

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 13825 of 2011 (C)

PETITIONER(S) :

**FR.BOBY JACOB, HAS (SOCIAL STUDIES),
INFANT JESUS HIGHER SECONDARY SCHOOL,
VAZHAKKULAM- 686 670.**

**BY ADVS.SRI.M.R.ANISON
SMT.K.P.GEETHA MANI**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM- 695 001**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
MUVATTUPUZHA- 686 661**
- 4. THE MANAGER,
INFANT JESUS HIGHER SECONDARY SCHOOL,
VAZHAKKULAM- 686 670.**

**R1 TO R3 BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES
R4 BY ADV. SMT ANNIE JACOB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE ORDER DATED 19.09.2006 ISSUED BY
THE 3RD RESPONDENT.**

**EXHIBIT P2: TRUE COPY OF RELEVANT PAGES OF THE AUDIT REPORT
DATED 29.02.2008.**

**EXHIBIT P3: TRUE COPY OF THE LETTER DATED 26.04.2008 ISSUED BY
THE 3RD RESPONDENT.**

**EXHIBIT P4: TRUE COPY OF THE ORDER 07.07.2008 ISSUED BY
THE 2ND RESPONDENT.**

**EXHIBIT P5: TRUE COPY OF THE ORDER DATED 30.01.2010 ISSUED BY
THE 1ST RESPONDENT.**

**EXHIBIT P6: TRUE COPY OF ORDER DATED 14.01.2011 ISSUED BY
THE 1ST RESPONDENT.**

**EXHIBIT P7: TRUE COPY OF THE STAFF FIXATION ORDER OF
THE 3RD RESPONDENT FOR THE YEAR 2006-2007.**

**EXHIBIT P8: TRUE COPY OF THE ORDER DATED 16.10.2012 ISSUED BY
THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM.**

**EXHIBIT P9: A TRUE COPY OF THE ORDER DATED 22.10.2012 ISSUED BY
THE 3RD RESPONDENT.**

**EXHIBIT P10: TRUE COPY OF THE DEGREE CERTIFICATE ISSUED BY
THE UNIVERSITY OF MADRAS TO THE PETITIONER IN JUNE 2012.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

C.K.ABDUL REHIM,J.

WP(C).NO. 13825 of 2011

Dated this the 19th day of March, 2015

JUDGMENT

The petitioner was appointed as HSA (Social Science) in the 4th respondent's school with effect from 5.6.2006, in a vacancy arose consequent to promotion of a regular HSA (Social Science) as Headmaster with effect from 1.4.2006. The appointment of the petitioner was approved by the 3rd respondent with effect from 5.6.2006. While the petitioner was working as such, the 2nd respondent had forwarded Ext.P2 letter to the 3rd respondent enclosing the extract of an audit report of accounts and registers, with respect to the period from 1.4.2006 to 31.3.2007, directing to obtain and forward reply if any from the persons concerned. The audit report had indicated that the appointment of the petitioner as HSA (Social Science) was not in order because the educational qualification possessed by the petitioner was only B.A (English) and B.Ed (English). Since the

petitioner was qualified only for the post of HSA (English), he could not have been appointed as HSA(Social Science), is the objection. Further it is pointed out that the subject ratio was also not seen satisfied with respect to the said appointment. Eventhough the 4th respondent submitted objection against Ext.P2 letter, the 3rd respondent had issued Ext.P3 letter to the Manager to withhold payment of salary to the petitioner, till the objection is cleared. On receipt of Exts.P2 and P3 the petitioner along with the 4th respondent approached this court in an earlier writ petition, WP(C).16857/2008. This court directed the 2nd respondent to take a decision at the earliest. Consequently the 2nd respondent had issued Ext.P4 proceedings cancelling appointment of the petitioner and fixing liability on the 3rd respondent who had approved the appointment. Direction was also issued to the 3rd respondent to recover such liability. Findings in Ext.P4 is to the effect that the petitioner was not qualified to continue in the post of HSA(Social Science). Ext.P4 order of the 2nd respondent was taken up in revision before the Government by the 4th respondent-Manager. Ext.P5 is the order passed in the revision petition. It was observed that, posts of

HSA in core subjects sanctioned in the school during the academic year 2006-07 were physical science-1, Maths -1 and Social Science -1. It is pointed out that, the Government through GO(P).No.220/2005/G.Edn, dt. 19.7.2005 have ordered that the qualification prescribed for appointment of HSA in core subject is B.Ed degree along with Degree in the concerned subject. Since the petitioner is qualified only to the post of HSA (English), the appointment cannot be approved. More over the appointment does not satisfy the subject ratio, is the findings. Eventhough the petitioner submitted an application seeking review of Ext.P5 order, the same was rejected through Ext.P6. In this writ petition the petitioner is challenging Exts.P2 to P6 orders as it is violative of the provisions contained in the Kerala Education Act and Rules.

2. It is noticed that the petitioner had also challenged Ext.P7 order of staff fixation of the 4th respondent's school with respect to the academic year 2006-07, to the extent it had not sanctioned a post of HSA(English). Inter alia the petitioner is seeking direction to respondents 1 to 3 to direct the 4th respondent to appoint the petitioner as HSA (English), with

effect from 5.6.2006 and also to approve such appointment. During the pendency of the writ petition steps were initiated by the 3rd respondent to recover the amount of salary received by the petitioner, from the Manager. Through an amendment the petitioner had also incorporated challenge against the steps of recovery initiated against the Manager.

3. There is no much contention raised by the petitioner disputing the fact that the petitioner was not qualified to be appointed as HSA (Social Science) as on 5.6.2006, in view of GO (P).220/2005 G.Edn. dt. 19.7.2005. The petitioner had produced Ex10 Degree Certificate which would indicate that he had acquired the degree of Master of Arts in Historical Studies from the University of Madras, during the year 2012. However, acquisition of such a qualification during 2012 would not in any manner enable the petitioner to contend that he was qualified to the post of HSA (Social Science) during 2006.

4. Crux of the contention raised on behalf of the petitioner is that, Ext.P7 staff fixation order issued with respect to the 4th respondent's school for the academic year 2006-07 was erroneous. In GO(MS).11/2002, dt. 7.1.2002 the Government

have ordered creation of new cadre of HSA(English) in aided and Government Schools, by reallocating periods of the language of English which are presently allotted to core subjects of Maths, Science and Social Science, in a phased manner. By virtue of a consequential amendment brought to Rule 6(I) of Chapter XXI II KER the new cadre of HSA (English) was created. It is contended that to satisfy the minimum subject requirement, post of HSA (English) ought to have been created, since it would not have caused retrenchment of any of the existing HSA's in the core subjects. But before considering merit of such a contention, it is to be examined as to whether the petitioner can challenge Exts.P7 staff fixation order of the year 2006-07 in a writ petition filed in the year 2011. First of all, the petitioner is not a person aggrieved by the order of staff fixation. His appointment was specifically to the post of HSA(Social Science). The said appointment was approved only in the post of HSA(Social Science). After working in the approved post for quite some time, when it is found that the petitioner was not qualified for such appointment, the petitioner cannot turn around and contend that his appointment ought to have been made in a

post of HSA (English) which was not established on the date of such appointment. The authorities could not have approved the appointment considering it as an appointment to the post of HSA (English). For the said reason the petitioner cannot be heard to contend that the staff fixation order was erroneous. If there was any grievance with respect the staff fixation order, it was for the Manager to take up the same before the statutory authorities, during the appropriate time. Evidently the Manager has not adopted any such course, instead he had only appointed the petitioner against the sanctioned post of HSA(Social Science). Therefore the challenge now raised by the petitioner against Ext.P7 order of staff fixation cannot be accepted.

5. Learned counsel for the petitioner made an appeal to this court to direct the Government to consider as to whether the appointment of the petitioner can be considered and approved as an appointment made in the post of HSA (English) and to permit continuance of the petitioner on that basis. As observed above, it is not permissible for the petitioner to raise any such contention challenging the staff fixation order. He being a person admittedly not qualified to the post of HSA (Social Science) as on the date

of appointment, this court cannot find fault with cancellation of the approval granted.

6. Therefore this court finds that the writ petition deserves no merit and the same is accordingly dismissed.

7. It is made clear that, this court has not considered the challenges raised against recovery steps initiated against the Manager based on Ext.P9 notice. It is left open to the Manager to challenge the same in appropriate proceedings, to the extent sustainable under law.

C.K.ABDUL REHIM, JUDGE

Pmn/

