

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 19141 of 2013 (P)

PETITIONERS:

1. ASWATHY R., W/O. HARIKUMAR, HSS TEACHER (JUNIOR) PHYSICS
V.V.H.S.S. THAMARAKKULAM, CHARUMOODU P.O., ALAPPUZHA DISTRICT
690 505. RESIDING AT AISWARYA PALLARIMANGALAM P.O.,
MAVELIKKARA - 690 107
2. DHANESH D., S/O. DEVARAJAN, HSS TEACHER (JUNIOR) CHEMISTRY
V.V.H.S.S. THAMARAKKULAM, CHARUMOODU P.O., ALAPPUZHA DISTRICT
690 505. RESIDING AT MAMPAZHATHU PUTHENVEEDU VEDARAPLAVU PO
CHARUMOODU, ALAPPUZHA DISTRICT 690 505
3. UNNIKRISHNAN R., S/O. RAJANKUTTY NAIR, HSS TEACHER (JUNIOR)
MATHEMATICS, V.V.H.S.S. THAMARAKKULAM, CHARUMOODU P.O.,
ALAPPUZHA DISTRICT 690 505. RESIDING AT PALAVALAYIL HOUSE,
VELLKULANGARA, MANAKALA P.O., ADOOR, PATHANAMTHITTA 691 551
4. VINEETHA S. VIJAYAN, W/O. SREEJITH, HSS TEACHER (JUNIOR) ENGLISH
V.V.H.S.S. THAMARAKKULAM, CHARUMOODU P.O., ALAPPUZHA DISTRICT
690 505. RESIDING AT THEVALASSERIL, KANNANAKUZHY,
CHARUMOODU P.O., ALAPPUZHA DISTRICT - 690 505.
5. SREELEKHA R., W/O. AJAYAKUMAR, HSS TEACHER (JUNIOR) HINDI
V.V.H.S.S. THAMARAKKULAM, CHARUMOODU P.O., ALAPPUZHA DISTRICT
690 505. RESIDING AT RETNA BHAVAN, CHUNAKKARA NORTH,
CHUNAKKARA P.O., MAVELLIKKARA 690 534.

BY ADVS.SRI.P.SANKARANKUTTY NAIR
SRI.K.SANDESH RAJA
KUM.VIDYA MENON

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. PRINICIPAL SECRETARY FINANCE DEPARTMENT
GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM 695 001.

3. THE DIRECTOR, DIRECTORATE OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, SHANTHI NAGAR
THIRUVANANTHAPURAM 695 001.
4. REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY EDUCATION
REGIONAL DIRECTORATE OF HIGHER SECONDARY EDUCATION
CORPORATION BUILDINGS, 4TH FLOOR, PALAYAM
THIRUVANANTHAPURAM 695 146
5. V.V.H.S.S. THAMARAKULAM, REP. BY THE MANAGER,
CHARUMOODU P.O., ALAPPUZHA DISTRICT - 690 505.

R5 BY ADV. SRI.K.S.SIVA KUMAR

R5 BY ADV. SRI.C.B.SREEKUMAR

R1 TO R4 BY ADDL. ADVOCATE GENERAL SRI. BABU VARGHESE
(INSTRUCTED BY GOVERNMENT PLEADER SRI.VIJU ABRAHAM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18.12.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE ORDER G.O.(MS) NO. 167/11/PED DATED 3.8.2011
ALONG WITH THE RELEVANT EXTRACT OF APPENDIX II
- P2 : TRUE COPY OF THE ORDER G.O. (RT) 5638/2011/G.EDN. DATED
17.12.2011 ISSUED BY THE 1ST RESPONDENT
- P3 : TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 1ST
PETITIONER DATED 4.6.2012
- P3(A) : TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 2ND
PETITIONER DATED 4.1.2012
- P3(B) : TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO THE 3RD
PETITIONER DATED 4.1.2012
- P3(C) : TRUE COPY OF THE LETTER INTIMATING THE 1ST RESPONDENT
ABOUT THE SELECTION OF THE PETITIONERS 2 AND 3 DATED
10.1.2012
- P3(D) : TRUE COPY OF THE LETTER DATED 13.7.2012 ISSUED TO THE 1ST
RESPONDENT
- P3(E) : TRUE COPY OF THE APPOINTMENT ORDER DATED 11.7.2012 ISSUED
TO THE 4TH PETITIONER
- P3(F) : TRUE COPY OF THE APPOINTMENT ORDER DATED 11.7.2012 ISSUED
TO THE 5TH PETITIONER
- P4 : TRUE COPY OF THE REPORT OF THE STAFF FIXATION IN THE 5TH
RESPONDENT HIGHER SECONDARY SCHOOL FOR THE ACADEMIC
YEAR 2011-2012 VERIFIED BY THE 3RD RESPONDENT
- P5 : TRUE COPY OF THE STAFF FIXATION REPORT OF THE 5TH
RESPONDENT SCHOOL FOR THE ACADEMIC YEAR 2012-2013
VERIFIED BY THE 4TH RESPONDENT
- P6 : TRUE COPY OF THE INTERIM ORDER DATED 11.02.2010 IN W.P.(C)
NO.37392/2009
- P7 : TRUE COPY OF THE INTERIM ORDER DATED 27.03.2013 IN W.P.(C)
4053/2013
- P8 : TRUE COPY OF THE RELEVANT EXTRACT OF THE GOVERNMENT
ORDER G.O.(MS) 211/2013/G.EDN. DATED 15.7.2013

- P9 : TRUE COPY OF THE ORDER NO.G.O.(MS) NO.202/2015/G.EDN DATED
28.07.2014 ALONG WITH ANNEXURE
- P10 : TRUE COPY OF THE ORDER NO. G.O.(MS) NO.229/2014/G.EDN DATED
6.11.2014
- P11 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.19017/2013 DATED
27.11.2014

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

jma

K. VINOD CHANDRAN, J.

W.P.(C) No. 19141 of 2013 (P)

Dated this the 18th day of December, 2015

J U D G M E N T

The petitioners are Higher Secondary School Teachers (HSST) (Junior) appointed to the 5th respondent school in various subjects in the academic year 2012-2013. The petitioners are aggrieved insofar as their approval of appointments having not been made till date, despite an order passed at Ext.P9, sanctioning the posts with effect from 15.7.2013, but, however, making it applicable prospectively, at Ext.P9.

2. The 5th respondent, a Higher Secondary School, along with various other aided schools were sanctioned one batch of Science with Code No.5 which indicates the subjects to be Physics, Chemistry, Mathematics and Computer Science, as per Ext.P1. The sanctioning of the course, definitely created need for Higher Secondary School Teachers, but, however, the sanction of such posts were pending.

3. Additional batch was granted in the academic year 2011-2012 by Order dated 3.8.2011. The students were also allotted by the Government under the Single Window Scheme. A selection committee was constituted under Rule 5 of Chapter XXXII of the Kerala Education Rules, 1959, (for brevity 'K.E.R.') which had, as its members, the Manager, the Principal and one Government nominee. Ext.P2 is the order by which a Deputy Secretary to Government, Co-operation Department, was nominated to be part of the selection committee. Selections were made and the petitioners were appointed in the various vacancies of Physics, Chemistry, Maths, English and Hindi.

4. The Manager forwarded the respective appointment orders for approval to the Regional Deputy Director, as has been produced at Ext.P3 series. The staff fixation order of the year 2011-2012 is produced at Ext.P4, which provides for the aforesaid posts and also one post in Computer Science. Ext.P5, the staff fixation order for

the year 2012-2013, also provides for the aforesaid posts. Various schools had similar grievance with respect to the non sanction of posts and the teachers appointed had approached this Court by various writ petitions, two of which are seen at Exts.P6 and P7.

5. Eventually, the Government sanctioned one post of Hindi and one post of Computer Science in the 5th respondent school and also upgraded a post of Malayalam by Ext.P8 dated 15.7.2013. The specific contention of the petitioners, as disclosed from the writ petition is that the Director of Higher Secondary Education had recommended the sanctioning of the five posts in which the petitioners were appointed. In fact, even after Ext.P8, a further recommendation is seen to have been sent by the Director on the basis of the representation made by the various schools and teachers, which resulted in Ext.P9. Ext.P9 specifically refers to the letter of the Director of Higher Secondary Education pointing out the anomalies in the earlier order.

6. In rectification of such anomalies, by Ext.P9 order dated 28.7.2015, the Government decided to create/upgrade/abolish the teaching posts with effect from 15.7.2013. The petitioners' school, as per Ext.P9, was granted the posts in Physics, Chemistry, Mathematics and English. Hence, by virtue of Exts.P8 and P9, all the posts, in which the petitioners were appointed, have been sanctioned. The petitioners' grievance is insofar as Ext.P8 having provided for the order to be prospective. Even such prospective application has not been brought into effect since the petitioners have not been disbursed the salary till date nor issued with the approval of appointment.

7. The learned Additional Advocate General, however, points out that the appointments to the schools, in which new batches are sanctioned or up-gradation is granted, has to be only of Guest Lecturers till a sanction is made by the Government. The learned Additional Advocate General also refers to G.O.(MS) No.128/10/G.Edn. dated 20.7.2010 for the previous academic year, in

which there was a specific condition that the appointments, till sanction, would be made as Guest Lecturers on daily wage basis. It is also contended that the ratio as provided for in Sl. No.3 of Rule 4 of Chapter XXXII of K.E.R. would disable the Manager from making fresh appointments, since there would be available qualified High School Assistants in the schools, as there is in existence a High School Section also.

8. At the outset it is to be noticed that the order referred to by the learned Additional Advocate General is with respect to the previous academic year and applies to the sanction of batches and up-gradation made in that year. A condition for appointment of Guest Lecturers in that year cannot have any application in any successive years, unless the order of sanction specifically provides for such appointments and restricts regular appointments till there is a post created. Ext.P1 is the sanction of courses in the present case. Ext.P1 does not anywhere speak about fresh appointments to be made

as Guest Lecturers, till a sanction of post or creation of such post is made by the Government.

9. In this context, the decision relied on by the learned counsel for the petitioner in *State of Kerala v. Saji* - 2009 (3) KLT 766 assumes relevance. A Division Bench of this Court considered the question of sanctioning of posts and whether it is automatic in the Higher Secondary Schools. Reading Rule 3 of Chapter XXXII of K.E.R., the Division Bench held that though the creations of post is not automatic, on up-gradation or sanction of additional batches, the Director has a duty coupled with the power to recommend sanction in accordance with the rules and the requirements as revealed from the staff fixation orders. The sanction of additional posts also was found to have a reference to the periods prescribed; as available in the definition of HSST and HSST (Junior) in Chapter XXXII of K.E.R.

10. In the present case there is absolutely no dispute that the staff fixation orders of the both the academic years i.e., 2011-2012 and

2012-2013 specifically noticed the requirement for creation of the posts in which the petitioners have been appointed. The recommendation of the Director is also to create such posts. Hence, when Ext.P8 order was passed, after about two years from the date of sanction, already the additional batch had commenced and the students completed the course. The additional batch, as was noticed, was sanctioned in 2011-2012. The second year of the Higher Secondary course would be completed in the academic year 2012-2013. The order at Ext.P8 came on 15.7.2013.

11. It cannot be accepted that on sanctioning such posts, on the recommendation of the Director, the Government could drag its feet and make a sanction at its own convenience and then categorise it as a prospective sanction. Coupled with the fact that there is no specific mandate that fresh appointments should be of Guest Lecturers alone, in the course sanction order, this Court is of the opinion that the sanction has to relate back to the date on which the

sanction of the batch was accorded by Ext. P1.

12. In any event, going by the facts as noticed herein above, the petitioners 2 and 3 were appointed on 23.12.2011 and the other petitioners only in the year 2012-2013 to available vacancies of HSST (Junior) as seen in the staff fixation order at Ext.P5 and definitely as recommended by the Director, which has been sanctioned by Exts.P8 and P9. The ratio is not a question to be urged by the Government and any person aggrieved; by the Manager not following the ratio, could approach this Court. The newly created posts except the one in which the first petitioner was appointed, were filled up by direct recruitment. The first petitioner was appointed in a by transfer vacancy and hence there could be no other qualified HSAs in the school. If there are such qualified HSAs they could definitely take up their claim before the appropriate forum and this judgment has not dealt with such claim, if any, on merits.

13. Further, it is to be noticed that in identical circumstances,

by Ext.P6 this Court had directed the post to be sanctioned with effect from the academic year 2011-2012 and also directed the appointments of the direct recruitees to be approved from that date. It is also indicated that Ext.P6 judgment was complied with by the Government by issuing G.O.(MS) No.56/10/G.Edn dated 12.4.2010. The afore cited Government Order was with respect to the academic year 2010-2011 where there was a specific condition as noticed above, that the fresh appointments would be made only to the post of Guest Lecturer till sanction is accorded for creation of posts. It is also to be noticed that when admittedly the new batch has commenced from 2011-2012, a sanction of post also has to relate back to that date and to that academic year in which the course/batch commenced.

14. For all the above reasons this Court is of the definite opinion that sanction has to relate back to the academic year 2011-2012, when the batch was sanctioned. The petitioners 2 and 3 would be deemed to have been appointed on 23.12.2011 and the others in

the academic year 2012-13 and they would be entitled to get their appointments approved from the date of their appointments as HSST (Junior) in their respective subjects. The respondents 3 and 4 are directed to pass appropriate orders, approving the appointment of the petitioners, and also disburse the arrears of salary within a period of four months from the date of receipt of the certified copy of this judgment.

Writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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P.A to Judge