

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

W.P.(C).No.16442 of 2005 (G)

PETITIONER(S):-

1. THE PRINCIPAL,
ST.MICHAELS COLLEGE, CHERTHALA-688 539.
2. SHEENA XAVIER, AVILION', PALLITHODE P.O., ALAPPUZHA -688 584.
3. SOPHY A.I., ARACKAL HOUSE, PUNNAPARA, ALAPPUZHA.
4. LINI STEPHEN, LINI COTTAGE, PAZHAVEEDU P.O., ALLEPPEY.
5. LOVELY ANTHONY, ARUCATTY, VETTAKAL P.O., CHERTHALA.
6. DALIYA.S., VALLOTTUCHIRA, SOUTH ARYAD,
AVALOOKKUNNU P.O., ALAPPUZHA-6.
7. LAIZAMMA.M.S., CHULLIKAL HOUSE, PUNNAPRA P.O., ALAPPUZHA.
8. K.A.XAVIER, BISHOP'S HOUSE, ALLEPPEY.

BY ADV. SRI.BABY ISSAC ILLICKAL.

RESPONDENT(S):-

1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. PRINCIPAL SECRETARY TO GOVT.,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
3. DIRECTOR OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM.
4. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
CENTRAL ZONE, ERNAKULAM.

R1 TO R4 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	PHOTOCOPY OF PROFORMA OF THE AGREEMENT.
EXT.P2	PHOTOCOPY OF GOVT. ORDER DT.6.12.99.
EXT.P3	PHOTOCOPY OF THE ORDER OF AFFILIATION OF COURSE DT.16.12.99.
EXT.P4	PHOTOCOPY OF THE GOVT. ORDER DT.17.10.97.
EXT.P5(a)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 2ND PETITIONER DT.4.9.2000.
EXT.P5(b)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 4TH PETITIONER DT.1.9.2000.
EXT.P5(c)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 8TH PETITIONER DT.28.6.2000.
EXT.P6(a)	LETTER FROM THE 4TH RESPONDENT TO THE SUB TREASURY, CHERTALLA DT.14.8.2002.
EXT.P6(B)	LETTER FROM THE 4TH RESPONDENT TO THE SUB TREASURY, CHERTALLA DT.14.8.2002.
EXT.P6(C)	LETTER FROM THE 4TH RESPONDENT TO THE SUB TREASURY, CHERTALLA DT.28.5..2002.
EXT.P6(D)	LETTER FROM THE 4TH RESPONDENT TO THE SUB TREASURY, CHERTALLA DT.11.3.2002.
EXT.P7(a)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 3RD PETITIONER DT.3.6.2003.
EXT.P7(b)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 5TH PETITIONER DT.6.08.2004.
EXT.P7(c)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 6TH PETITIONER DT.1.6.2004.
EXT.P7(d)	PHOTOCOPY OF THE APPOINTMENT ORDER OF THE 7TH PETITIONER DT.7.6.2002.
EXT.P8	PHOTOCOPY OF THE GOVT. ORDER DT.21.8.99.
EXT.P9	PHOTOCOPY OF THE CIRCULAR ISSUED BY THE 3RD RESPONDENT DT.19.1.2000.

RESPONDENT'S EXHIBITS:-

EXT.R4(a) TRUE COPY OF THE G.O.(MS).NO.78/01/HIGHER EDUCATION
DATED 11.7.2001.

EXT.R4(b) TRUE COPY OF THE CIRCULAR NO.28796/D1/03
HIGHER EDUCATION DATED 9.2.2004.

vku/

[true copy]

K.Vinod Chandran, J.

W.P.(C).No.16442 of 2005-G

Dated this the 20th day of October, 2015.

JUDGMENT

The 1st petitioner is a Principal and the petitioners 2 to 8 are Guest Lecturers in B.Com [Computer Application] appointed in the 1st petitioner's College. The controversy in the above case arose in the context of the Government sanctioning fresh courses on the de-linking of Pre-Degree from the College and the entrustment of the same to Higher Secondary sections in schools. The Guest Lecturers were not paid the salary for reason of there being no sanction of posts.

2. The issue with respect to the regular hands appointed in the very same circumstances is covered by a Division Bench judgment of this Court in ***State of Kerala v. Arun George [2009 (4) KLT 972]***, which has been upheld by the Supreme Court in ***State of Kerala and Ors. v. Arun George and Ors. [2015 (1) SCALE 775 = 2015 (1) KLT 833 (SC)]***. This Court found that the teachers appointed for imparting

training in the newly granted courses, which definitely created additional workload, was also under the Direct Payment Agreement and the Government had the liability to pay the salaries. The contention of the Government that there was a ban from appointments was specifically noticed and the same was found to be permissible only between 03.06.1997 and 02.06.2000 when the statutory prohibition was there as per Section 5 of the Pre-Degree (Abolition) Act, 1977. Any executive Government Orders extending such ban was held to be inoperative.

3. Herein also, the petitioners contend that the writ petitioners 2 to 8 were appointed anticipating additional workload due to the sanctioning of fresh courses, which was permissible as per Exhibit P9. The refusal on the ground of a ban existing cannot be sustained. However, it has to be looked into as to whether on a reference to the additional courses sanctioned and the available regular hands there was scope for appointment of petitioners 2 to 8 in their respective periods for reason of the workload, which definitely would have to be gone into by the 3rd respondent.

4. In the above circumstance, the petitioners shall produce a copy of the writ petition before the 3rd respondent along with the certified copy of this judgment and the 1st petitioner shall also provide the staff fixation orders for the respective years and the list of sanctioned regular hands so as to decide on the issue in accordance with the declaration in ***Arun George*** (*supra*). The Director Collegiate Education shall give an opportunity of hearing to the 1st petitioner as also the other petitioners and the same shall be considered together and orders passed at any rate, within three months from the date of production of the certified copy of this judgment.

The writ petition is disposed of as above. Parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran,
Judge

vku.

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