

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 18318 of 2011 (L)

PETITIONER(S):

**P.V.LOVELIN,
KERALA FOLKLORE ACADEMY,
CHIRACKAL.P.O, PUTHIYATHERU KANNUR, RESIDING AT
SREENILAYAM, CHOKLI.P.O, KANNUR.**

**BY ADVS.SRI.P.V.SURENDRANATH
SMT.BINDUMOL JOSEPH
SRI.B.S.SYAMANTHAK**

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED BY ITS
SECRETARY FOR CULTURAL AFFAIRS DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM
PIN-695001.**
- 2. KERALA FOLKLORE ACADEMY, REPRESENTED BY
ITS SECRETARY, CHIRACKAL.P.O, PUTHIYATHERU
PIN-670011.**
- 3. SECRETARY, KERALA FOLKLORE ACADEMY,
CHIRACKAL.P.O, PUTHIYATHERU, PIN-670011.**
- 4. SRI.P.K.ABDUL RAHMAN, PEON, KERALA
FOLKLORE ACADEMY, CHIRACKAL.P.O, PUTHIYATHERU
PIN-670011.**

**R1 BY SENIOR GOVERNMENT PLEADER SMT.M.J.RAJASREE
R2 & 3 BY ADV. SRI.T.KAJITH KUMAR
R4 BY ADVA. SRI.ABDUL RAOOF PALLIPATH
SRI.K.R.AVINASH (KUNNATH)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-02-2015,
ALONG WITH WPC.NOS.23778/2011 & 13111/2014, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE G.O.(K)NO.20/2005/CAD DATED 28/2/2005**
- P2: COPY OF THE RESOLUTION DATED 27/1/2007 OF THE GENERAL COUNCIL OF THE R2 FOR APPOINTMENT OF THE PETITIONER AS PROGRAMME OFFICER**
- P3: COPY OF THE RESOLUTION OF THE GENERAL COUNCIL DATED 30/4/2009**
- P4: COPY OF THE COMMUNICATION ISSUED DATED 18/12/2009 OF BEHALF OF THE R1**
- P5: COPY OF THE COMMUNICATON DATED 8/1/2010**
- P6: COPY OF THE COMMUNICATION FROM THE GOVERNMENT DATED 26/5/10**
- P7: COPY OF THE LETTER DATED 3/6/10 ALONG WITH COPIES OF THE RELEVANT RESOLUTION**
- P8: COPY OF THE GOVERNMENT ORDER G.O.(MS)NO.12/11/CAD DATED 16/2/11**
- P9: COPY OF THE ACQUITTANCE ROLL OF WAGES FOR RELEVANT PERIOD EVIDENCING PAYMENT OF WAGES TO RIJU P.N.AS PEON OF THE R2**
- P10: COPY OF THE ORDER 14600/09 DATED 7/9/2009 OF THE R3**
- P11: COPY OF THE AFORESAID LETTER DATED 2/11/2009 WITH THE RELEVANT APPENDIX**
- P12: COPY OF THE CERTIFICATE DATED 24/9/2009 ISSUED BY THE R3**
- P13: COPY OF THE CERTIFICATE DATED 25/1/11 ISSUED BY THE R3**

RESPONDENTS' EXHIBITS

- R2(A): COPY OF THE REQUEST DATED 25/9/2007 SUBMITTED BY THE PETITIONER BEFORE THE R3**
- R2(B): COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF THE EXECUTIVE COMMITTEE OF THE R2 DATED 9/5/11.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M. Shaffique, J.

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W.P (C) Nos. 18318 & 23778 of 2011

and

13111 of 2014

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Dated this, the 27th day of February 2015.

J U D G M E N T

Petitioners in W.P (C) Nos. 18318 & 23778 of 2011 have been working in temporary vacancies in the Kerala Folklore Academy. According to them, when attempts were made to terminate their services, they have approached this Court. It is brought to the notice of this Court that as per the Rules Ext. P1, which relates to conditions of service of employees of Folklore Academy, the selection process is through qualified hands from the list available from the Employment Exchange and if qualified hands are not available, they were entitled to advertise in the news paper and conduct selection process through a committee. As per Rule 7A, it is provided that temporary hands will be terminated when their period is over. It is further provided that in case temporary hands are appointed in permanent posts, they shall continue to employ till permanent appointment is made.

2. The learned counsel for the petitioners submits that the petitioners were appointed against sanctioned posts and though they were not employed in accordance with the statutory provisions, they are entitled to continue until

regular hands are appointed in accordance with the procedure prescribed.

3. W.P (C) No. 13111/2014 has been filed by very same petitioners seeking for a direction to the Employment Officer to recommend the name of the petitioners to respondents 1 and 2 for selection to the post of L.D. Typist, L.D. Clerk and Watchman, under respondents 1 and 2, to conduct interview and selection and to complete the process.

4. Since the issue involved in these cases relates to appointments being made to Kerala Folklore Academy, the same are decided together.

5. By an interim order passed by this Court in W.P (C) Nos. 23778/2011 and 13111/2014, this Court had permitted the interview to be held, whereas it was directed that select list shall not be finalised. In these writ petitions, the petitioners have a grievance that their names were not forwarded by the Employment Exchange, which, according to them, is arbitrary.

6. Counter affidavit has been filed in these cases inter alia stating that the petitioners have no legal right to demand that they should continue in service till regular hands are appointed. It was stated

that the petitioners were only appointed on temporary basis. Therefore, they are not entitled for any benefits as claimed in the writ petition.

7. As far as W.P (C) No. 13111/2014 is concerned, the petitioners were not entitled to participate in the selection process, as according to them, their names were not sent by the Employment Exchange.

8. In the counter affidavit filed by respondents 2 and 3, it is stated that as per Ext. R2(f), the 3rd respondent had requested the 4th respondent to send the names of qualified hands. The number of posts in the various cadres were one each.

9. 4th respondent has filed a counter affidavit stating that on receipt of the requisition, the 4th respondent has forwarded a list of candidates on 8.1.2014 after strictly following the selection criteria regarding age, qualification, seniority etc., and also the rules for nomination and submission of the candidates as stipulated in the Employment Exchange Procedure for appointments in regular vacancies. It is also stated that no priority is given to any candidates who are already working under the 2nd respondent. The

nominations made against the request of the 2nd respondent was based on seniority as envisaged under the rules and regulations of employment exchange procedure.

10. Having regard to the nature of contentions urged by the 4th respondent, I do not think that the petitioners have made out a case for interference by this Court. There is no material to indicate that any person's name who is junior to the petitioners in the list available with the Employment Exchange was forwarded. Under such circumstances, there being no merit in W.P (C) No. 13111/2014, the same is liable to be dismissed.

11. As far as the other writ petitions are concerned, the petitioners are already continuing on a temporary basis but was not appointed in terms with the Rules. However, since they were appointed against substantive vacancies, in terms of Rule 7(c), they are entitled to continue till regular hands join duty. The only relief claimed is to permit them to continue employment till regular hands are appointed.

12. In the above circumstances, the writ petitions are disposed of as under:

(a) W.P (C) No. 13111/2014 is dismissed.

(b) In W.P (C) Nos. 18318 & 23778 of 2011, the petitioners shall be permitted to continue in service till regular hands are appointed. It shall be open for the Academy to proceed with the finalisation of the list in accordance with the procedure prescribed.

Sd/-

A.M. Shaffique, Judge.

Tds/