IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 23938 of 2004 (Y)

PETITIONER(S):

1. **REMESAN A.,**
   H.S.S.T. COMMERCE, MAMBARAM H.S.S., MAMBARAM P.O.,
   KANNUR DISTRICT.

2. **HARIKRISHNAN P.R.,**
   HIGHER SECONDARY SCHOOL TEACHER, MAMBARAM H.S.S.,
   MAMBARAM P.O., KANNUR.

3. **PRADEESH V.C.,**
   HIGHER SECONDARY SCHOOL TEACHER, MAMBARAM H.S.S.,
   MAMBARAM P.O., KANNUR.

4. **SASIDHARAN P.V.,**
   HIGHER SECONDARY SCHOOL TEACHER (MATHEMATICS),
   MAMBARAM H.S.S., MAMBARAM P.O., KANNUR DISTRICT.

5. **DENESHAN P.,**
   HIGHER SECONDARY SCHOOL TEACHER (PHYSICS),
   MAMBARAM H.S.S., MAMBARAM P.O., KANNUR.

6. **CHANDRAN K.,**
   HIGHER SECONDARY SCHOOL TEACHER, MAMBARAM H.S.S.,
   MAMBARAM P.O., KANNUR.

7. **SAPNA GOPAL,**
   H.S.S.T. (ENGLISH), MAMBARAM H.S.S., MAMBARAM P.O.,
   KANNUR.

8. **ASOKAN THYKANDIYIL,**
   H.S.S.T. (ENGLISH), MAMBARAM H.S.S., MAMBARAM P.O.,
   KANNUR.

9. **MANSOOR KINAKOOL,**
   HIGHER SECONDARY SCHOOL TEACHER (PHYSICS),
   N.M.HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

Msv/

10. JASEER K.V.,
HIGHER SECONDARY SCHOOL TEACHER (CHEMISTRY),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

11. ABOOBACKER KEETHADATH,
HIGHER SECONDARY SCHOOL TEACHER (POLITICS),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

12. MAJEED NADUTHARAMMAL,
HIGHER SECONDARY SCHOOL TEACHER (BOTANY),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

13. ABDUL AZEEZ C.P.,
HIGHER SECONDARY SCHOOL TEACHER (ECONOMICS),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

14. MUHAMMED ASHARAF M.,
HIGHER SECONDARY SCHOOL TEACHER (ZOOLOGY),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

15. BINDU C.J.,
HIGHER SECONDARY SCHOOL TEACHER (HINDI),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

16. MUHAMMED SHAMEER PEROOLLI J.,
HIGHER SECONDARY SCHOOL TEACHER (URDU),
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

17. ASHRAF THUNDIYIL,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR,
THALASSERY, KANNUR.

18. SHIJU P. OUSEPH,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M.HIGHER SECONDARY SCHOOL, PERINGATHUR, THALASSERY,
KANNUR.

19. JITHESH M.P.,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR,
THALASSERY, KANNUR.

20. ABDUL HAMEED M.,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR,
THALASSERY, KANNUR.

Msv/

21. HAKKIM PUNNAKKAL,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR,
THALASSERY, KANNUR.

22. PALLAVI P.,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR,
THALASSERY, KANNUR.

23. FIROZ K.,
HIGHER SECONDARY SCHOOL TEACHER,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR, KANNUR.

BY ADVS.SRI.BENOY THOMAS
SRI.PAULSON THOMAS

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, GENERAL EDUCATION,
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM.

3. DISTRICT EDUCATIONAL OFFICER, THALASSERY.

4. PRINCIPAL,
MAMBARAM HIGHER SECONDARY SCHOOL, MAMBARAM P.O.,
KANNUR.

5. PRINCIPAL,
M.M. HIGHER SECONDARY SCHOOL, THALASSERY, KANNUR.

6. PRINCIPAL,
N.A.M. HIGHER SECONDARY SCHOOL, PERINGATHUR,
THALASSERY, KANNUR.

R1-R3 BY SENIOR GOVERNMENT PLEADER SRI.SAIDALAVI K.K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 23938 of 2004 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE GOVERNMENT ORDER DTD.25.11.2000.

EXT.P2: TRUE COPY OF THE GOVERNMENT ORDER DTD.17.8.2001.

EXT.P3: TRUE COPY OF THE SPECIMEN STAFF FIXATION ORDER ISSUED BY THE 2ND RESPONDENT DTD.11.12.2001.

EXT.P4 SERIES: TRUE COPY OF THE APPROVAL ORDERS OF THE PETITIONERS ISSUED BY THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT IN WP(C) NO.16664/2004 DTD.13.7.2004.

EXT.P6: TRUE COPY OF THE CIRCULAR ISSUED BY THE RD RESPONDENT DTD.15.6.2004.

EXT.P7: TRUE COPY OF THE SPECIMEN MEMOS ISSUED BY THE PRINCIPALS SCHOOLS.

EXT.P8: TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE IN WP(C) NO.23066/2004 DTD.4.8.2004.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 23938 of 2004

Dated this the 30th day of September, 2015

J U D G M E N T

The petitioners, who are working as HSST/HSST Junior in their respective schools, were appointed either in pursuance of the GO dated 13.05.1998 or in pursuance of the directions given by the apex court in its interim order dated 07.12.1999 in Dollichan's case. In either case, the apex court protected the appointment of the petitioners with the following directions;

> "(1) All the teachers in the private schools, who have been appointed during the pendency of these cases pursuance to the interim order dated 07.12.1999 would be held to be duly appointed to the post and their services will not be annulled."
>
> ....
>
> "(3) If there has been any appointment made pursuance to the Government Order of 13.05.1998 as on today, those appointments would continue and will not be annulled."

Subsequently, the Government issued Ext.P1 GO regularizing the services of the petitioners in terms of Dolichan's direction. By Ext.P2 GO dated 17.08.2001, retrospective sanction was accorded by the Government

for the creation of the post in pursuance of the same direction given in Dolichan. Accordingly, staff fixation orders were made and posts were sanctioned by the 2nd respondent for the years, 1999-2000 & 2000-2001. Consequential approval order was also given to the petitioners as HSST/HSST Junior with effect from their respective dates of appointment by Ext.P4 series of approval orders. The petitioners allege that as far as the salary admissible to the post of HSST is concerned, the Government made certain gimmicks and denied salary or scale of pay to teachers appointed during 1999-2000 and 2000-01 and ordered only guest salary. The Government Orders relating to the same were sought to be challenged/interpreted in O.P. No.23810/02 and 24064/02 at the instance of persons like the petitioners (and connected cases) and this Court, in the aforesaid cases, granted declaration to the effect that petitioners are entitled for salary admissible for the post of HSST for their approved service and directed payment and made applicable to all similarly situated teachers by Ext.P5

Judgment. The Government has not filed any counter nor did file any appeal in any of the cases mentioned above; and therefore, the judgments have become final. The petitioners allege that Government again started playing gimmicks and issued contrary G.O. Dated 05.11.2003 restating that the G.Os challenged/sought to be interpreted in the aforementioned cases will be pressed into service for disbursement of salary in the purported compliance of judgments. Another Government Order dated 29.05.2004 also reiterates the same position. According to the petitioners, the G.O.s pressed into service were issued before the judgments and considered by this Court. The petitioners point out that with the malicious intention to escape from the liability to pay the salary against the posts and escape from the contempt proceedings, Government now started to get refund of the already granted benefits of increment etc. w.e.f. the approved date of appointment. According to the petitioners, they are entitled to get all service benefits including salary in the scale of pay and increment w.e.f. their approved date of appointments as per

the judgments, which have become final. Therefore, according to the petitioners, Exts.P6 & P7 impugned orders, by which the 3rd respondent DEO and the Principals of the schools sought to get refund of already granted benefits of increments to the petitioners w.e.f. their date of approved appointments against sanctioned post is illegal. Hence, this writ petition.

2. Arguments have been heard.

3. The main challenge in this writ petition is Ext.P6 circular of the DEO, directing refund of the increment granted to the petitioners and the similarly placed persons. This, according to the petitioners, is based on GO(P) No.56/02/Fin. dated 16.01.2002, as per which, the petitioner would be eligible for the salary with effect from 01.12.2001.

4. Today, the learned counsel for the petitioners invited my attention to a subsequent Government Order issued by the General Education Department, i.e., GO(Ms) No.60/2007/G.Edn dated 12.03.2007, which practically supersedes the Government Order dated 25.01.2002. By

the recent order, the Government have examined the matter in detail and they were pleased to sanction arrear salary to those Higher Secondary School Teachers up to the period 30.11.2001 in the scale of pay admissible to Higher Secondary School Teachers. The arrear salary consequent to this up to 31.12.2006 would be merged to their PF account and the same would be allowed to be withdrawn only after 31.12.2011. In the light of GO(Ms) No.60/2007/G.Edn dated 12.03.2007, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, the writ petition is allowed. Exts.P6 & P7 are quashed. The date of approved appointment against the post of HSST/HSST Junior has to be reckoned for payment of all service benefits including increments as per GO(Ms) No.60/2007/G.Edn dated 12.03.2007.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-