

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 16727 of 2009 (I)

PETITIONER:

**AYISHA. I., AGED 35 YEARS,
W/O.ASHRAF, CHALIL HOUSE,
POST VILAYIL, MALAPPURAM.**

**BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM.**
- 4. THE ASST.EDUCATIONAL OFFICER,
KONDOTTY, MALAPPURAM.**
- 5. THE MANAGER, NEERAD A.M.L.P.SCHOOL,
P.O.MUTHUVALLUR, KONDOTTY,
MALAPPURAM-673 638.**

BY GOVERNMENT PLEADER: K.T. LILLY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 16727 of 2009 (I)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXHIBITS P1: COPY OF THE APPOINTMENT ORDER DATED 06.06.2001 ISSUED TO
THE PETITIONER BY THE 4TH RESPONDENT.**

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

skr

SHAJI P. CHALY, J.

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W.P.(C).No.16727of 2009

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Dated this the 4th day of August, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking a writ of mandamus or any other appropriate writ order or direction, directing respondents 1 and 4 to disburse the salary and other benefits to the petitioner for the academic period 2003–2004 (i.e. from 15.07.2003 to 14.07.2004) and for other related reliefs.

2. Brief facts for the disposal of the case are as follows;

3. Petitioner was appointed as L.P.S.A. by the 5th respondent from 06.06.2001 to 18.10.2001 on a leave vacancy. Thereafter, the petitioner's appointment was approved by the 4th respondent as per Ext.P1 order dated 06.06.2001. Thereafter petitioner was appointed in an additional post during 2002–2003 academic year and her appointment was approved. In the academic year 2002–

2003, there were 10 divisions in the school and on the basis of the strength of the school, an additional post was requested by the 5th respondent manager. But the Government disallowed the request for the additional post because of the economic ban.

4. It was also contended by the petitioner that during the academic year 2003–04 additional 11th post was again requested. But on verification of the 4th respondent, again the request of additional post was declined. It was also contended that on the basis of a high level verification by the 3rd respondent, there was insufficient strength for giving additional division. The request of the 5th respondent for additional division was also rejected by the 3rd respondent. It was also contended that the petitioner has joined the 5th respondent school as L.P.S.A., because of the sufficient strength of the students and she continued teaching, believing that management will get sanction of

additional post from Higher Authorities by filing appeal. Even though the management went up to the Government level challenging the orders, declining the request of additional post in the year 2003–2004, it was not pursued thereafter.

5. Anyhow, in spite of not sanctioning an additional post, petitioner continued in the school in the subsequent academic year also and thereafter in the year 2004–05, the 5th respondent management was sanctioned with additional post and the petitioner was shifted to permanent post from 17.10.2004 onwards and continuing as an L.P.S.A as such. The grievance voiced by the petitioner in this writ petition is that during the period 2003–2004 she was not paid salary by the management for the reason that additional post was not sanctioned by the Government during that period.

6.The 1st respondent has filed a counter

affidavit refuting the statements and contentions contained in the writ petition and contended that the continuance of the petitioner in the school of the 5th respondent without approval will not render any liability to the 1st respondent for payment of the salary during the period under which the service of the petitioner was not approved.

7. Heard the learned counsel for the petitioner and learned Government Pleader.

8. The learned counsel for the petitioner contended that since the service of the petitioner was approved by the 1st respondent during an earlier period, she was entitled to be paid salary by the Government especially due to the fact that the additional post could not be sanctioned consequent on the division fall and there was no fault on her part in continuing service especially when the management has not terminated her service as teacher from the school. She also contended that the salary

due to her for the period claimed should be paid by the Government and adjustment to the same shall be made after making due proceedings against the 5th respondent management. On the other hand, the learned Government Pleader submitted that the Government is liable to pay salary to the petitioner only if her service was approved, by the Government and since the period during which the salary was claimed by the petitioner was not approved, Government is not liable to pay salary to the petitioner and if at all she has any claim, same will have to be made against the 5th respondent management.

9. After evaluating the rival submissions made by the counsel and perusing pleadings and the documents what I gathered was that, admittedly the service of the petitioner during the period of 2003-04 was not approved by the Government. Even though there was a division fall consequent to which staff strength was

reduced, she was allowed to continue in the school by the 5th respondent management and therefore the Government did not have any liability to pay salary to the petitioner during the period, she continued in service without approval. Therefore, the claim raised by the petitioner against the 1st respondent, in my view, was not sustainable. However, leaving open the right of the petitioner to claim the salary during the period 2003-2004 against the management, the writ petition is disposed of.

Sd/-
SHAJI P. CHALY
JUDGE

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