

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 14485 of 2014 (I)

PETITIONER:

SUSAMMA MATHEW,
AGED 35 YEARS,
THACHAYIL JOSE VILLA,
MALOODU P.O, ADOOR,
PATHANAMTHITTA,
NOW WORKING AS HSST (JR.) HINDI,
ST.MARY'S HSS, KIZHAKKEKARA,
KOTTARAKKARA.

BY ADV. SRI.PAULSON THOMAS

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. DIRECTOR,
HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM-695 001.
3. REGIONAL DEPUTY DIRECTOR,
DEPARTMENT OF HIGHER SECONDARY EDUCATION,
CORPORATION BUILDINGS, PALAYAM,
THIRUVANANTHAPURAM - 695 001.
4. MANAGER,
CORPORATE EDUCATIONAL AGENCY,
MALANKARA SYRIAN CATHOLIC SCHOOLS,
PATTOM P.O,
THIRUVANANTHAPURAM - 695 004.

R1-R3 BY GOVERNMENT PLEADER SMT.P.E.REZIYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE APPOINTMENT ORDER APPOINTING THE PETITIONER AS HSST (JUNIOR) HINDI AT POPE PIUS XI HSS, BHARANIKAVU, ALAPPUZHA FOR THE PERIOD FROM 19.11.2003 TO 31.3.2006.

EXT.P1(a): TRUE COPY OF THE APPROVAL ORDER ON EXT.P1 APPOINTMENT.

EXT.P2: TRUE COPY OF THE APPOINTMENT ORDER APPOINTING THE PETITIONER AS HSST (JUNIOR) HINDI AT ST.MARY'S HSS, KIZHAKKEKARA, KOTTARAKKARA W.E.F 21.07.2008.

EXT.P3: TRUE COPY OF G.O(MS) NO.278/2006/GEN.EDN. DT.9.11.2006.

EXT.P4: TRUE COPY OF THE INTIMATION GIVEN BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT CONCERNING THE OPTION OF SUBJECT COMBINATIONS OF THE 3 BATCHES INCLUDING THE 3 SECOND LANGUAGES.

EXT.P5: TRUE COPY OF G.O(MS) NO.153/2000/GEN.EDN. DT.19.5.2000.

EXT.P6: TRUE COPY OF THE STAFF FIXATION ORDER ISSUED BY R3 FOR THE ACADEMIC YEARS 2006-07, 2007-08 AND 2008-09 IN THE PETITIONER'S SCHOOL.

EXT.P7: TRUE COPY OF THE LETTER NO.527/08 DATED 12.05.2008 ISSUED BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT.

EXT.P7(a): TRUE COPY OF THE LETTER DT.20.11.08 ISSUED BY R4 TO R3.

EXT.P7(b): TRUE COPY OF THE LETTER NO.529/08 DATED 11.06.09 ISSUED BY R4 TO R1.

EXT.P7(c): TRUE COPY OF LETTER DT.12.06.09 ISSUED BY R4 TO R1.

EXT.P8: TRUE COPY OF THE JUDGMENT IN WPC.NO.2313/2009 DT.11.11.09.

EXT.P9: TRUE COPY OF THE ORDER PASSED BY THE GOVT. PURSUANT TO EXT.P8 JUDGMENT CREATING/UPGRADING THE POSTS OF THE PETITIONER'S SCHOOL FOR THE YEARS 2006-07, 2007-08 AND 2008-09.

EXT.P10: TRUE COPY OF THE INTERIM ORDER PASSED BY THE HIGH COURT IN WPC.NO.37392/2009 DT.11.2.2010.

EXT.P11: TRUE COPY OF THE PROCEEDINGS NO.33389/T1/2009/GEN. EDN. DT.19.12.2009 OF R1.

EXT.P12: TRUE COPY OF THE DIRECTIONS IN PROCEEDINGS NO.Acd-SPC-3/68061/HSE/2009 DT.28.12.2009 ISSUED BY R2.

EXT.P13: TRUE COPY OF JUDGMENT DT.2.8.2011 IN WPC.15503/2010.

EXT.P14: TRUE COPY OF GO(Rt) NO.3886/2012/Gen.Edn. DT.10.8.12.

EXT.P15: TRUE COPY OF THE G.O(Ms) NO.244/2013/Gen.Edn. DT.30.08.2013.

EXT.P16: TRUE COPY OF THE APPROVAL ORDER NO.TRO/5/2983/HSE/2008 ISSUED BY R3 DT.30.09.2013.

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EXT.P17: TRUE COPY OF THE ORDER IN CONTEMPT CASE NO.1025/2012
DT.7.2.2014.

EXT.P18: TRUE COPY OF THE JUDGMENT IN WPC.NO.17676/2009.

EXT.P19: TRUE COPY OF G.O(MS).267/2014 DT.9.12.2014.

RESPONDENTS' EXHIBITS

EXT.R2(a): TRUE COPY OF THE PROPOSAL OF THE DIRECTOR OF HIGHER
SECONDARY EDUCATION TO GOVT.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.14485 of 2014-I

Dated this the 24th day of February, 2015

JUDGMENT

The only grievance raised in this Writ Petition is regarding the denial of salary payable to the petitioner with effect from the date of approval of her appointment. The petitioner is working as a Higher Secondary School Teacher (HSST) (Junior) (Hindi) in St.Mary's HSS, Kizhakkekara, Kotttarakkara, based on her appointment as per Ext.P2 order dated 21.07.2008. The appointment was made against a vacancy which arose on allotment of higher secondary course in the school, as per Ext.P1. She has been continuing in the school ever since the date of appointment. She had earlier approached this Court in Writ Petition (C) No.15503/2010, when her appointment was not approved. By Ext.P13 judgment dated 2.8.2011 in that Writ Petition, this Court declared the entitlement to get the appointment approved and directed the Director of Higher Secondary Education to pass orders regarding approval of

appointment of the petitioner, within a period of two months.

2. By Ext.P16 order, the Director of Higher Secondary Education approved the appointment of the petitioner, pursuant to Ext.P13 judgment, w.e.f 21.07.2008. A rider is attached therein to the effect that she will be eligible for monetary benefits attached to the post only w.e.f 30.08.2013. It is as against this condition stipulated in the order of approval that the petitioner has approached this Court.

3. There is no dispute as to the fact that the petitioner has been working in the school with effect from the date of her appointment and the appointment was against a sanctioned post, admissible as per the workload. The Director of Higher Secondary Education has finally chosen to approve her appointment, for which also she had to file Con.Case(C) No.1025 of 2012 against the Director of Higher Secondary Education.

4. I have heard the learned counsel for the petitioner as well as the learned Government Pleader.

5. As the petitioner has been working in the School ever since her appointment and the post in which she was appointed has been sanctioned w.e.f 21.07.2008, there cannot be

any justification for denying her the monetary benefits attached to the post with effect from the date of her appointment i.e 21.07.2008.

6. It is pertinent to note that appointment of all the teachers who were appointed consequent to the allotment of new batch of High Secondary Courses in the very same school were already approved with effect from the date of their appointment and all of them were granted all the monetary benefits with effect from the date from which their appointments were approved. There cannot be any discrimination with respect to the Higher Secondary School Teacher in Hindi alone by delaying the date for payment. The petitioner is entitled to all the monetary benefits attached to the post of HSST Junior towards the services she has already rendered in the School on the basis of Ext.P2 order of appointment.

7. The learned counsel for the 2nd respondent submitted that payment of salary with effect from the date of approval will result in various hardships. The details regarding the payment to be made on account of the approval from the date of appointment/date of effect of approval is explained in the

counter affidavit.

8. The services of the petitioner has been already utilised all these years and several batches of students passed out from the School. There is sanctioned post also with effect from the date of effect of approval. Therefore there is no basis for the untenable explanations furnished in the counter affidavit for denying the salary and other benefits attached to the post of HSST (Junior) (Hindi) with effect from 21.07.2008. After extracting the services of petitioner it is highly unfair and unjust on the part of the respondents to deny the pay and allowances on the ground of financial burden.

In these circumstances this Writ Petition is disposed of declaring that the petitioner will be entitled to all monetary benefits attached to the post of HSST (Junior) (Hindi) w.e.f 21.07.2008. The arrears of pay due to her shall be paid within a period of four months from the date of receipt of a copy of this judgment.

rtr/

Sd/-
(P.V.ASHA, JUDGE)