

grievance was allowed. However, the said judgment came to be reversed by a Division Bench of this Court as per the verdict dated 24.09.2009 in W.A. No. 1115 of 2008. Pursuant to finalization of the proceedings as above, the Government/Department proceeded with further steps for realization of the due amount, which was sought to be intercepted by filing a writ petition before this Court, leading to T.A. No. 209 of 2015 before the Kerala Administrative Tribunal; on transfer of jurisdiction. The stand taken by the petitioners is that, no bond was executed by them at any point of time and as such, there was no liability to reimburse the salary which was drawn by the applicants.

4. The case was sought to be resisted by the Government pointing out that the issue had become final by virtue of the judgment in W. A. No. 1115 of 2008 and that there was no impediment on the way of the Government/Department in realizing the due amount. After hearing both the sides, the Tribunal accepted the version of the Government and accordingly, interference was declined and the T.A. was dismissed, upholding the stand taken by the Government, vide Annexure P3. This made the petitioners to approach this Court by filing the present original petition.

5. Heard Sri. M. Sajjad, the learned counsel appearing for the petitioners and Sri. Muhammed Shafi M., the learned senior Government Pleader appearing for the first and second respondents at length.

6. The observation made so as to have rejected the claim mooted by the petitioners, as it appears from paragraphs 6 and 7 of Ext. P17 order, are in the following terms:

(6) Government have examined the matter afresh. It is seen that the course started on 22.1.1997. As per the general condition of the prospectus, the selected candidates had to execute a bond in the form prescribed. Before issuing the prospectus, Government had authorized the Chief Co-ordinator of Projects World Bank Assisted Technical Education Project to make suitable modification in the existing bond, which was intended for other course for the use of one time B.Tech. course considering the specialty of this courses vide G.O.(Ms) No. 4/96/H.Edn. Dated 05.01.1996. The only two clauses, 'g' and 'h' of the bond form prescribed for other courses were modified for this one time three year B.Tech course and not changed the entire thing as stated by the petitioners. In clause 'g' the stipulation 'successful completion of the studies' was modified more specifically and in

clause 'h' the period 5 years was changed to 7 years. This bond form was approved by government vide G.O. (Rt.) No. 1038/97/H.Edn. Dated 29.08.1997. Hence the bond prescribed in the prospectus was the bond issued to earlier courses with suitable modification as envisaged by para 13 of G.O.(Ms) No. 4/96/H.Edn. Dated 5.1.1996. Besides, Government is the competent body in taking decision as the staff members are deputed by utilizing the fund of Government. So modification of such clauses are not arbitrary nor unrealistic, nor against any terms in the judgment dated 05.12.1997 in O.P. No. 16951/97 the Hon'ble High Court had not found any illegality in insisting to execute modified bond. The direction in the judgment dated 08.09.1998 in W.A. 141/98 provides only to pay the salaries to the petitioners till the disposal of the Writ Appeal. There is no stay order in force in respect of recovery from the salary of the staff member who have discontinued the one time three year B.Tech. Course and have not regularised the period of study as stipulated by the Government. The exhibit P7 of the O.P. No. 13708/2000 was issued on the above circumstances. The High Court direction has already been implemented. In the interim order, there has been no ban on the recovery of salaries paid to the discontinued teacher for the period of absence. It is

clear that the period during which the petitioner attended the course cannot be treated as duty since they had violated the terms and conditions of deputation and the course itself had been started for the benefit of their promotion scope as well as to improve the quality in teaching. A person deputed to higher studies is expected to utilize the vacation for undergoing the course seriously and pass examination to acquire the degree. They have not been let on to romp over freely in the name of the course.

(7) In the above circumstances, Government does not find any reason to withdraw its earlier decision taken in Ext. P7 Government letter No. 9092/L1/98/H.Edn. Dated 14.03.200 except in the case of those deceased. The period for which the deceased underwent the course till the discontinuance will be treated as eligible leave and excess amount, if any, received by them will be recovered. In all other cases the condition stipulated in the bond executed vide G.O.(Rt) No. 1038/97/H.Edn. Dated 29.08.1997 will hold good. The judgment read as 6th paper above is thus complied with"

5. The learned counsel for the petitioners points out that, while declining the relief sought for by them, the Government has extended benefits to some others. It is stated that the Government has been adopting pick and choose policy in

extending reliefs to some others of choice, as revealed from Annexures P4 to P7. The learned counsel also points out that the way in which the period of absence has been ordered to be treated, as per Ext. P17, is not at all correct and that, had the petitioners continued in service, they were entitled to have 'two vacations'. How the period has to be regularized is a matter which is to be reconsidered; more so since the petitioners may be eligible for various types of leave, submits the learned counsel for the petitioners.

8. It is seen from Ext. P17 (paragraph 7) that the Government while considering and finalizing the matter, has drawn some exception in the case of the 'deceased' from satisfying the liability. But in the same sentence, it is stated that the excess amount, if any, received by them will be recovered. Whether it is a typographical error or based on any enabling provision is not known, and it is for the Government to have it clarified. In any view of the matter, this Court finds that the matter requires to be reconsidered as to the eligibility of the petitioners to cover the period in question as eligible leave or some other leave, as extended to others concerned as discernible from Annexures P4 to P7. The learned Government Pleader submits that the petitioners

have already filed a fresh representation before the Government and that the Government is ready to have it considered in accordance with law.

9. In the said circumstances, the first respondent is directed to reconsider the matter by passing appropriate orders, taking note of all the factual particulars as referred to herein before, after affording an opportunity of hearing to any one of the petitioners in a representative capacity. Steps, if any, pursued for recovery of the due amount, shall be kept in abeyance till such time. It is made clear that Annexure P3 order passed by the Tribunal will not place any bar in considering the matter as aforesaid.

The Original Petition is disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

Sd/-

**BABU MATHEW P. JOSEPH,
JUDGE.**

kmd