

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C) .No. 18724 of 2012 (M)

PETITIONER(S) :

MANOJ KUMAR V.,
AGED 31 YEARS, S/O.K.NARAYANAN NAIR,
RESIDING AT KATTAMBALLY HOUSE,
CHEMNAD POST, KASARAGOD DISTRICT.

BY ADVS.SRI.SURESH KUMAR KODOTH
SMT.HEMALATHA.

RESPONDENT(S) :

-
1. DIRECTOR OF HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM - 695 001.
 2. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
KOZHIKODE - 673 001.
 3. THE MANAGER,
NAVAJEEVAN HIGHER SECONDARY SCHOOL,
PERDALA P.O.,
KASARAGOD DISTRICT - 671 551.
 4. THE SELECTION COMMITTEE FOR THE POST OF HSST,
REPRESENTED BY ITS CONVENER/PRINCIPAL,
NAVAJEEVAN HIGHER SECONDARY SCHOOL, PERDALA,
BADIDKA P.O., KASARAGOD DISTRICT - 671 551.
 5. SREENATH E.,
HSST (COMPUTER APPLICATION),
NAVAJEEVAN HIGHER SECONDARY SCHOOL, PERDALA,
BADIDKA PO, KASARAGOD DISTRICT - 671 551.
 6. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM - 695 001.

R5 BY ADV. SRI.KALEESWARAM RAJ
R3 & 4 BY ADV. SRI.K.G.GOURI SANKAR RAI
BY SENIOR GOVERNMENT PLEADER SRI. S.JAMAL.

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

rvs.

APPENDIX

PETITIONER(S) EXHIBITS :

- EXHIBIT-P1. A TRUE COPY OF THE ADVERTISEMENT IN 'MATHRUBHOOMI THOZHIL VARTHA' DATED 5/11/2011.
- EXHIBIT-P2. A TRUE COPY OF COMPLAINT BEFORE BADIADKA POLICE STATION DATED 21/11/2011.
- EXHIBIT-P3. A TRUE COPY OF THE RECEIPT ISSUED BY BADIADKA POLICE ON 21/11/2011.
- EXHIBIT-P4. A TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DATED 18.11.2011.
- EXHIBIT-P5. A TRUE COPY OF REPRESENTATION SUBMITTED BEFORE THE FIRST RESPONDENT DATED 28/11/2011.
- EXHIBIT-P6. A TRUE COPY OF JUDGMENT IN WP(C) NO.32772/2011, DATED 2/4/2012.
- EXHIBIT-P7. A TRUE COPY OF HEARING NOTE DATED 14.6.2012.
- EXHIBIT-P8. A TRUE COPY OF ORDER DATED 4/7/2012 ISSUED BY THE FIRST RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

~~~~~  
**W.P.(C).No.18724 of 2012**  
~~~~~

Dated this the 2nd day of February, 2015

J U D G M E N T

This writ petition is filed challenging rejection of the petitioner's candidature for appointment as Higher Secondary School Teacher (HSST) for the reason that he did not produce the original documents evidencing his qualification before the selection committee.

2. The petitioner had worked as a Guest Lecturer in the Navajeevan Higher Secondary School, Perdala in Kasargod District. He entrusted original documents in relation to the qualification before the Manager. Thereafter, a regular vacancy of Higher Secondary School Assistant (Junior) in Computer Application arose in the same school. Petitioner applied for the post. The interview was scheduled on 19/11/2011. He

-:2:-

approached the Principal and the Manager on several occasions for return of the documents before the scheduled date of interview. The petitioner also claims that he has issued a registered notice on 06/11/2011 for return of the documents. It is submitted that he went to the Principal on 17/11/2011 and again on 18/11/2011. Since he could not produce the original documents on the date of interview, he lodged a complaint before the Police on 21/11/2011. Ext.P2 is the copy of the said complaint and Ext.P3 is the acknowledgment. Petitioner relies on Ext.P4 notice issued by the Manager. Ext.P4 is dated 18/11/2011 wherein the petitioner was requested to take back the original certificates. It is stated in Ext.P4 that the petitioner on 16/11/2011 refused to accept the certificates by giving proper acknowledgment. It is further stated that the documents were available in the office on 16/11/2011. Petitioner points out at the envelope containing Ext.P4 which is produced as Ext.P4 (2). This would show that the Manager sent Ext.P4 only

on 21/11/2011. The petitioner submits that the Manager sent Ext.P4 with an anterior date to cover up his illegal action. The fifth respondent is the candidate who was selected in the interview. The petitioner challenges the selection process and submits that the selection process of 5th respondent is illegal and unsustainable.

3. Though, notice was served on the Manager, he has not chosen to contradict any of the allegations raised by the petitioner in the writ petition.

4. On behalf of the Department a counter affidavit has been filed. It is admitted that appointments to the teaching posts have to be made by the Manager on the basis of the recommendation of the Chairman of the Selection Committee consisting of Manager or his nominee who will be the Chairman of the Selection Committee and other than the Manager, the Principal of his school and a Government representative nominated by the Manager. It is further submitted that the petitioner failed to produce the original

certificates at the time of interview and therefore, the Selection Committee did not consider the petitioner's candidature. It is also stated that the fifth respondent is the duly selected candidate.

5. The sequence of factual aspects as revealed would indicate that the Manager of the school with a malicious intention detained the original certificates of the petitioner. The Manager's letter dated 18/11/2011 would show that the original certificates were available in the office on 16/11/2011. The interview was scheduled on 19/11/2011. The date on the envelope containing Ext.P4, which is dated 18/11/2011, shows that it was despatched only on 21/11/2011. Therefore, the original certificates were available with the Manager on the date of interview i.e. On 19/11/2011. As rightly pointed out by the learned counsel for the petitioner, Ext.P4 is antedated so as to make it appear that the petitioner failed to produce the original documents and also failed to collect the documents from the school. The Manager was the

Chairman of the Selection Committee and he was very well aware that the petitioner's document were in his possession on 19/11/2011. He could have very well given the documents to the petitioner on that day itself. The conduct of the Manager would show that this was purposefully done. It was a vicious act emanated from malicious intention to deny an opportunity to the petitioner to take part in the interview.

6. The position of the Manager is that of the trustee. He is expected to discharge his duties and functions to protect the interest of the State. He is discharging a public function. The appointment and selection of the teachers have to be exercised by him on account of the duty attached to him as a public functionary. He is bound to follow the relevant regulation for selection in the matter of appointment of teachers. Though, there is no vitiating elements of selection procedure to unsettle the appointment of the

fifth respondent, nevertheless, a malicious action on the part of the Manager cannot be left with impunity.

7. In **Binny Ltd. v. V.Sadasivan [(2005) 6 SCC 657]**, the Hon'ble Supreme Court held in para.11 as follows:

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations

-:7:-

could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest..."

8. The appointment of HSST is governed by the provisions of Chapter XXXII of the Kerala Education Rules, 1958. The approval of appointment given to the teachers is subject to satisfaction of the fulfilment of the conditions in Chapter XXXII of KER. The Manager is performing the public function in regard to appointment of teachers. Therefore, the action of the Manager in appointing the teacher is amenable under Article 226 of the constitution.

9. The equality of opportunity in public appointment is a fundamental right. Any denial of such right is a denial of the fundamental right. In any circumstances, when a person is deprived of such right he has a remedy either before this Court under Article 226 of the Constitution to enforce his right or to seek damages from the civil court. But the public law remedy to award public law damages are not alien to the writ jurisdiction. The existence of any alternate remedy to approach the civil court would not prevent the High Court or the Hon'ble Supreme Court from awarding public law damages in appropriate cases, if so warranted.

10. In **Rudul Shah v. State of Bihar & Anr. [(1983) 4 SCC 141]**

the Hon'ble Supreme Court held as follows:

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim

has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right.....

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these

circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of

-:11:-

individuals is the true bastion of democracy.

Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

(emphasis in bold)

11. The Hon'ble Supreme Court also considered the similar question in **Nilabati Behera (Smt.) Alias Lalita Behera v. State of Orissa & Ors. [(1993) 2 SCC 746]** and **S.P.S Rathore vs. State of Haryana [(2005) 10 SCC 1]**.

12. The allegation against the Manager stands unequivocally proved without further requirement to probe into malefaction of the Manager. The documents produced by the petitioner clearly spell out the Manager's intention to deprive the petitioner from participating in the interview without documents. The damages in such circumstances is awarded not only on the ground of loss of opportunity to the petitioner but also as a deterrent measure. The Manager shall pay Rs.5 lakhs (Rupees five lakhs only) as damages to the petitioner. If the then Manager is not in office now,

the recovery shall be effected by resorting to revenue recovery proceedings against him or his property. The findings in this case clearly establish that the Manager, at the relevant point of time, is unfit to continue in the office of the Manager. The Manager is duty bound to uphold the public as well as State interest. The Manager who committed flagrant violation of law cannot continue in the office. Therefore, if the same Manager is continuing in the Office, the Director of the Higher Secondary Education shall take steps to remove the Manager from the Office. Though, there is no specific provision under the Kerala Education Rules to remove the Manager of a Higher Secondary School from the office, nevertheless, the power to approve also includes the power to dismiss. (See Section 16 of the General Clauses Act, 1897). The department is free to approve and grant salary payable to the fifth respondent, if she is otherwise eligible. The writ petition is disposed of. Cost follows the event, the Manager shall pay cost of litigation to the

W.P.(C).No.18724/2012

-:13:-

petitioner which is quantified at Rs.20,000/- (Rupees twenty thousand only).

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms