

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 8342 of 2014 (P)

PETITIONERS:-

- 1. K. IBRAHIM, MANAGER,
AKM HIGHER SECONDARY SCHOOL, KOTTOOR,
INDIANOOR, KOTTAKKAL, MALAPPURAM DISTRICT.**
- 2. SAILATH P.K.,
HIGHER SECONDARY SCHOOL TEACHER, CHEMISTRY,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM.**
- 3. MOHAMMED KUTTY T.,
HIGHER SECONDARY SCHOOL TEACHER, ARABIC,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM.**
- 4. DHANYA K.,
HIGHER SECONDARY SCHOOL TEACHER, BOTANY,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM.**
- 5. JISMITH B.C.,
HIGHER SECONDARY SCHOOL TEACHER, MATHEMATICS,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM.**
- 6. SUBHADRA P.M.,
HIGHER SECONDARY SCHOOL TEACHER, MALAYALAM,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM.**
- 7. SPAIJA A.B.,
HIGHER SECONDARY SCHOOL TEACHER, ZOOLOGY,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM DISTRICT.**
- 8. ALI KADAVANDI,
HIGHER SECONDARY SCHOOL TEACHER, COMMERCE,
AKMHSS, KOTTOOR, INDIANOOR, KOTTAKKAL,
MALAPPURAM.**

9. JENOY MATHEW,
HIGHER SECONDARY SCHOOL TEACHER, PHYSICS,
AKMHSS, KOTTOOR, INDIANOR, KOTTAKKAL,
MALAPPURAM.
10. SHOWKATHALI P.,
HIGHER SECONDARY SCHOOL TEACHER, ENGLISH,
AKMHSS, KOTTOOR, INDIANOR, KOTTAKKAL,
MALAPPURAM.
11. ABDUL LATHEEF A.C.,
HIGHER SECONDARY SCHOOL TEACHER, ECONOMICS,
AKMHSS, KOTTOOR, INDIANOR, KOTTAKKAL,
MALAPPURAM.
12. ABDUL GAFOOR T.C.,
HIGHER SECONDARY SCHOOL TEACHER,
COMPUTER APPLICATION, AKMHSS, KOTTOOR,
INDIANOR, KOTTAKKAL, MALAPPURAM.

BY ADVS.SRI.AUGUSTINE JOSEPH,
SRI.K.S.ROCKEY,
SRI.TONY AUGUSTINE.

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR,
HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM - 695 001.
3. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
MALAPPURAM.

BY GOVT. PLEADER SMT.SUNITHA VINOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, ALONG WITH WP(C).NO.4 OF 2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. TRUE COPY OF ORDER DATED 27.02.2012 FROM THE 1ST RESPONDENT.
- EXHIBIT P2. TRUE COPY OF THE LETTER DATED 25.09.2012 FROM THE RDD, KOZHIKODE.
- EXHIBIT P3. TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.25285/2012 DATED 02.01.2013.
- EXHIBIT P4. TRUE COPY OF THE ORDER DATED 20.03.2013 FROM THE RDD, KOZHIKODE.
- EXHIBIT P5. TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.8659/2013 DATED 04.06.2013.
- EXHIBIT P6(A). TRUE COPY OF THE APPROVAL ORDER DATED 19.11.2013 ISSUED TO SRI.SAILATH P.K.
- EXHIBIT P6(B). TRUE COPY OF THE APPROVAL ORDER DATED 19.11.2013 ISSUED TO MOHAMMED KUTTY T.
- EXHIBIT P6(C). TRUE COPY OF THE APPROVAL ORDER DATED 19.11.2013 ISSUED TO SMT.DHANNYA K.
- EXHIBIT P6(D). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO JISMITH B.C.
- EXHIBIT P6(E). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO SMT.SUBHADRA P.M.
- EXHIBIT P6(F). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO SMT.SPAIJA A.B.
- EXHIBIT P6(G). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO SRI.ALI KADAVANDI.
- EXHIBIT P6(H). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO SRI.JENYO MATHEW.
- EXHIBIT P6(I). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO SRI.SHOWKATHALI.
- EXHIBIT P6(J). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013 ISSUED TO SRI.ABDUL LATHEEF A.C.

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**EXHIBIT P6(K). TRUE COPY OF THE APPROVAL ORDER DATED 13.11.2013
ISSUED TO SRI.ABDUL GAFOOR T.C.**

EXHIBIT P7. TRUE COPY OF THE ORDER DATED 12.12.2013 FROM THE RDD.

**EXHIBIT P8. TRUE COPY OF THE ORDER DATED 04.03.2014 FROM
THE 1ST RESPONDENT.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C)Nos.4 & 8342 of 2014

Dated this the 25th day of February, 2015

JUDGMENT

Petitioners are the teachers of an aided Higher Secondary School appointed in the School with effect from 1.1.2013 consequent upon the proceedings of the Regional Deputy Director, Higher Secondary Education, Regional Office, Kozhikode dated 19.11.2013. The appointments were given effect from 1.1.2013 onwards. These appointments have been approved as per Ext.P6 series with effect from 1.1.2013 onwards on provisional basis subject to ratification by the Government. It is the admitted position that the Government at that time did not sanction creation of the post to which the petitioners were appointed. The approval of appointment was given by the Regional Deputy Director in compliance of the directions of this Court in Ext.P3 judgment in W.P.(C)

No.25285/2012. In the above judgment, it is ordered as follows:

“I accordingly, dispose of the writ petition with a direction to the Regional Deputy Director of Higher Secondary Education, Kozhikode to sanction the required number of teaching and non-teaching staff in the petitioner's newly sanctioned Higher Secondary School as per the rules and the guidelines issued by the Director of Higher Secondary Education. Needful in the matter shall be done and the staff fixation order issued for the academic year 2012-2013 expeditiously and in any event within two weeks from the date on which the petitioner produces a certified copy of this judgment along with a copy of the writ petition complete in all aspects before the Regional Director Higher Secondary Education, Kozhikode. It will be open to the Regional Director, Higher Secondary Education to visit the school again if necessary with notice to the Manager/Headmaster.”

2. The Government by General Order produced as Ext.P8 approved only to sanction one post of HSST and six

posts of HSST(Junior), whereas the appointments were approved by the Regional Deputy Director as seen from Ext.P6 series is in respect of one post of HSST and ten posts of HSST (Junior). This is after conducting visit of the School as directed by this Court and taking note of the students' strength of the School. There is no dispute for the Department that based on the working periods, the School was entitled for one post of HSST and ten posts of HSST (Junior) during the year 2012-2013. There are two implications arising out of Ext.P8. One is reduction of post and other is that order was given only with prospective application that is from the date of the Government Order dated 4.3.2014.

3. These writ petitions have been filed by the teachers challenging the Government Order to the extent reducing the post and also giving prospective application to the Government Order.

4. In this matter, a detailed counter affidavit has been filed by the first respondent. It is submitted that no appointment can be made in the School without creation of the post by the Government. It is also submitted that if at all the petitioners worked in that school, that can be only treated as the appointment for on daily wage basis and the petitioners cannot as a matter of right claim the appointment to the post even before the creation of the post.

5. The learned Government Pleader also pointed out Clause-5 in Ext.P1 Government Order dated 27.2.2012. The above Government Order is in respect of sanctioning of new Higher Secondary School in Thrissur and six districts of Malabar area. The petitioners' School is also governed by Ext.P1. In Ext.P1, it is stated that the Sanction is also accorded to the management to engage Guest Lectures till permanent posts of the Higher Secondary School Teachers are created in the School. Therefore, it is submitted that in the light of Ext.P1

referred as above, no right is accrued to the petitioners to seek approval with effect from the date of appointment. It is further submitted that the Regional Deputy Director also modified its earlier approval orders by modifying it to the extent that the approval is subject to the Government Orders.

6. The learned counsel appearing for the petitioners Sri. Augustine Joseph points out to the relevant paragraphs as quoted in the aforementioned paragraphs. It is submitted that this Court directed the Regional Deputy Director to sanction the post after visiting the School and the Regional Deputy Director carried out only the obligation as directed by this Court. Once that obligation is fulfilled, there is no scope for re-agitating the issue that sanctioning of the post will depend upon the decision of the Government. Once the post is sanctioned even though subject to ratification by the Regional Deputy Director, the Government cannot take independent decision to unsettle the directions of this Court in Ext.P3. If

the Government has any grievance against the direction, the Government ought to have challenged Ext.P3 then and there.

7. The learned counsel for the petitioners is right in making submission that when this Court directed the Regional Deputy Director to sanction the number of teaching and non-teaching staffs in the School, it cannot give a room for the Government to take a decision otherwise. This Court did not place any further rider to the above direction that this shall be done only with prior approval of the Government. It is true, as rightly pointed out by the learned Government Pleader that without creating the post by the Government, no post in newly sanctioned Higher Secondary School can be created. However, a departure has to be made in the particular facts and circumstances of the case, the sanction has been accorded by the Regional Deputy Director based on the directions of this Court. They have also granted approval subject to ratification by the Government. In such situation, the only possible

course of action available to the Government is to ratify the decision of the Regional Deputy Director.

8. In the facts and circumstances of the case, the Government could not have taken an independent decision for creation of the post as the decision was taken to sanction the School by the Regional Deputy Director pursuant to the directions of this Court. Therefore, I am of the view that the impugned order passed is liable to be set aside to the extent above.

These writ petitions are disposed of with the following directions:

The petitioners are entitled for approval from the date of appointment. All the petitioners, who are appointed to the sanctioned posts as per Ext.P6 series are entitled to continue in the service as regular hand with effect from the date of appointment and the restriction as placed in Ext.P8 to decrease the strength has no application in this matter.

Consequently, necessary order shall be passed to enable the petitioners benefit of the direction given by this Court. If any arrears of salary is liable to be paid to the petitioners, the same shall be disbursed within three months.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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