

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 11641 of 2008 (J)

PETITIONER(S):

- 1. K.J.JOSEPH, AGED 44 YEARS
S/O.LATE K.A.JUSSA, LIBRARY ASSISTANT, S.H.COLLEGE
THEVARA, ERNAKULAM (RESIDING AT, KALATHIL HOUSE
ANDIPALLIKKAV, MUTHAKUNNAM P.O.)**
- 2. K.J.LUKOSE, AGED 38 YEARS,
S/O.LATE K.O.JOB, LAST GRADE SERVANT, S.H.COLLEGE
THEVARA, ERNAKULAM (RESIDING AT KARONDUKADAVIL
K.R.PURAM P.O., CHERTHALA).**

**BY ADVS.SRI.M.R.SUDHEENDRAN
SRI.SURAJ.S**

RESPONDENT(S):

- 1. STATE OF KERALA
SECRETARY TO GOVERNMENT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.**
- 3. THE PRINCIPAL, S.H.COLLEGE, THEVARA,
ERNAKULAM.**

**R,R3 BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
R,R3 BY ADV. SRI.TONY GEORGE KANNANTHANAM
R,R2 BY ADV. GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS

- EXT.P1** **COPY OF THE ORDER DATED 15.6.07 IN APPEAL NO. 11/2006 OF THE UNIVERSITY APPELLATE TRIBUNAL, THIRUVANANTHAPURAM.**
- EXT.P2** **COPY OF LETTER DATED 12.9.07 ISSUED BY THE 3RD RESPONDENT.**
- EXT.P3** **COPY OF THE LETTER NO. NO. F(2)40665/07/COLLEGIATE EDN. DEPT. DATED 17.10.2007 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.**
- EXT.P4** **COPY OF THE LETTER DATED 29.10.2007 WITH THE LIST OF THE STAFF SENT TO THE 2ND RESPONDENT BY THE 3RD RESPONDENT.**

RESPONDENTS EXHIBITS:

- EXT.R2(A)** **COPY OF THE LIST DATED 22.11.07.**

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.11641 of 2008 - J

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Dated this the 1st day of September, 2015

J U D G M E N T

The petitioners filed the above writ petition claiming that, on reinstatement of the petitioner, as on 22.08.2007, as per Ext.P1 order of the University Appellate Tribunal, no salary is being paid to the petitioners for reason of the inaction of the 2nd respondent. None appears for the petitioners or the respondent college, when the matter was called for hearing. I have heard the learned Government Pleader.

2. The brief facts to be noticed are that the petitioners were both proceeded against by the management of the 3rd respondent college and were dismissed from service. The petitioners took up the matter before the University Appellate Tribunal, who by Ext.P1 directed reinstatement and also directed that the period spent outside service would be treated as Leave

Without Allowance. The petitioners in the writ petition contend that the 2nd respondent has refused to disburse and sanction the salary payable to the petitioner.

3. The 2nd respondent has filed a detailed counter affidavit, in which it was stated that though the petitioners were reinstated in service, there were no sanctioned posts, which alone would make liable the Government, to pay the salary. The counter affidavit specifically indicates that, on the petitioners dismissal, the Manager of the 3rd respondent has appointed fresh persons, to whom the salary is being paid by the Government.

4. The 3rd respondent in fact called for the staff pattern of the 3rd respondent's college and it is specifically stated in the counter affidavit that the staff fixation statement showed 14 non-teaching staff are surplus in the college. The respondent college is said to come under B-Grade and as per the revised staff pattern, only 35 posts of non-teaching staff are permissible, while the respondent college has engaged 49 non-teaching staff.

5. It is also specifically noticed that the petitioners

have filed I.A No.10027 of 2015, in which Exts.P5 and P6 are produced. Exts.P5 and P6 indicate that the salary of the petitioners are being paid and that the arrears too have been paid. The claim raised in Exts.P5 and P6 seems to be with respect to payment of interest for the delayed payment of salary.

6. The averments in the counter affidavit of the respondent State, is not at all controverted by the petitioners or by the respondent college. No interest liability can be mulcted on the Government. The Manager, who is said to have been made appointment in surplus of the sanctioned vacancy available, is also not a party to the above writ petition.

In such circumstance, the prayer for interest made in the writ petition cannot be sustained and the writ petition would stand dismissed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB

// true copy //

P.A To Judge.