

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WA.No. 1695 of 2015 () IN WP(C).2075/2011  
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AGAINST THE JUDGMENT IN WP(C) 2075/2011 of HIGH COURT OF KERALA DATED  
06-04-2015

APPELLANT/ADDL.3RD RESPONDENT IN WP(C):  
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THE GOVERNMENT OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT  
DEPARTMENT OF SPORTS AND YOUTH WELFARE, SECRETARY  
THIRUVANANTHAPURAM-695001.

BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS

RESPONDENT/PETITIONER & 1ST AND 2ND RESPONDENTS IN WP(C):  
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1. S.JALESHKUMAR  
THULASI BHAVANAM, PALOTTUMoola, NANNIYODE  
PACHA.P.O, THIRUVANANTHAPURAM, PIN-695562.
2. JOSEPH MATHEW  
PAZHAVEEDU, CHAMPAKULAM P.O., ALAPPUZHA  
PIN 688505.
3. KERALA STATE SPORTS COUNCIL  
THIRUVANANTHAPURAM, REPRESENTED BY THE SECRETARY  
KERALA STATE SPORTS COUNCIL  
THIRUVANANTHAPURAM-695001.

BY SRI.KALEESWARAM RAJ  
BY SMT.LATHA KRISHNAN,SC,SPORTS COUNCIL  
BY SRI.B.UNNIKRISHNA KAIMAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-08-  
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, CJ**

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**A.M.SHAFFIQUE, J.**

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W.A.No.1695 of 2015

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Dated this the 7<sup>th</sup> day of August 2015

**J U D G M E N T**

**Ashok Bhushan, CJ**

Heard learned senior Government Pleader,  
Adv.Sri.Kaleeswaram Raj appearing for the 1<sup>st</sup> respondent/writ  
petitioner, Adv.Sri.B.Unnikrishna Kaimal appearing for the 2<sup>nd</sup>  
respondent and Smt.Latha Krishnan, learned Standing Counsel  
appearing for the 3<sup>rd</sup> respondent.

2. This writ appeal has been filed against the judgment  
dated 06/04/2015 in W.P.C.No.2075/2011 by which the learned  
Single Judge disposed of the writ petition directing that the  
Government may implement Ext.P9 order taking into  
consideration the right accrued to the petitioner based on the  
rank in the rank list. The learned Single Judge further directed  
that the appointments already made shall not be affected by any  
such directions of the Government. The State, aggrieved by the  
said direction, has come up in the appeal.

3. The brief facts which are necessary to be noted for deciding the writ appeal are:

The petitioner was engaged on daily wage basis as Swimming Coach under the Sports Council in the year 1996. He continued on daily wage basis till the year 2001. Later his service was terminated. In the year 2002, he was again engaged on daily wage basis and was continuing on daily wage basis. When five regular vacancies for Swimming Coach were advertised, petitioner was one of the applicants against regular basis and in the rank list prepared, he was shown as Sl.No.6. While the petitioner was working on daily wage basis and went to attend the National Games in the year 2009, a complaint was received against him on the basis of which disciplinary proceedings were initiated. In 2011, petitioner was terminated from daily wage appointment. Petitioner submitted an application to the State Government with regard to claiming appointment on regular basis. Petitioner further claimed that complaints and charges against him were without any basis and appropriate decision will be taken by the Government. On the said application submitted by the petitioner, Government called for a report from the Sports Council and the petitioner, in the meantime, had also filed

W.P.C.No.6846/2009 challenging Ext.P8 by which petitioner's engagement on daily wage basis were terminated. The learned Single Judge allowed the writ petition setting aside Ext.P8 order and directed the petitioner to be re-admitted to duty vide judgment dated 11/08/2009. W.A.No.2545/2009 was filed by the Kerala State Sports Council which writ appeal was disposed of vide judgment dated 22/12/2009 giving liberty to the Sports Council to issue memo of charges and to complete the enquiry within a period of three months. With regard to entitlement of the petitioner for regular appointment, the observation made by the learned Single Judge was retained. It was further observed that the same would also depend upon the outcome of the enquiry, if any, against the writ petitioner. The Government, taking into consideration the application of the writ petitioner, report of the Sports Council and the judgment dated 22/12/2009, took a decision to drop the disciplinary proceedings with a direction to reinstate the petitioner in service. This Court further directed that in so far as the appointment of the petitioner on permanent basis, early steps shall be taken for appointment and after observing his work minutely. The said order dated 23/08/2013 was passed by the Government at Ext.P9. Petitioner, thereafter, was taken back

on daily wage basis and is still working.

4. The learned Single Judge, by the impugned judgment, had issued the following directions in paragraph 7 which is extracted below:

*“This Court after adverting to rival claims of the parties and considering the nature and scope of directions of the Government in Ext.P9 is of the view that Government is bound to implement Ext.P9. It is for the Government to take into account all the factors to work out directions in Ext.P9. The right accrued to the petitioner based on the rank in the rank list cannot be denied as he has been exonerated from the charge against him. It is to be noted that petitioner has been working on daily wage basis since 1996 onwards. Therefore, Government shall take necessary steps to implement Ext.P9 order by appointing petitioner in regular vacancy. The appointments already made shall not be affected by any such directions of the Government. Needful shall be done within a period of two months from the date of receipt of a copy of this judgment after affording an opportunity of hearing to the petitioner.”*

5. The State Government, aggrieved by the said directions, has come up in the appeal. The learned counsel for the appellants submits that the learned Single Judge ought to have directed setting aside the appointment of the 2<sup>nd</sup> respondent so that the writ petitioner could have been accommodated. It is

submitted that the State Government is not in favour of creating a new post taking into account the ratio of coaches in different disciplines. It is submitted that appointment of the writ petitioner can be made as and when vacancy is available, since at present there is no vacancy, appointment on regular basis cannot be made.

6. Learned counsel for the writ petitioner, refuting the submission of the learned counsel for the appellants, contends that State Government is bound by Ext.P9 decision by which State Government decided that writ petitioner shall be offered appointment on regular basis and now State Government cannot go back from Ext.P9 order and denying regular appointment to the petitioner whereas persons lower in rank to the writ petitioner had already been appointed on regular basis as Swimming Coach.

7. Learned counsel for the 2<sup>nd</sup> respondent in the writ petition has submitted that the learned Single Judge has rightly directed not to disturb any appointments already made. He submits that even after his appointment, several other persons, lower in rank, were appointed. Therefore, his appointment has rightly been saved.

8. We have considered the submission of the learned counsel on either side and perused the records.

9. There is no dispute that Ext.P9 was issued by the State Government taking into consideration the application dated 06/11/2012 of the writ petitioner, report of the Sports Council dated 13/03/2013 and 17/07/2013 as well as the judgment of the Division Bench dated 22/12/2009. There is also no issue that the writ petitioner was not included in the rank list against regular vacancies and persons lower in rank to the petitioner has been appointed. Petitioner could not be appointed on the basis of the rank list on the ground that enquiry on complaint was pending at the relevant time which resulted in bypassing his regular appointment. In view of the decision of the State Government where it has been held that no charges have been proved and disciplinary proceedings have to be dropped, petitioner's grievance has to be redressed by regular appointment. State Government, having already taken a decision for regular appointment, it is for the State Government to take appropriate decision in that regard. It is useful to refer to the operative portion of Ext.P9 which is to the following effect:

*"It is hereby directed that the Kerala State Sports Council should reinstate shri.S.Jalesh Kumar, who has*

*become eligible for appointment as Swimming Coach, on a permanent basis, and take early steps to appoint him as a Swimming Coach in the Kerala State Sports Council and after observing his work minutely alone, his case for appointment on a permanent basis shall be considered.*

*Further steps in this behalf shall be initiated by the Secretary of the Kerala State Sports Council.”*

10. In the above view of the matter, it is for the State Government to take appropriate decision in the matter, in the light of Ext.P9 and the directions issued by the learned Single Judge. We do not find any ground to modify the judgment of the learned Single Judge except to the fact that appropriate decision shall be taken by the State Government as per the direction of the learned Single Judge keeping in view Ext.P9 order. The State Government shall take the decision within a period of three months from the date of receipt of a copy of this judgment.

This writ appeal is disposed of accordingly.

(sd/-)

**(ASHOK BHUSHAN, CHIEF JUSTICE)**

(sd/-)

**(A.M.SHAFFIQUE, JUDGE)**

jsr





