

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 12002 of 2006 (D)

PETITIONERS:

1. FRANCIS SEBASTIAN, HSST ENGLISH(JUNIOR),
ST.GEORGE H.S.S., VAZHATHOPPE, IDUKKI.
2. BINUMON JOSEPH, HSST CHEMISTRY(JUNIOR),
ST.XAVIER'S H.S.S., CHEMMANNAR, IDUKKI.
3. SIGY MATHEW,
HSST ENGLISH (JUNIOR), ST.GEORGE H.S.S., VAZHATHOPPE
IDUKKI.
4. RESHMI R.
HSST JUNIOR PHYSICS, HIMAYUTHUL ISLAM H.S.S.
KOZHIKODE.

BY ADV. SRI.PAULSON THOMAS

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, GENERAL EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. DIRECTOR OF HIGHER SECONDARY EDUCATION,
DIRECTORATE OF HIGHER SECONDARY EDUCATION
SANTHI NAGAR, HOUSING BOARD BUILDING
THIRUVANANTHAPURAM.
3. CORPORATE MANAGER,
DIOCESE OF IDUKKI, IDUKKI.
4. MANAGER,
HIMAYUTHUL ISLAM H.S.S., KOZHIKODE.

R4 BY ADV. SRI.C.P.MOHAMMED NIAS

R3 BY ADVS. SRI.V.M.KURIAN

SRI.MATHEW B. KURIAN

SRI.K.T.THOMAS

R1 & R2 BY GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 12002 of 2006 (D)

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF APPOINTMENT ORDER DATED 20.12.2001 ISSUED BY
3RD RESPONDENT TO THE 1ST PETITIONER**
- P1(A) : TRUE COPY OF APPOINTMENT ORDER DATED 20.12.2001 ISSUED BY
3RD RESPONDENT TO THE 2ND PETITIONER**
- P1(B) : TRUE COPY OF APPOINTMENT ORDER DATED 20.12.2001 ISSUED BY
3RD RESPONDENT TO THE 3RD PETITIONER**
- P1(C) : TRUE COPY OF APPOINTMENT ORDER DATED 21.11.2001 ISSUED BY
4TH RESPONDENT TO THE 4TH PETITIONER**
- P2 : TRUE COPY OF ORDER DATED 3.9.2003 ISSUED BY 2ND RESPONDENT**
- P2(A) : TRUE COPY OF ORDER DATED 6.10.2003 ISSUED BY 2ND
RESPONDENT**
- P2(B) : TRUE COPY OF ORDER DATED 1.1.2004 ISSUED BY 2ND RESPONDENT**
- P3 : TRUE COPY OF G.O.(MS) NO.298/200/GEN. EDN. DATED 25.8.2000**
- P4 : TRUE COPY OF JUDGMENT IN WRIT APPEAL NO.2245/2002 DATED
22.1.2003**
- P5 : TRUE COPY OF JUDGMENT WRIT APPEAL NO.1927/2004 DATED
4.11.2004**
- P6 : TRUE COPY OF THE REPRESENTATION DATED 7.12.2005**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 12002 of 2006 (D)

Dated this the 5th day of October, 2015

J U D G M E N T

The petitioners are aggrieved with the fact that the petitioners' appointments between 2001-2003 have not been regularised and the pay and allowances paid; in accordance with such appointment as High Secondary School Teachers (HSST).

2. All the petitioners, admittedly, were appointed in December, 2001 as HSST. At that point of time the Special Rules with respect to service in the Higher Secondary Section had come into force as Chapter XXXII in the Kerala Education Rules, as on 12.11.2001. As per the qualification prescribed by the Government in the Special Rules, it was incumbent upon any person, to have qualified the State Eligibility Test (SET), for appointment as HSST. The petitioners, at that point of time, were not so qualified. However, the petitioners are said to have acquired the said

qualification subsequently in the year 2003 and from that date, their appointments are also said to have been regularised.

3. The learned counsel for the petitioners rely on Ext.P3 order of the Government to contend that as per Ext.P3 the Government had permitted eligible qualified hands to be appointed on ad-hoc basis, in the absence of qualified hands. The principle would equally apply to the petitioners even after the Special Rules, is the specific contention. The petitioners' claim is that, on the basis of such exemption, the appointments made of the petitioners on various dates should be regularised from the date of such appointment, and not from the date of SET qualification.

4. The background facts insofar as the introduction of the Higher Secondary Course, reveals that on introduction of Higher Secondary Courses in Schools, the Government had decided on a ratio of 75:25 from open

merit and High School section, for appointment as HSSTs. The same was unsuccessfully challenged before this Court and was taken up before the Supreme Court also unsuccessfully. However, while the Special Leave Petition was pending before the Hon'ble Supreme Court, by an interim order the Supreme Court had permitted ad-hoc appointments, but on promotion from the High School Section. It is also evident that as for the teachers from High School Section, who could be promoted as HSST in the 25% quota, there was an exemption granted from test qualification insofar as permitting them to acquire such qualification, within two years from the date of appointment.

5. The exemption at Ext.P3 is no more applicable after the Special Rules came into effect. It is also clear that the Government had power to make such exemption but however, did not exercise such power in making an exemption. The exemption applicable to High School

Section can also not be transmitted to the open merit candidate since they do not stand on an equal footing. When the power of exemption was available with the Government and the Government consciously did not exercise that, it is not for this Court to impose such exemption on the Government by way of drawing a parallel on the earlier conduct of the Government.

6. Evidently, Ext.P3 was brought out in the special circumstance of the matters pending before the Hon'ble Supreme Court and there was an amount of uncertainty insofar as the appointments to the Higher Secondary Section. However, on 12.11.2001, whatever cloud there was, in the scheme of appointments, stood removed for reason of the Special Rules having come into force. The petitioners were all persons who were appointed after the Special Rules were brought in. It is also an admitted fact that the SET examination was commenced in the year 2000. The petitioners did not qualify then or in the years when

they claim to have continued as HSSTs. In such circumstance, the Government having not granted an exemption, which it had power to do, the petitioners cannot invoke the jurisdiction under Article 226 of the Constitution of India to seek a direction to the Government to grant such exemption. The exemption not being available, the petitioners cannot seek approval for the period when they allegedly continued as HSSTs, but without the essential qualification of SET.

In such circumstance, the writ petition is devoid of merit and the same is dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE