

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 26807 of 2006 (N)

PETITIONER :

**A.V. JANARDHANAN,
HINDI TEACHER (UPSA HINDI), AUPS, VARODE,
OTTAPPALAM.**

**BY ADVS.SRI.K.A.ABRAHAM
SRI.BIJU MARTIN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.PIN-695 001**
- 2. THE DEPUTY DIRECTOR, EDUCATION, PALAKKAD-678 001**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
OTTAPPALAM.PIN-679 101**

R1 TO R3 BY GOVERNMENT PLEADER SMT. LOWSYA.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.26807/2006

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE APPOINTMENT ORDER NO.D.DIS.D/4738/92 DATED 27/3/1993.**
- P2 COPY OF THE ORDER NO.D.DIS.D1/2297/97 DATED 15/7/97**
- P3 COPY OF THE REPRESENTATION DATED 10/7/2002**
- P4 COPY OF THE ORDER NO.D/1874/06 DATED 5/5/2006**
- P6 COPY OF THE JUDGMENT REPORTED IN 1992 (2) KLT 549**
- P7 COPY OF THE ORDER NO.B 88/97-98 DATED 16/2/1998**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A. MUHAMED MUSTAQUE, J.

= = = = =

W.P.(C) No.26807 of 2006

= = = = =

Dated this the 18th day of March, 2015

JUDGMENT

The only dispute in this writ petition is pertaining to vacation salary paid to the petitioner for the period from 28.03.1991 to 19.06.1991.

2. The petitioner was appointed as a Hindi teacher (UPSA Hindi) on 27.08.1990. This was approved with effect from 27.8.1990 to 27.3.1991. The manager re-appointed the petitioner on 20.06.1991 against additional vacancy. Since the proposal was received belated, it was rejected. Aggrieved by the rejection of the approval of the appointment, the petitioner along with the Manager of the school jointly approached this Court with a writ petition. The said writ petition was disposed of and accordingly re-appointment was approved with effect from 20.08.1991 to 14.07.1994. Thereafter, in another petition filed by the petitioner and the Manager, this Court directed to approve the appointment with effect from 20.06.1991 onwards. Accordingly the petitioner is on the roll as Hindi teacher

continuously from 20.8.1990 onwards.

3. By Ext.P4, the AEO ordered that the petitioner is entitled for vacation salary as he was on roll since the date of initial appointment. However, in the audit it has been found out that sanction of vacation salary for the petitioner from 28.03.1991 to 19.6.1991 is irregular and the petitioner was directed to refund the amount. The audit objection was raised first time only in the 2006. It is challenging this order the petitioner has approached this Court.

4. The learned Government Pleader submits that the petitioner's appointment initially was temporary and therefore the petitioner is not entitled to vacation salary. The learned counsel for the petitioner submits that the petitioner's appointment was regular service as can be seen from Ext.P4 and therefore he is entitled for vacation salary.

5. As seen from the counter itself the petitioner has put in continuous service from initial appointment (27.08.1990) onwards. The consequent orders happened to be passed by the authorities for the reason that the proposal made by the Manager re-appointing the petitioner after vacation is belated.

This Court interfered with those decisions. Thus it can be seen that all along the petitioner is continuing in the said post from the initial appointment itself. Any artificial break cannot result in denial of vacation salary to the petitioner. Further, audit objection was raised for the first time only in the year 2006, after enjoying the benefit for more than a decade. It is iniquitous to direct a teacher to refund the amount after more than a decade.

6. In such circumstances, based on equitable consideration, the impugned orders are set aside. Therefore, reckoning that the petitioner is entitled for vacation salary, there shall be a direction to re-fix the increment dates of the petitioner consequently.

The writ petition is disposed of.

A. MUHAMED MUSTAQUE, JUDGE

sj