

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 5421 of 2007 (U)

PETITIONER(S):

B.SELVAN, S/O.BALAN,
KONGAMANDI, VATTAVADA, KOVILLOOR P.O.
IDUKKI DISTRICT, PRESENTLY WORKING AS PEON
KURIAKOSE ALIAS HIGH SCHOOL, VATTAVADA,
KOVILLOOR P.O., IDUKKI DISTRICT.

BY ADVS.SRI.JOHN VARGHESE(THOPPIL)
SRI.BAIJU JOHN

RESPONDENT(S):

1. SECRETARY TO GOVERNMENT
GENERAL EDUCATION, GOVT. OF KERALA
THIRUVANANTHAPURAM.
2. DEPUTY DIRECTOR OF EDUCATION,
THODUPUZHA, IDUKKI DISTRICT.
3. DISTRICT EDUCATIONAL OFFICER,
KATTAPANA, IDUKKI DISTRICT.
4. THE MANAGER, KURIAKOSE ELIAS HIGH
SCHOOL, VATTAVADA, IDUKKI DISTRICT.
5. DEEPU MANI, KURIAKOSE ELIAS HIGH
SCHOOL, VATTAVADA, IDUKKI DISTRICT.

R.1 TO 3 BY GOVERNMENT PLEADER SMT. LOWSY. A
R4 BY ADV.SRI.BABY ISSAC ILLICKAL
R5 BY ADV.SRI.B.PREMNATH (E)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5421 of 2007

APPENDIX

PETITIONER(S)' EXHIBITS

P1: APPOINTMENT ORDER DATED 20.6.1997 OF THIS COURT

P2: ORDER DATED 9.8.2002 OF THIS COURT

P3: GOVERNMENT ORDER No.(Rt.)3271 DATED 24.8.2001.

P4(a) & (b): PETITIONS FOR REGULARIZATION DATED 14.8.2003 AND 22.7.2004

P5: PETITION FOR PROMOTION DATED 20.8.2003

P6: GOVERNMENT ORDER No. (Rt) 4295/2006 DATED 4.10.2006.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

Sou.

A.MUHAMED MUSTAQUE, J.
=====

W.P(C).No.5421 of 2007
=====

Dated this the 23rd day of January, 2015

JUDGMENT

Petitioner was appointed as Peon in Kuriakose Elias High School, Vattavada on 20.06.1997. At the time of appointment of petitioner, there was no sanctioned post of Peon. Since the appeal filed by the Manager before the Deputy Director, Idukki was rejected, the Manager terminated petitioner's service as Peon. When the staff fixation order was revised, the Manager offered the petitioner the same post, but he refused it and continued till 02.04.2000. The Manager then removed the petitioner from service on 19.05.2000. On 24.08.2001, Government sanctioned the post of Peon with effect from 01.06.1997 and appointment of the petitioner was approved with effect from 20.06.1997. Petitioner's service also have been directed to be regularized with effect from 30.09.2002.. Government while passing Ext.P3 order directed the Director Educational Officer concerned to regularize the period during which Selvan was kept out of service. The above order was challenged by the Manager in O.P.No.32300 of 2001 before this Court. That Original Petition was dismissed with cost. Essentially, the dispute in this Writ Petition is regarding promotion of the petitioner for the

post of Clerk. The vacancy to the post of Clerk arose from 01.06.1999. Petitioner submits that he was entitled to be promoted as Clerk. Petitioner's claim for the post of Clerk was approved by Ext.P6 Government Order. In Ext.P6 order, it is noted that one Deepu Mani 5th respondent herein was holding the post of Clerk from 11.06.1999.

2. By Ext.P6 order, Government issued the following directions:

“In the circumstances the period of absence in respect of Sri.B.Selvan from 19/05/2000 to 30/09/2002 is regularized as “non-duty” and the period treated as non-duty can't be reckoned for any service benefits. The petitioner is promoted as clerk in the place of Sri.Deepu Mani reverting him as peon with immediate effect, if he is otherwise eligible for promotion”.

3. Petitioner's claims are two fold, ie, he is entitled for salary from 19.05.2000 to 30.09.2002, the period through which he was kept out of service. The second claim is for promotion with effect from 01.06.1999 the date on which the vacancy arose in the post of Clerk.

4. While passing Ext.P6 order, Government ordered that petitioner was kept out of service for the period from 19.05.2000 to 30.09.2002 not of his fault but for reasons attributable to the

Manager. This period can be regularized as non duty and the period cannot be reckoned for any service benefits. Petitioner's claim for promotion of Clerk was approved by reverting Deepumani, who was appointed by the Manager for the above post. Therefore, petitioner's claim for the post of Clerk has been upheld. The question is whether petitioner is entitled for salary or other service benefits from the period from 19.05.2000 to 30.09.2002. Though petitioner's claim for the post of Clerk has been upheld as clear from Ext.P6, it is ordered that this is only with effect from the date of order.

5. Petitioner submits that since he was kept out of service by the Manager for no reason of his own, he is entitled for salary for the period from 19.05.2000 to 30.09.2002. Petitioner placed reliance on the decisions of this Court in **Gracy Vs. Assistant Educational Officer, Ambalapuzha (1976(1) ILR 48)**, **Sivarajan Vs. State of Kerala (1993(2) KLT 287)**, **State of Kerala Vs. Bhaskaran Pillai (2003(1) KLT 60)**, **State of Kerala Vs. E.C Elsy and Ors. (1987(2) KLT 882)**, **Subramoniam Vs.Kerala Agrl. University (1987(2) KLT 203)**. Petitioner's case is that having upheld his claim for promotion, he is entitled for restoration of the benefits consequent upon such declaration.

6. No doubt, petitioner is justified in making such claim. It has to be found that petitioner has been kept out of service by the Manager and period has been ordered to be regularized as non-duty in Ext.P6. This Court while upholding the claim of promotion, cannot accept the claim for monetary benefits consequent upon such declaration. The period during which petitioner was out of service was filled up by appointing Shri. Basil a peon with effect from 25.09.2000. His service was approved by the authorities. That being so, I am of the view petitioner cannot claim salary for the above period.

7. Question arises whether petitioner is entitled for promotion with effect from the date of occurrence of the vacancy. It is the admitted case that party respondent was promoted in the place of petitioner. He was only displaced consequent upon Ext.P6 order. This means party respondent is drawing all the benefits being a promotee as Clerk. However having reverted him, I am of the view petitioner's claim for promotion with effect from the date of occurrence of vacancy cannot be denied. Therefore, petitioner is entitled for declaration of promotion with retrospective effect from 01.06.1999. However, he will not be entitled for the difference in salary for the reason that Deepumani was working as Clerk and he was only displaced consequent upon

Ext.P6 order. For all other respects, reckoning qualifying service pension, other allowances and benefits etc, petitioner's service shall be reckoned for the post of Clerk with effect from 01.06.1999. The direction in Ext.P6 to the above extent treating the petitioner's service as non-duty is modified in the light of declaration of the petitioner's promotion with retrospective effect from 01.06.1999. Impugned orders are set aside to the above extent

The Writ Petition is disposed of. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

Sbna/06/02/15