

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE SMT. JUSTICE P.V.ASHA**

**FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H**

**WP(C).No. 15650 of 2013 (E)**  
-----

**PETITIONER(S):**  
-----

**NASEERA A AGED 38 YEARS  
W/O.LATE MR.ALI AHAMED, ARABIC TEACHER  
C.H.M.K.S.M.U.P.SCHOOL, NANDANKIZHAYA, KOLLENGODE  
PALAKKAD-678 506.**

**BY ADVS.SRI.C.A.MAJEED  
SRI.K.H.ASIF  
SMT.RAAGA R.RAMALAKSHMI  
SRI.P.B.UNNIKRISHNAN NAIR**

**RESPONDENT(S):**  
-----

- 1. STATE OF KERALA  
REPRESENTED BY PRINCIPAL SECRETARY  
GENERAL EDUCATION DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM. 695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS  
JAGATHI, THIRUVANANTHAPURAM. 695 014.**
- 3. JOINT DIRECTOR OF PUBLIC INSTRUCTIONS  
JAGATHI, THIRUVANANTHAPURAM. 695 014.**
- 4. THE DEPUTY DIRECTOR OF EDUCATION  
D.D.OFFICE, PALAKKADU-678 001.**
- 5. THE ASSISTANT EDUCATION OFFICER  
OFFICE OF THE DISTRICT EDUCATION OFFICER, KOLLENGODE  
PALAKKADU DISTRICT-678 681.**
- 6. THE MANAGER  
C.H.M.K.S.M.U.P.S, NANDANKIZHAYA, KOLLENGODE  
PALAKKAD DISTRICT-678 506.**

**R1-R5 BY ADV. GOVERNMENT PLEADER SRI. V.K. REFEEL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-08-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
-----

**EXT.P1- A PHOTOCOPY OF THE STAFF FIXATION ORDER FOR THE ACADEMIC YEAR 1979 - 1980 FOR THE 6TH RESPONDENT SCHOOL.**

**EXTP2- A PHOTOCOPY OF THE STAFF FIXATION ORDER FOR THE ACADEMIC YEAR 2007 - 2008 FOR THE 6TH RESPONDENT SCHOOL.**

**EXTP3- A PHOTOCOPY OF THE STAFF FIXATION ORDER FOR THE ACADEMIC YEAR 2008 - 2009 FOR THE 6TH RESPONDENT SCHOOL.**

**EXTP4- A PHOTOCOPY OF THE REVISION PETITION DATED 07.05.2012 PREFERRED BY THE 5TH RESPONDENT.**

**EXTP5- A PHOTOCOPY OF THE ORDER NO.7507/S2/2012/G.EDN DATED 25.03.2013 ISSUED BY THE 1ST RESPONDENT.**

**EXTP6- A PHOTOCOPY OF THE G.O.(RT).NO.5014/68/EDN. DATED 08.11.1968.**

**EXTP7- A PHOTOCOPY OF THE G.O.(MS).NO.371/2000/GEN.EDN. DATED 13.11.2000.**

**EXTP8- A PHOTOCOPY OF THE GOVERNMENT ORDER NO.51064/J2/91/G.EDN DATED 27.12.1991.**

**RESPONDENTS EXHIBITS:    NIL**

**/TRUE COPY/**

**P.A. TO JUDGE**

**SKV**

P.V.ASHA, J.

=====

W.P.(C). No. 15650 OF 2013

=====

Dated this the 21<sup>st</sup> day of August, 2015

JUDGMENT

Petitioner is a Part Time Arabic Teacher appointed with effect from 17.2.2009 in an aided UP School under the 6<sup>th</sup> respondent. She is seeking conversion of part time post as Full time. Ext.P4 revision petition filed by her before Govt under Rule 12F of Chapter XXIII of Kerala Education Rules, 1959, requesting to convert her post as full time on diversion of Group 'C' posts was rejected by Ext P5 order saying that sufficient periods are not available for diversion.

2. Relying on Exts.P6 and P7 Government orders, she claims Full time benefit. By Ext P6 Government Order dated 6.11.1968, Government ordered that in UP Schools and High Schools, one period from any subject under Group C will be diverted for teaching Arabic. By Ext P7 order dated 13.11.2000, Government clarified that the post created by virtue of group 'C' diversion cannot be treated as protected

and such full time posts cannot be converted into part time posts.

3. In Ext.P5 order dated 25.3.2013, while rejecting the request of petitioner it was stated that the post of Sanskrit Teacher in the School was already converted to full time by diverting periods from Group C subject and hence no other post can be converted by diversion.

4. Petitioner submits that though she was appointed against a retirement vacancy of an Arabic Teacher in a Full Time post, her appointment was as part time Arabic Teacher. Government had in Ext.P8 letter dated 27.12.1991, clarified that if there is no post of specialist/craft teacher in the School, the periods for the Group C subject for which there is no specialist/craft teacher can be diverted. It is provided therein that one period for the Group C subject per each standard can be diverted for Arabic. Similarly, one period per each standard can be diverted to Sanskrit, Urdu and Hindi.

5. Referring to Exts.P2 and P3 staff fixation orders for the School for the academic years 2007-08 and 2008-09, the petitioner pointed out that there are 12 periods for Arabic, whereas there are 37 periods for Craft, reckoning one period for each standard. If 3 periods for Craft subject is diverted, petitioner will be entitled to get the benefit of Full Time, going by the Government Order Ext.P6 as clarified in Ext.P8.

6. The Government has filed a counter affidavit admitting that the petitioner was appointed as Part Time Arabic Teacher with effect from 17.2.2009 to 31.3.2009 and thereafter with effect from 1.6.2009 against the retirement vacancy of Smt.Mariakutty, who was a part time Arabic Teacher with full time benefits. It is stated that as per the Staff fixation for the year 2010-2011 there were 3 divisions and 12 periods for Arabic and accordingly part time post was sanctioned. It is further stated that Sanskrit Teacher was not allowed Full Time benefit by diversion of Group 'C'

posts earlier. It is stated that since sufficient periods are not available for diversion, the petitioner cannot be granted full time benefit by diversion of group 'C' subjects.

7. The learned Counsel for the petitioner relied on a judgment of this court in Writ Appeal No. 233/08 wherein, after referring to the Government Letter Ext.P8, a Division Bench of this court held that going by para 3(b) of Ext.P8, even if there is no Physical Education Teacher, 3 periods can be diverted for Sanskrit, from the periods available for Physical Education. The claim of the Manager to convert the Part time post of Sanskrit Teacher into Full Time post, diverting 3 periods out of the 9 periods available for Physical Education was upheld, even though there was no sanctioned post for Physical Education. The learned Government Pleader vehemently opposed the contentions on behalf of the petitioner arguing that Government have already issued orders on 4.11.2010 cancelling Group C diversion.

8. On examination of the rival contentions, with reference to the pleadings and the Govt orders, it is seen that though there is a sanctioned post of Physical Education teacher in the School under the 6<sup>th</sup> respondent, there is no craft teacher. 11 divisions were sanctioned in the UP Section for the years 2007-08 and 2008-09. As per para 3(b) of Ext P8 letter one period each per standard can be diverted for Arabic when there is no post of Specialist/Craft teacher. As there is no Craft Teacher, there will not be any difficulty for diverting 3 periods for Arabic, from the periods available for the group C subject Craft, as provided in para 3(b) of Ext P8 letter. From Ext.P7 order, it is seen that Government had, as per the circular No.47295/J2/88/G.Edn dated 1.3.1989, ordered that Full time teacher can be appointed in the vacancy in a Full time post of language teacher created by diversion of Group C subjects. Therefore petitioner who was appointed in the retirement vacancy of such a Full Time teacher, should have been appointed as Full Time Arabic

teacher and given approval accordingly. The contention of the learned Govt Pleader that Govt have cancelled diversion of periods of Group C subjects cannot be accepted as no such cancellation is ordered. I have elaborately dealt with that contention in my judgment in W.P.(C) No.22772/2013.

Under the above circumstances, Ext.P5 is quashed. Respondents are directed to take appropriate steps for converting the Part Time Post of Arabic Teacher manned by petitioner to a Full Time Post with effect from the date of her appointment and to grant her all consequential benefits, within a period of 3 months from the date of receipt of a copy of this judgment.

Sd/ –  
P.V.ASHA, JUDGE

SKV