

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

W.A.No. 1528 of 2015 IN WP(C).8342/2014

(AGAINST THE JUDGEMENT DATED 25.2.2015 IN W.P.(C)8342/2014)

APPELLANTS/RESPONDENTS IN THE WPC:

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1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
 2. THE DIRECTOR, HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM.
 3. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION, MALAPPURAM.

BY SR. GOVERNMENT PLEADER SRI.M.A.FAYAZ

RESPONDENTS/PETITIONERS IN THE WPC:

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1. K IBRAHIM, MANAGER, AKM HIGHER SECONDARY SCHOOL, KOTTOOR
INDIANOOR, KOTTAKKAL, MALAPPURAM DISTRICT.
 2. SAILATH P.K., HIGHER SECONDARY SCHOOL TEACHER, CHEMISTRY, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
 3. MOHAMMED KUTTY T., HIGHER SECONDARY SCHOOL TEACHER, ARABIC, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
 4. DHANYA K., HIGHER SECONDARY SCHOOL TEACHER, BOTANY, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
 5. JISMITH B.C. HIGHER SECONDARY SCHOOL TEACHER, MATHEMATICS, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
 6. SUBHADRA PM., HIGHER SECONDARY SCHOOL TEACHER, MALAYALAM, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
 7. SPAIJA A.B., HIGHER SECONDARY SCHOOL TEACHER, ZOOLOGY, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
 8. ALI KDAVANDI, HIGHER SECONDARY SCHOOL TEACHER, COMMERCE, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.

9. JENOY MATHEW, HIGHER SECONDARY SCHOOL TEACHER, PHYSICS, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
10. SHOWKATHALI P., HIGHER SECONDARY SCHOOL TEACHER, ENGLISH, AKMHSS
KOTTOOR, INDIANOOR, KOTTAKKAL, MALAPPURAM.
11. ABDUL LATHEEF A.C., HIGHER SECONDARY SCHOOL TEACHER,
ECONOMICS, AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL
MALAPPURAM.
12. ABDUL GAFOOR T.C., HIGHER SECONDARY SCHOOL TEACHER
COMPUTER APPLICATION, AKMHSS, KOTTOOR
INDIANOOR, KOTTAKKAL, MALAPPURAM.

R BY SRI.AUGUSTINE JOSEPH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.1528 of 2015

Dated this the 27th day of July, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by respondents in W.P.(C)8342/14 who are aggrieved by the judgment dated 25.2.2015 rendered by the learned Single Judge, whereby Ext.P8 order approving the appointees prospectively in modification of Ext.P6 was set aside.

2. We heard the Government Pleader appearing for the appellants and the learned counsel appearing for the respondents.

3. Although the learned Government Pleader sought to justify Ext.P8, by contending that only after posts are sanctioned appointments could have been made, we are unable to appreciate this contention. By Ext.P1 order Higher Secondary section was sanctioned in the school in question and although Clause 5 of Ext.P1 only provided that Guest Lecturers are appointed till permanent posts are sanctioned. Appointments were made till 1.1.2013. In Ext.P3 judgment rendered in W.P(C)25285/12, which writ petition was filed by the Manager of the school complaining of non sanctioning of the posts, this Court ordered thus:

"I accordingly, dispose of the writ petition with a direction to the Regional Deputy Director of Higher Secondary Education, Kozhikode to sanction the required number of teaching and non-teaching staff in the petitioner's newly sanctioned Higher Secondary School as per the rules and the guidelines issued by the Director of Higher Secondary Education. Needful in the matter shall be done and the staff fixation order issued for the academic year 2012-2013 expeditiously and in any event within two weeks from the date on which the petitioner produces a certified copy of this judgment along with a copy of the writ petition complete in all aspects before the Regional Director, Higher Secondary Education, Kozhikode. It will be open to the Regional Director, Higher Secondary Education to visit the school again if necessary with notice to the Manager/Headmaster."

4. It was in compliance of the directions in the judgment, by Ext.P6 posts were sanctioned and approval was granted with effect from 1.1.2013. However, the same was made subject to the ratification by the Government. Subsequently, when the Government issued Ext.P8 order dated 4.3.2014, approval was granted with prospective effect and the prior service was ordered to be on daily wages. It was in such circumstances that challenging Ext.P8, writ petition was filed. Reading of the judgment shows that the view taken by the learned Single Judge is having regard to the directions in Ext.P3 which have attained finality and are binding on the appellants. The appellants had rightly issued

Ext.P6 and could not have made the appointment prospective from the date of Ext.P8.

5. Admittedly, the directions in Ext.P3 have become final. Even as on date those directions are not either sought to be corrected by a review or in an appeal. In such circumstances, the respondents did not have the freedom to modify Ext.P6 in the manner it is done by Ext.P8. Therefore, the view taken by the learned Single Judge does not suffer from any illegality.

Writ appeal is dismissed.

**ANTONY DOMINIC
JUDGE**

**SHAJI P. CHALY
JUDGE**

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