

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(C).No. 16613 of 2014 (B)

PETITIONER(S) :

1. **BINCY PHILIP**
H.S.S.T (JUNIOR) ENGLISH
ST.CORNELIUS HIGHER SECONDARY SCHOOL, KOLAYAD
KANNUR-670650.
2. **SHEEJA K.,**
H.S.S.T (JUNIOR) COMMERCE
ST.CORNELIUS HIGHER SECONDARY SCHOOL, KOLAYAD
KANNUR-670650.
3. **ANJU JOSE**
H.S.S.T (JUNIOR) COMMERCE
SACRED HEART HIGHER SECONDARY SCHOOL, PAYYAVUR
KANNUR-670 633.
4. **HELEN K. MATHEW**
H.S.S.T (JUNIOR) ENGLISH
NADUVIL HIGHER SECONDARY SCHOOL, NADUVIL P.O.
KANNUR DISTRICT-670 582.
5. **SANDEEP ALEX**
H.S.S.T (JUNIOR) COMMERCE
NADUVIL HIGHER SECONDARY SCHOOL, NADUVIL P.O.
KANNUR DISTRICT-670582.
6. **VINEETHA K.T.,**
H.S.S.T (JUNIOR) ENGLISH, KODALI, H.S.S
KODALI, KANNUR DISTRICT.
7. **SMITHA SEKHARAN**
H.S.S.T (JUNIOR) COMMERCE, KODALI, H.S.S
KODALI, KANNUR DISTRICT.
8. **DEEPAMOL K.S.,**
H.S.S.T (JUNIOR) COMMERCE
IRITTY HIGHER SECONDARY SCHOOL,
KEEZHOOR, IRIITY
KANNUR DISTRICT-670703.

9. SMITHA K.
H.S.S.T (JUNIOR) ENGLISH
P.M.S.A.M.A. HIGHER SECONDARY SCHOOL, CHEMMANKADAVU
KOTTAKKAL, MALAPPURAM DISTRICT.
10. RASHEEDA K.
H.S.S.T (JUNIOR) COMMERCE
P.M.S.A.M.A. HIGHER SECONDARY SCHOOL, CHEMMANKADAVU
KOTTAKKAL, MALAPPURAM DISTRICT.

BY SENIOR ADVOCATE DR.K.P.SATHEESAN
BY ADVS.SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP V. NAIR
SRI.S.VIBHEESHANAN

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
GENERAL EDUCATION (T) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION
OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM-695 001.
3. THE JOINT DIRECTOR (ACADEMIC)
OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM-695 001.
4. THE REGIONAL DEPUTY DIRECTOR
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE
KOZHIKODE-673 001.
5. THE REGIONAL DEPUTY DIRECTOR
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE,
KANNUR-
6. THE REGIONAL DEPUTY DIRECTOR
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE
MALAPPURAM-676 505.

R1 TO R6 BY GOVT. PLEADER SMT. SUNITHA VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015,
ALONG WITH WPC. 6798/2014 & CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1 : TRUE COPY OF ORDER NO.A4/3008(1)/13/K.DIS. DT.31-12-2013
ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P2 : TRUE COPY OF ORDER NO.A4/3008(2)/2013/K.DIS DT.31-12-2013
ISSUED BY THE 4TH RESPONDENT IN RESPECT OF THE 2ND
PETITIONER.
- EXHIBIT P3 : TRUE COPY OF ORDER NO.B4/10312/2013/K.DIS DT.16-01-2014 ISSUED
BY THE 4TH RESPONDENT IN RESPECT OF THE 3RD PETITIONER.
- EXHIBIT P4 : TRUE COPY OF THE ORDER NO.A5/1529/14/K.DIS DT.25-03-2014
ISSUED BY THE 5TH RESPONDENT IN RESPECT OF THE 4TH
PETITIONER.
- EXHIBIT P5 : TRUE COPY OF ORDER NO.A5/1408/2014/K.DIS DT.25-03-2014 ISSUED
BY THE 5TH RESPONDENT IN RESPECT OF THE 5TH PETITIONER.
- EXHIBIT P6 : TRUE COPY OF ORDER NO.A2/2859/2013/K.DIS DT.07-11-2013 ISSUED
BY THE 4TH RESPONDENT IN RESPECT OF THE 6TH PETITIONER.
- EXHIBIT P7 : TRUE COPY OF ORDER NO.A2/2861/2013/K.DIS DT.05-11-2013 ISSUED
BY THE 4TH RESPONDENT IN RESPECT OF THE 7TH PETITIONER.
- EXHIBIT P8 : TRUE COPY OF ORDER NO.A2/2970/2013/K.DIS DT.13-02-2014 ISSUED
BY THE 4TH RESPONDENT IN RESPECT OF THE 8TH PETITIONER.
- EXHIBIT P9 : TRUE COPY OF ORDER NO.G/1190/2014/RDD/MLPM/HSE DIS.
DT.29-5-2014 ISSUED BY THE 4TH RESPONDENT IN RESPECT OF THE
9TH PETITIONER.
- EXHIBIT P10 : TRUE COPY OF THE ORDER NO.G/1186/2014/RDD/MLPM/HSE DIS.
DT.26-5-2014 ISSUED BY THE 6TH RESPONDENT IN RESPECT OF THE
10TH PETITIONER.
- EXHIBIT P11 : TRUE COPY OF DIRECTION GIVEN BY THE 2ND RESPONDENT TO
RESPONDENTS 4, 5 & 6 DT.19-12-2013.
- EXHIBIT P12 : TRUE COPY OF ORDER DT. 25-4-2014 ISSUED BY THE 3RD
RESPONDENT TO THE 1ST PETITIONER IN THE APPEAL FILED BY THE
1ST PETITIONER.
- EXHIBIT P13 : TRUE COPY OF ORDER DT.25-4-2014 ISSUED BY THE 3RD
RESPONDENT TO THE 2ND PETITIONER IN THE APPEAL FILED BY THE
2ND PETITIONER.
- EXHIBIT P14 : TRUE COPY OF ORDER 20-2-2014 ISSUED BY THE 3RD RESPONDENT
IN RESPECT OF THE 3RD PETITIONER.

(Contd...)

WP(C).No. 16613 of 2014 (B)

EXHIBIT P15 : TRUE COPY OF ORDER DT.6-5-2014 ISSUED BY THE 3RD
RESPONDENT TO THE 4TH PETITIONER.

EXHIBIT P16 : TRUE COPY OF ORDER ISSUED BY THE 3RD RESPONDENT IN THE
APPEAL FILED BY THE 5TH PETITIONER DT.6-5-2014.

EXHIBIT P17 : TRUE COPY OF ORDER ISSUED BY THE 3RD RESPONDENT IN THE
APPEAL FILED BY THE 6TH PETITIONER DT. 7-4-2014.

EXHIBIT P18 : TRUE COPY OF ORDER ISSUED BY THE 3RD RESPONDENT IN THE
APPEAL FILED BY THE 7TH PETITIONER DT. 7-4-2014.

EXHIBIT P19 : TRUE COPY OF ORDER ISSUED BY THE 3RD RESPONDENT IN THE
APPEAL FILED BY THE 8TH PETITIONER DT. 25-4-2014.

EXHIBIT P20 : TRUE COPY OF JUDGMENT DT.10-1-2006 IN WPC 10845/2005.

EXHIBIT P21 : TRUE COPY OF JUDGMENT DT. 22-5-2012 IN WPC 5709/2007
PUBLISHED IN THE WEBSITE OF THIS HON'BLE COURT.

EXHIBIT P22 : TRUE COPY OF ORDER NO.B3/5085/RDDE/HSE/2013 DT.14-6-2013
ISSUED BY THE REGIONAL DEPUTY DIRECTOR, HIGHER SECONDARY
EDUCATION, ERNAKULAM.

EXHIBIT P23 : TRUE COPY OF ORDER NO.B3/5086/RDDE/HSE/2013 DT.19-6-2013
ISSUED BY THE REGIONAL DEPUTY DIRECTOR, HIGHER SECONDARY
EDUCATION, ERNAKULAM.

EXHIBIT P24 : TRUE COPY OF LETTER WRITTEN BY THE 2ND RESPONDENT TO THE
FIRST RESPONDENT DT.11-4-2013.

RESPONDENT(S)' EXHIBITS :

EXT. R2(a) COPY OF THE G.O.(MS) NO. 162/1991/G.EDN DATED 1.10.1991.

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

.....
**W.P.(C).Nos.16613, 16621, 6798, 7498, 7502, 7660, 10680,
20486, 12804 of 2014 & W.P.(C).No. 16683 & 11033 of 2014**

.....
Dated this the 1st day of June, 2015

J U D G M E N T

Insofar as the issue involved in all the writ petitions is similar, they are taken up together for consideration and disposed by this common judgment. For the sake of convenience, the reference to facts and exhibits is from W.P.(C).No.16613 of 2014.

1. The petitioners in the writ petition were appointed as H.S.S.T (Junior) in the respondent school with effect from 16.03.2013. They were all posted against sanctioned posts for the academic year 2011 - 2012. The facts in the writ petition would disclose that, while the appointment orders were sent to the educational authorities for approval, the approval of their appointment was effected only with effect from 03.06.2013/08.07.2013, subsequent to the dates of their actual appointment. Ext.P1 is the order approving the appointment of the 1st petitioner, Ext.P2 pertains to the 2nd petitioner and Exts.P3 to P10 pertain to other petitioners. Aggrieved by the orders of approval, to the extent that they approved the appointment only with effect from a subsequent date, and not from the date of their

actual appointment, the petitioners approached the 3rd respondent through appeals. The 3rd respondent, by Exhibits.P12 to P19 orders rejected the claim for approval, notwithstanding Ext.P11 direction dated 19.12.2013 that was issued by the 2nd respondent clarifying that persons like the petitioner could have obtained an approval of their appointment from the date of appointment. The only confusion that was created by Ext.P11 was through Clause 1 therein which indicated that the appointees should have a minimum of two months service prior to March 31st to get the scale of pay and vacation salary applicable to regular appointees. The petitioners would rely on Ext.P21 judgment of this Court wherein, considering an identical situation where a person was appointed as an H.S.S.T on 25.02.2005 in a regular vacancy, but the approval to the said appointment was given only with effect from 11.07.2005 on a similar reasoning as evidenced in Exts.P12 to P19 orders that are impugned in the present writ petition, this Court found as follows:

"3. I have heard the parties, Chapter XXXII of Kerala Education Rules contains the recruitment rules for appointment to various posts in Aided Higher Secondary Schools. Although Chapter XIV A of the KER contains certain restrictions regarding appointments in

aided schools to vacancies which have arisen at the fag end of the academic year, Chapter XXXII does not contain any similar provisions. A Division Bench of this Court has already held that in respect of appointments in Higher Secondary Schools, the provisions of the KER cannot be pressed into service. Normally unless there is any legal objection against the appointment, the appointment has to be approved from the date of joining duty. It is not disputed before me that the petitioner had joined duty in the 3rd respondent's School on 25.02.2005 and has been working continuously from that date. It is also not disputed that the petitioner was appointed in a regular permanent vacancy, which arose on the resignation of a permanent Higher Secondary School Teacher of the School. Even under the KER the restriction in appointment is only to vacancy the period of which is less than 60 days (before the amendment of Rule 7A of KER or one year (after the amendment of the Rule). That Rule does not prohibit appointments to permanent vacancies which arise even before the close of 'academic' year. But it is specifically stipulated that no appointments shall be made to vacancies, which arise on the closing date. But, here, the vacancy arose on 24.01.2005 and the petitioner was appointed on 25.02.2005. The learned Government Pleader would strenuously argue

that during the fag end of the academic year it is not necessary to appoint a fresh hand as a teacher, insofar as by that time all the portions of the syllabus would have been covered by the teacher, who had resigned from service, I am not inclined to accept that contention. According to me, that period is the most crucial period for the students. Perhaps the efforts of the teacher during that period would decide as to whether a particular student should pass the examination or get first class or distinction. I am of opinion that there should always be teachers in regular vacancies till the end of the academic year, failing which the same would prejudicially affect the studies of the students.

4. As such, I do not find any merit in the reasoning of the respondents in restricting the approval of appointment of the petitioner from 11.07.2005 only. When the petitioner has been appointed in a permanent vacancy and he joined duty on 25.02.2005, he is entitled to approval of appointment with effect from that date, insofar as there are no other objections for such appointment. Accordingly, to that extent Ext.P6 is quashed. The 2nd respondent is directed to pass fresh orders approving the appointment of the petitioner with effect from 25.02.2005. Orders in this regard shall be passed and arrears of salary released to the petitioner, as

expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment."

2. It is the contention of the petitioners herein that, in the light of Ext.P21 judgment, a direction should be given to the educational authority to approve the appointment of the petitioners also with effect from the date of their actual appointment. It is also pointed out that Ext.P21 judgment has since been accepted by the Government and Government Order RT No.1577/15/Gen.Edn dated 25.04.2015 has been issued in respect of H.S.S.T's (Jr.), similarly placed as the petitioners, granting them approval from the date of their initial appointment against the sanctioned posts in the respective schools.

3. A counter affidavit has been filed on behalf of the 2nd respondent wherein reliance is placed on Ext.R2(a) Government order dated 01.02.1991, wherein it is stipulated that vacancies, the duration of which is two months or less, shall not be filled up by appointment. It is the contention of the respondents that, inasmuch as the appointment of the petitioners, albeit to regular substantive vacancies in sanctioned posts, was effected in February/March 2013, and the academic year came to close on

31.03.2013, the appointments of the petitioners were to vacancies, the duration of which was less than two months, and therefore, the embargo against appointment, directed in the Government Order dated 01.02.1991, would apply. In response to the said averments in the counter affidavit, petitioners would submit that as per the provisions of Chapter 32 of KER, and in particular Rule 5 thereof, there is no embargo against the approval of appointments with effect from the date of such appointments. Alternatively, it is contended that the provisions of Ext. R2(a) Government Order cannot override the statutory provisions under the KER. It is further stated that the Government Order referred to by the respondents deals only with temporary vacancies such as leave vacancies and cannot, at any rate, relate to appointments in substantive vacancies that have arisen during the fag end of the academic year. Reliance is also placed on the decisions of this Court in **Santha v. State of Kerala (1992 (2) KLT 549)** and **Mini Joseph v. Director of Public Instruction(2005 (4) KLT Case No.17).**

4. I have heard the learned Senior counsel Sri.K.P.Satheesan, appearing on behalf of the petitioners in W.P.(C).Nos.16613, 16621, 7502, 7660, 12804 & 20486 of 2014, Sri.Sandesh Raja, the

learned counsel for the petitioners in W.P.(C).Nos.16683 and 11033 of 2014, Sri.B.S.Swathi Kumar, the learned counsel for the petitioners in W.P.(C).Nos.6798, 7498 and 10680 of 2014 and the learned Government Pleader for the respondents in all the writ petitions.

5. On a consideration of the facts and circumstances of the case, as also the submissions made across the bar, I find that the issue relating to the grant of approval to appointments made at the fag end of the academic year, to substantive vacancies arising in regularly sanctioned posts of H.S.S.T in a School, has already engaged the attention of this Court in Ext.P21 judgment referred to above. It was held by this Court in the said judgment that appointments that were made to regularly sanctioned posts, and against vacancies that arose at the fag end of the academic year, had to be approved with effect from the date of appointment and, further, that the embargo against grant of approval to the vacancies, the duration of which was less than two months, as stipulated in Ext.R2(a) Government Order, would not apply to such appointments. It is not in dispute that the aforesaid judgment has not been reversed in any further proceedings by way of appeal etc. Under the circumstances, I am of the view that the petitioners in

these cases are also entitled to the same relief as was granted to the petitioners in that case.

Resultantly, the impugned orders in these writ petitions, that approve the appointment of the petitioners therein as H.S.S.T with effect from a date, subsequent to the date of their actual appointment in the School, are quashed and the writ petitions allowed by holding that the petitioners are entitled to approval of their appointment with effect from the date of their appointment in the School. As a consequence of the aforesaid direction, I also make it clear that the petitioners would not be required to pay contribution to the Contributory Pension Scheme that was introduced with effect from 01.04.2013.

W.P.(C).No.11033 of 2014 & W.P.(C).No.16683 of 2014:

In these writ petitions, while the relief sought for by the petitioners is identical to that which is sought for in the writ petitions disposed above, there are certain additional issues which arise for consideration. In W.P.(C).No.11033 of 2014, the petitioners are similarly placed as the writ petitioners in the cases already disposed above, except for the fact that their appointment was to the post of Lab Assistants. As in the case of the writ

petitioners in the other writ petitions, although they were appointed with effect from various dates in 2011 - 2012 and 2012 - 2013, the approvals to their appointments were granted only with effect from 03.06.2013. In the case of the petitioners in W.P.(C). No.16683 of 2014, the petitioners were appointed as H.S.S.T in the Schools concerned, petitioners 1 to 6 having been appointed in the years 2011 and 2012 and the other petitioners in the year 2013. As in the case of petitioners in W.P.(C).No.11033 of 2014, their appointments were also approved only with effect from 03.06.2013. The petitioners in both these writ petitions are also entitled to the directions issued in respect of approval from the date of appointment, as in the case of the other writ petitions disposed by the common judgment above. That apart, in the case of the petitioners in these two writ petitions, the additional issue that arises for consideration is whether the sanctioning of the post of Lab Assistants and H.S.S.T (Jr.) in the School in February 2013, with prospective effect, could deprive them of an approval of their appointment for the period from the dates of their actual appointment in the School, in anticipation of the sanctioning of the posts in question, till 23.02.2013 when the posts were actually sanctioned in the School. I find that the said issue was considered by this court in W.P.(C).No.20849 of 2013 wherein by the judgment

dated 19.09.2014, this court found that there was no legal or rational basis for the artificial cut off date of 23.02.2013 fixed, in that case, for the purposes of up-gradation of posts that were already created under the Government Order dated 24.10.2011. It was specifically found that the purpose of up-gradation was to recognize the services rendered by Lecturers who had been accommodated against the post of H.S.S.T (Jr.) that had been created pursuant to the aforesaid Government Order. Accordingly, it was found that, if as a matter of fact, the Lecturers in question conformed to the criteria stipulated in Rule 1(d) of Chapter XXXII of the KER, at the commencement of the academic year 2011 - 2012, then there was no justification for denying them the benefit of up- gradation with effect from that date. It was thereafter found that the prospective operation of sanction for up-gradation being based on no tangible or valid reasons forthcoming from the Government, the same had necessarily to be seen as arbitrary, and therefore, legally unsustainable. In the light of the aforesaid judgment in W.P.(C).No.20849 of 2013, I am of the view that the petitioners in these two writ petitions are also entitled to the benefit of the said judgment. Accordingly, the Government Order No.G.O.(MS)NO. 76/2013/G.Edn dated 23.02.2013 in its application to the petitioners shall have effect from the commencement of the

academic year 2011 - 2012, when they were actually appointed in the school, and subject to a physical verification as to whether the petitioners stood qualified to hold the respective posts as on that date. The respondents shall ensure that the approval of the appointment of the petitioners in these two writ petitions is from their actual date of appointment subject to the above observations.

The writ petitions are allowed as above.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

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