

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 2075 of 2011 (H)

PETITIONER(S):

S.JALESH KUMAR, THULASI BHAVANAM,
PALOTTUMoola, NANNIYODE, PACHA.P.O
THIRUVANANTHAPURAM, PIN-695562.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

1. KERALA STATE SPORTS COUNCIL,
THIRUVANANTHAPURAM, REPRESENTED BY THE SECRETARY
KERALA STATE SPORTS COUNCIL
THIRUVANANTHAPURAM-695001.

2. JOSEPH MATHEW, PAZHAVEEDU, CHAMPAKULAM.P.O
ALAPPUZHA-688505.

ADDL R3. THE GOVERNMENT OF KERALA
REPRESENTED BY the SECRETARY TO GOVERNMENT
DEPARTMENT OF SPORTS AND YOUTH WELFARE
SECRETARIAT, THIRUVANANTHAPURAM

(ADDL R3 IS SUO MOTO IMPEADED AS ADDL R3 AS PER ORDER DATED
23.02.2015)

R1 BY ADV. PIRAPPANCODE V.S.SUDHEER, SC, SPORTS COUNCIL

R2 BY ADV. SRI.KRB.KAIMAL (SR.)

R2 BY ADV. SRI.B.UNNIKRISHNA KAIMAL

R1 BY ADV. SMT.P.K.RADHIKA

R1 BY ADV. SMT.LATHA KRISHNAN, SC, KERALA STATE SPORTS
COUNCIL

ADDL R3 BY ADV. GOVERNMENT PLEADER(Sr.): ADV.SMT.M J RAJASREE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT P1 : TRUE COPY OF THE RELEVANT PAGES OF THE RANKED LIST
AFFIXED IN the NOTICE BOARD
- EXT P2 : TRUE COPY OF THE PROCEEDINGS DATED 04.01.2011
ISSUED BY 1ST RESPONDENT
- EXT P3 : TRUE COPY OF the JUDGMENT DATED 11.08.2009 IN W.P
(C) .NO.6846/2009
- EXT P4 : TRUE COPY OF the JUDGMENT DATED 22.12.2009 IN
W.A.NO.2545/2009
- EXT P5 : TRUE COPY OF THE AFFIDAVIT AND PETITION IN
I.A.NO.10294/2009 IN W.P(C) .NO.8125/2009
- EXT P6 : TRUE COPY OF THE ORDER OF SUSPENSION DATED
14.01.2009
- EXT P7 : TRUE COPY OF the TERMINATION LETTER DATED
03.02.2009
- EXT P8 : TRUE COPY OF the JUDGMENT DATED 04.04.2012 IN Writ
Petition(C)NO.38578 OF 2010
- EXT P9 : TRUE COPY OF G.O(Rt) .NO.156/2013 DATED 23.08.2013

(EXT P1 PRODUCED ALONG WITH W.P(C) SUBSTITUTED WITH the DOCUMENT
ACCOMPANYING I.A.16974/11)

RESPONDENTS EXHIBITS:

- EXT R2(a) : TRUE COPY OF the ORDER NO.KSSC/B1/12186/2007-10
DATED 01.03.2011 ISSUED BY THE 1st RESPONDENT
- EXT R1(a) : TRUE COPY OF the RANK LIST
- EXT R1(b) : TRUE COPY OF THE PROCEEDINGS OF STANDING COMMITTEE
KERALA SPORTS COUNCIL DTD 21.12.2010
- EXT R1(c) : TRUE COPY OF THE REPORT DATED 20.12.2011

True Copy/

P A to Judge

A.MUHAMED MUSTAQUE, J.
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W.P(C).No.2075 of 2011
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Dated this the 06th day of April, 2015

JUDGMENT

Petitioner was a Swimming Coach with the Kerala Sports Council on daily wage basis. The temporary appointment of the petitioner was on 15.05.1996 and worked on daily wage basis till 06.02.2001. Later his service was terminated. Thereafter he was reappointed on daily wage basis with effect from 27.09.2002.

2. While petitioner was working as Swimming Coach on daily wage basis, petitioner responded to a notification issued by the Sports Council on 17.08.2007 inviting applications to fill up the vacancy of Swimming Coaches, five in number on regular basis. Petitioner was ranked six in the rank list which was published on 21.12.2010. In the meantime, the Sports Council proceeded against the petitioner for disciplinary action for misconduct. Based on outcome of such proceedings, petitioner was terminated from the service of the Sports Council on daily wage basis. This was on 03.02.2009. Petitioner challenged the above action of the Sports Council before the Government. Government passed Ext.P9 dated 23.08.2013. By the above said Government order, petitioner was exonerated. Petitioner has

been directed to be reinstated by terminating entire disciplinary proceedings. It is further ordered that petitioner's inclusion in regular appointment shall only after observing petitioner's conduct.

3. Petitioner submits that all the five vacancies are filled and party respondent herein having rank No.7 is the last appointee. Therefore petitioner is entitled for appointment in the light of Ext.P9 order.

4. This Court by an order dated 23.02.2015 directed to ascertain the views of the Government, whether petitioner can be accommodated in any of the vacancy of the Sports Council. In the statement filed before this Court by the Government, it is stated as follows:

“It is respectfully submitted that there are a total of 18 coaches in the field of Swimming under the 1st respondent, Kerala State Sports Council (15 sanctioned post + 3 converted posts). The number of trainees in the field of swimming under the 1st respondent is only 134. Thus the ratio of coaches per students is 1:8. This ration is much higher than the number of coaches in Athletics, Football etc which are the most popular stream in sports. For example in Athletics the ratio of coaches per students is about 1:14 and in Football it is 1:13. Thus from the ratio it can be seen that

there are sufficient number of coaches in the field of swimming and if more posts are created in the field of swimming this will result in the demands for creation of more posts in other streams which will results in heavy financial burden to the State Exchequer.”

5. There is no dispute that person who is lower higher rank has been appointed. The only reason on which petitioner was denied appointment is on account of pendency of the disciplinary proceedings. Learned counsel for the petitioner would urge that these proceedings have no connection in considering the petitioner based on ranking in the list. It is further submitted that in view of the fact that Government has already ordered that petitioner shall be appointed on regular vacancy, there is no meaning in denying regular appointment to the petitioner as such claim is based on the right accrued to him on the basis of the petitioner's rank in the list.

6. Learned counsel for the party respondent submits that party respondent was appointed in the year 2011 and if petitioner is being accommodated in regular vacancy, he shall not be thrown out.

7. 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.

The Writ Petition is disposed of. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.