

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 7161 of 2005 (C)

PETITIONER :

P.V.HARIDAS, MANAGER, KUNNOTH U.P.SCHOOL,
P.O.PATTANNUR, KANNUR DISTRICT.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS :

1. STATE OF KERALA, REP. BY THE SECRETARY
TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR.
4. THE ASSISTANT EDUCATIONAL OFFICER,
MATTANNUR.

R1-4 BY SR.GOVERNMENT PLEADER SRI.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE STAFF FIXATION ORDER DT.8.7.2002 ISSUED BY THE 4TH RESPONDENT

EXT.P2 : COPY OF THE NOTICE DATED 13.1.2003 ISSUED BY THE 3RD RESPONDENT

EXT.P3 : COPY OF THE OBJECTION TO THE 3RD RESPONDENT DT.27.1.2003

EXT.P4 : COPY OF THE ORDER DATED 14.12.2001

EXT.P5 : COPY OF THE ORDER NO.D.DIS.45413/86/(B5) DT.7.4.87

EXT.P6 : COPY OF THE ORDER NO.B5/261/2003 DT.15.2.2003 ISSUED BY THE 3RD RESPONDENT

EXT.P7 : COPY OF THE REVISION BEFORE THE 2ND RESPONDENT DTD.4.4.2003

EXT.P8 : COPY OF THE ORDER NO.D.DIS.32219/03/RA3/DPI DT.26.12.2003

EXT.P9 : COPY OF THE REVISION FILED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 17.2.2004

EXT.P10 : COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 19.6.2004

EXT.P11 : COPY OF THE PROCEEDINGS OF THE 4TH RESPONDENT DTD.8.12.2004

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.7161 of 2005

Dated this the 6th day of January, 2015

J U D G M E N T

The petitioner is the Manager of an aided school. For the academic year 2002-03, the 4th respondent issued Ext.P1 staff fixation order. As per Ext.P1, one Full Time Post of Junior Hindi Teacher was retained by converting the periods from Group 'C' subject. The above action was objected to by the 2nd respondent as per Ext.P2. The objection in Ext.P2 is that, during the year 2002-03 only 14 periods were available for Hindi. For the purpose of sanctioning a full time post, 15 periods are necessary. However, a Full Time regular post was sanctioned by diverting periods from Group 'C' subject. Since the post has to be treated as a fresh one, a Higher Level Verification by the District Educational Officer should have preceded such sanction. Since no Higher Level Verification was conducted, it is found in Ext.P2 that, the action of the 4th respondent was irregular. Accordingly, the Full Time Post of Junior Hindi Teacher sanctioned as per Ext.P1 was rejected.

2. The petitioner submitted Ext.P3 objections to Ext.P2. However, the 2nd respondent rejected the same by Ext.P6. Though the petitioner preferred a revision to the 2nd respondent, the same has been rejected by Ext.P8. The petitioner challenged Ext.P8 in a further revision before the 1st respondent. By Ext.P10 the revision has also

been dismissed. The petitioner has challenged the said proceedings in this writ petition.

3. According to Adv.Sri.M.Vijayakumar who appears for the petitioner, there was already a part time post of Junior Hindi Teacher in the school. There is no dispute that the petitioner was entitled to the said part time post. What has been done by the 4th respondent is only to convert the said Part Time Post to a Full Time Post by adding one period from the Group 'C' subject, which is permissible. Conversion of a Part Time Post to a Full Time Post cannot be characterised as sanction of a new post. The said action, therefore, was within the powers of the 4th respondent. A Higher Level Verification is necessary only in cases where additional divisions or additional staff were to be sanctioned. In the case of the petitioner's school, since no additional division or additional staff was sanctioned by Ext.P1, a Higher Level Verification was not necessary. Therefore, the objection is without any justification. The counsel also places reliance on Exts.P4 and P5 orders passed by respondents 2 and 3 in the case of other schools in similar circumstances to contend that, the petitioner has been discriminated. The consistent stand of the Department was that, conversion of a Part Time Post to a Full Time Post by tacking on periods from Group 'C' subject was permissible and that no Higher Level Verification was necessary in such cases. For the above reasons, the counsel seeks the issue of appropriate directions setting aside the impugned

proceedings.

4. A counter affidavit has been filed on behalf of the 1st respondent. According to the learned Government Pleader, since no Full Time Post of Junior Hindi Teacher was available in the school, sanction of such a post amounted to sanction of additional staff. The same could have been done only after a Higher Level Verification was conducted by the District Educational Officer. For the above reasons, it is contended that the action of the authorities is perfectly in order.

5. Heard. A perusal of Rule 12, Chapter XXIII Kerala Educational Rules, 1959 (hereinafter referred to as 'the Rules' for short) shows that, a re-verification of the strength of students at higher level by the District Educational Officer is called for only in cases where additional divisions or additional staff are found necessary. In the present case, there was already a Part Time Post of Junior Hindi Teacher in existence. The number of periods available for Hindi was 14. 15 periods were necessary for conversion of a Part Time Post to a Full Time Post. Therefore the 4th respondent had tacked on one period from the Group 'C' subject to the Hindi language for the purpose of converting a Part Time Post to a Full Time Post. Ext.P4 is an order issued by the 2nd respondent with respect to another school in similar circumstances. In Ext.P4, the question involved was whether a Part Time Post of Arabic language could be converted to a Full Time Post. The issue has been considered and ordered in the following words :

“Aggrieved by the above orders the manager has preferred an appeal to this office as per third paper read above. The argument of the manager is that as per Rule 12 of Chapter XXIII KER further verification of strength by the Assistant Educational Officer is necessary only when addl.divisions or addl.staff are found necessary. During 2000-01 no addl.division or addl.staff are found necessary in the school. As such Higher Level verification is not required in this case. The case has been examined in detail. The period each from Group C subject can be diverted for making part-time posts as full-time. In this school 2 period each have been shifted to make the Sanskrit and Urdu posts as full-time. One more period can be shifted to make the part time Arabic as full-time. No higher level verification is necessary in the case this cannot be considered as an additional posts. The request is therefore allowed.”

6. Similarly, in Ext.P5, the 3rd respondent has ordered as follows in the case of a similar school :

“This year the AEO has converted the part time post of Urdu teacher into full time by diverting 3 periods from Group 'C' subject. But the DEO has of reduced the F.T.post into part time as the HLV of strength of pupils was not done before sanctioning the post. As per G.O.(MS)105/86/G.Edn. dated 26.6.86 higher level verification of strength of pupils is required where addl.division/addl.staff are found necessary as a result of the verification done by the departmental officer. This is only a conversion of part time post of Urdu into full time and therefore HLV contemplated the above G.O. was not necessary. Hence the P.T.post of lower grade Urdu teacher sanctioned by the AEO is restored by diverting 3 periods from Music. The order of the D.E.O. are cancelled.”

7. The above orders show that, the respondents had been maintaining the stand that, conversion of a Part Time Post to a Full Time Post could be done by the Assistant Educational Officer without having a Higher Level Verification conducted. However, in the impugned proceedings the respondents have taken a diametrically opposite stand. The present stand that, conversion of a Part Time Post to a Full Time Post amounts to sanction of a fresh post cannot therefore be accepted. The authorities cannot treat similarly situated persons differently as the same would amount to discrimination. In the present case, having sanctioned posts to nearby schools as per Exts.P4 and P5 holding that no Higher Level Verification was necessary, it is not open to the respondent to take up a position that in the case of the petitioner's school alone, such a Higher Level Verification was mandated. Therefore, Exts.P2, P6, P8 and P10 are unsustainable.

In view of the above, this writ petition is allowed. Exts.P2, P6, P8 and P10 are set aside.

Sd/-
K.SURENDRA MOHAN, JUDGE.