

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WA.No. 761 of 2014 () IN WP(C).32945/2005

AGAINST THE JUDGMENT IN W.P.(C) 32945/2005 of HIGH COURT OF KERALA DATED 03-07-2013.

APPELLANT(S)/RESPONDENTS NO.1, 2 & 4 IN WP(C):

1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION AND
HIGHER SECONDARY EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHURAM.
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION,
OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM.
3. THE DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
THIRUVALLA.

BY SENIOR GOVERNMENT PLEADER, SRI. SHAIKON P. MANGUZHA

RESPONDENTS/PETITIONER AND RESPONDENTS NO.3 IN WP(C):

1. V.N.PRASANNAKUMARAN NAIR,
S/O NARAYANAN NAIR, VALIYAPURAYIDATHIL,
KKOTTANADU P.O., VRINDAVANAM, THIRUVALLA,
(LABORATORY ASSISTANT
DEVASWOM BOARD HIGHER SECONDARY SCHOOL, THIRUVALLA) - 689 101.
2. CORPORATE MANAGER/SECRETARY,
TRAVANCORE DEVASWOM BOARD HIGHER SECONDARY SCHOOLS,
OFFICER OF THE TRAVANCORE DEVASWOM BOARD,
THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI.S.SUBHASH CHAND

R2 BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE DEVASWOM BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-08-2015, ALONG WITH
WA. 779/2014, THE COURT ON 08.09.2015 DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.Nos.761 & 779 of 2014

Dated this the 8th day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

The above appeals are preferred by Respondents 1, 2 and 4 in the writ petition against the judgment dated 03.07.2013 in W.P.(C) Nos.32945 of 2005 and 18201 of 2005, respectively. By the impugned judgment, the learned Single Judge quashed Exts.P12 in both the writ petitions and Ext.P13 Government Order dated 26.11.2004 and Ext.P14, respectively. Since the writ petitions are decided by a common judgment and common issues arise in these appeals, it was only proper that both the appeals are considered together.

2. Brief facts leading to the cases are as follows:

Party Respondents in the appeals were appointed on 11.12.2003 and 05.08.2003 as Laboratory Assistants, respectively, in the 2nd Respondent's Schools. Pursuant to the appointments made, party Respondents joined duty and they were working in the Schools without any break. But, their

appointments were not approved by the 2nd appellant. As a result of such state of affairs, the party Respondents were not disbursed salary and allowances in the post of Laboratory Assistant. There were four Science batches and four Laboratories were provided in the School of the 2nd Respondent. Four persons were working as Laboratory Assistants including the party Respondents and the appointment of other Laboratory Assistants except the party Respondents were approved by the 2nd appellant.

3. As per the Government Order dated 01.02.1991, four posts of Laboratory Assistants/Laboratory Attender, one in each Laboratory, were sanctioned and the scale of pay were directed to be at the prevailing rate in the Government Higher Secondary Schools and appointments were directed to be made by promotion from qualified Class-IV employees in the School/Management. To cut a long story short, according to the party Respondents, 1st appellant had issued order dated 28.03.2003, according sanction for the creation of two posts of Laboratory Assistants in the scale of pay of Rs.2650-4150 in each Government/Aided Higher Secondary Schools which had Science Batches and where no posts of Laboratory Assistants

were created previously. Thereafter, by Order (Ms) No.299/2004/G.Edn. dated 24.09.2004, Government ordered the creation of supernumerary posts of Laboratory Assistants in the Higher Secondary Schools in the Aided sector having Science Batches subject to a maximum of four Laboratory Assistants in each School so as to regularize the appointments made till 28.03.2003. It was further ordered that they will be eligible for salary with effect from 28.03.2003. The writ petitions were filed by the party Respondents aggrieved by that part of the Government Order dated 24.09.2004, by which a cut off date of 28.03.2003 was fixed so as to regularize the appointments.

4. 2nd appellant has filed a counter affidavit and contended that the 2nd Respondent had not submitted the appointment details of the party Respondents for granting approval and further that at the time of effecting the appointment of the party Respondents, the Manager knew that those who were appointed as Laboratory Assistants after 28.03.2003 in the supernumerary posts were not eligible for getting approval as per the Government Order dated 24.09.2004. It was further submitted that Government have

created two regular posts of Laboratory Assistants in each Higher Secondary Schools having Science Batches as per Government Order dated 28.03.2004 and two supernumerary posts were created as per the order dated 24.09.2004 on humanitarian grounds so as to regularize the appointments already made till 28.03.2003 and therefore it was contended that only those who were appointed and posted till 28.03.2003 in the supernumerary posts were eligible for approval of appointment. The party Respondents who were appointed on 11.12.2003 and 05.08.2003 were not eligible for approval in the light of the Government Order for the sole reason that their appointments were after the cut off date prescribed in the Government Order dated 24.09.2004. Apart from the same, it was contended that the 2nd Respondent has made the appointments knowing fully well that the Government were liable to approve the appointment of persons appointed till 28.03.2003 and therefore the Government were not at all responsible for the situation caused to the party Respondents at the instance of the 2nd Respondent Manager. It was also contended that if the appointments of the party Respondents as Laboratory Assistants subsequent to 28.03.2003 were

approved, it will lead and inspire other Managers to resubmit the illegal appointments to the post of Laboratory Assistants after the cut off date.

5. 2nd Respondent has filed a counter affidavit supporting the case advanced by the party Respondents. It was contended that the 2nd Respondent, like other Managements, made appointments to the post of Laboratory Assistants in the four Laboratories each in the four Schools under the 2nd Respondent Management and the party Respondents were appointed accordingly. The Government have no case that four Laboratory Assistants were not required in each school or that there were appointments exceeding four Laboratory Assistants in those Schools. In the four Higher Secondary Schools managed by the 2nd Respondent, 13 Laboratory Assistants were appointed prior to 28.03.2003 and accordingly 2nd Respondent was entitled to appoint altogether 16 Lab Assistants and therefore to the remaining three posts, party Respondents were appointed and therefore there was no illegality or violation of any provisions of Government Orders in the matter of appointment of the party Respondents.

6. The 1st appellant has filed an additional counter affidavit and contended that the 2nd Respondent had appointed one Anoop Kumar S. as Lab Assistant in the School with effect from 11.02.2002 and hence to regularize his appointment, the post has been sanctioned as supernumerary. Since the appointment of the said person was before the Government Order dated 28.03.2003, the appointment of Lab Assistants made after 28.03.2003 in the Aided Higher Secondary Schools have not been approved by the Government. It is further contended that as per Government Order dated 28.03.2003 and 24.09.2004, appointments of Lab Assistants made till 28.03.2003 only can be regularized. So, the appointment of the party Respondents were not in accordance with law. Along with the additional counter affidavit, 1st appellant has produced a proceedings of the Regional Deputy Director, Higher Secondary Education, Thiruvananthapuram dated 12.07.2012 by which the strength of Lab Assistants under the 2nd Respondent Management concerning D.B. Higher Secondary School, Cheriyanad as 3 including one supernumerary post and therefore it was contended that the appointment of the party Respondents could not be sustained as the same was not in

accordance with the Government Orders cited *supra*. Obviously, it seems that the said counter affidavits were filed in W.P.(C) No.18201 of 2005 and the contentions raised were adopted to the other writ petition.

7. Heard the learned Senior Government Pleader appearing for the appellants and the learned counsel for the 1st Respondent in the appeals.

8. Learned Senior Government Pleader submitted that already two Lab Assistants were in existence in the Higher Secondary School, Cheriyanad belonging to the 2nd Respondent at the time of appointment of the party Respondents. According to the learned Senior Government Pleader, the Government have restricted the appointment to the post of Lab Assistants to two posts only and the Government as per the order dated 24.09.2004 had ordered that those persons who were appointed in excess of the above two posts prior to 28.03.2003, i.e. the cut off date contained in the said Government Order, were directed to be approved by creating two supernumerary posts. It was further contended that the regularization in making appointment over and above two posts up to 4 posts were applicable only to those appointments

made prior to the Government Order dated 28.03.2003. But, in the instant case, since the party Respondents were appointed after the said cut off date, at a time when already two Laboratory Assistants were working in the School and therefore the party Respondents were not entitled to get approval of their appointment.

9. On the other hand, the learned counsel for the 1st Respondent contended that even though as per Government Order dated 28.03.2003, two posts alone were sanctioned, subsequent Government Order dated 24.09.2004 was issued with the intention of accommodating the already working two Laboratory Assistants over and above the same with the intention of creating two supernumerary posts so as to man the four Laboratories of the Schools where having four Science Batches. Learned counsel also contended that as per the Government Order dated 26.11.2004, Government have stipulated the manner in which appointments were made to 4 Laboratory Assistants and prescribed parameters for fixing their seniority. Therefore, learned counsel contended that when all these Government Orders were read together, each Higher Secondary Schools having four Science Batches were

entitled to appoint four Laboratory Assistants each in one school. Therefore, learned counsel contended that the appointments of the party Respondents made by the 2nd Respondent was in accordance with the Government Orders cited *supra* and therefore valid and legal.

10. Having considered the rival submissions made by the learned counsel and perusing the pleadings and the documents, what is evident is that by issuing the orders, Government intended to allow the Aided Managements to have 4 Laboratory Assistants in the Higher Secondary Schools having 4 Science Batches. So far as the factual aspects raised by the party Respondents and the 2nd Respondent Management that they were having four Science Batches in the Cheriyanad School of the 2nd Respondent was not disputed. Viewed in that circumstances and relating the said factual circumstances to the Government Orders cited *supra*, we are of the considered opinion that the 2nd Respondent Management was entitled to have four Laboratory Assistants including the two supernumerary posts created as per Government Order dated 24.09.2004. The learned Single Judge quashed the Government Order dated 24.09.2004 by which a cut off date of

28.03.2003 was fixed to regularise the appointments made till that date, even though the reliefs sought for in the writ petitions were only to quash the cut off date fixed by the Government in the order dated 24.09.2004. Learned counsel for the 1st Respondent contended that the same was only an error entitled to be corrected in these appeals. Therefore, the question remained was whether the cut off date fixed by the Government in the order dated 24.09.2004 was sustainable. According to us, having created 4 posts including the supernumerary posts vide order dated 24.09.2004, there was no justifiable reason for fixing a cut off date for regularizing the appointments made till 28.03.2003. In any case, the Government had the liability to pay salary only with effect from 28.03.2003 and therefore there was no nexus sought to be achieved by creating such an artificial cut off date. Learned counsel further contended that since there were only two Lab Assistants prior to 28.03.2003, the 2nd Respondent was entitled to appoint two more Lab Assistants by virtue of posts created by the Government as per order dated 24.09.2004 and therefore entitled for regularization of their appointments.

11. Considering the totality of the circumstances, we are of the considered opinion that since the intention of the Government was to create posts of 4 Laboratory Assistants to effectively man the 4 Science Laboratories of the School, there was no reasonable nexus or object sought to be achieved by creating a cut off date in the order dated 24.09.2004. Obviously, by the order dated 28.03.2003, only two posts were created and by issuing the order dated 24.09.2004, the Government intended creation of two supernumerary posts also and therefore there was no reasonable circumstance to the Government to have created such a cut off date in the order dated 24.09.2004. Therefore, we are of the opinion that Ext.P12 Government Order to the extent it created a cut off date of 28.03.2003 is unsustainable and to such extent, the order dated 24.09.2004 will remain quashed. We do not find any illegality or legal infirmities so as to interfere with the judgment of the learned Single Judge.

Accordingly, with the modification *supra*, we sustain the judgment of the learned Single Judge, and accordingly appeals are dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

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P.S. to Judge

St/-