

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 16696 of 2015 (J)

PETITIONER(S):

1. **THOMAS JOSEPH AGED 34 YEARS**
JR.HIGHER SECONDARY SCHOOL TEACHER (COMMERCE)
UNION HIGHER SECONDARY SCHOOL, ANNANAD, CHALAKUDY.
2. **PATRICIA D'SOUZA**
JR.HIGHER SECONDARY SCHOOL TEACHER (COMMERCE)
ST.JOSEPH'S HIGHER SECONDARY SCHOOL, MATHILAKAM.
3. **ANNE CHACKO**
HIGHER SECONDARY SCHOOL TEACHER (ENGLISH)
STANTONY'S H.S.S., MALA.
4. **PRIYA P.V.**
JR.HIGHER SECONDARY SCHOOL TEACHER (COMMERCE)
M.A.M.H.S.S., KORATTY.
5. **LIGY JOSE**
JR.HIGHER SECONDARY SCHOOL TEACHER (COMMERCE)
B.V.M.H.S.S., KALPARAMBA.
6. **SEETHA MATHEW**
JR.HIGHER SECONDARY SCHOOL TEACHER (ENGLISH) B.V.M.H.S.S.
KALPARAMBA.
7. **GEETHA CHIYARATH**
JR.HIGHER SECONDARY SCHOOL TEACHER (ENGLISH)
M.A.M.H.S.S., KORATTY.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENT(S):

1. **STATE OF KERALA**
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. **THE DIRECTOR OF HIGHER SECONDARY EDUCATION,**
HOUSING BOARD BUILDINGS, SANTHI NAGAR
THIRUVANANTHAPURAM-695 010.
3. **THE REGIONAL DEPUTY DIRECTOR,**
HIGHER SECONDARY EDUCATION, ERNAKULAM-682011.

4. THE MANAGER
UNION HIGHER SECONDARY SCHOOL, ANNANAD
CHALAKUDY-680 309.

5. THE MANAGER
ST.JOSEPH'S HIGHER SECONDARY SCHOOL
MATHILAKAM-680 685.

6. THE MANAGER
STANTONY'S H.S.S., MALA-680 732.

7. THE MANAGER,
M.A.M.H.S.S., KORATTY-680 308.

8. THE MANAGER
B.V.M.H.S.S., KALPARAMBA-680 662.

9. THE CORPORATE EDUCATIONAL AGENCY
DIOCESE OF IRINJALAKUDA, PASTORAL CENTRE
IRINJALAKUDA-680 121.

R BY GOVERNMENT PLEADER, SMT. M.J. RAJASREE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1 :** TRUE COPY OF THE APPOINTMENT ORDER DATED 19-3-2013 ISSUED TO THE 1ST PETITIONER.
- EXT. P2 :** TRUE COPY OF THE PROCEEDINGS DATED 10-12-2013 ISSUED BY THE 3RD RESPONDENT.
- EXT. P3 ;** TRUE COPY OF THE APPOINTMENT ORDER DATED 19-3-2013 ISSUED TO THE 2ND PETITIONER.
- EXT. P4 :** TRUE COPY OF THE PROCEEDINGS DATED 10-12-2013 ISSUED BY THE 3RD RESPONDENT.
- EXT. P5 :** TRUE COPY OF THE LETTER DATED 3-12-2014 ISSUED BY THE 2ND RESPONDENT.
- EXT. P6 :** TRUE COPY OF THE ORDER NO.57/13 DATED 13-3-2013 ISSUED BY THE 9TH RESPONDENT.
- EXT. P7 :** TRUE COPY OF THE PROCEEDINGS DATED 19-11-2013 ISSUED BY THE 3RD RESPONDENT.
- EXT. P8 :** TRUE COPY OF THE PROCEEDINGS DATED 26-11-2013 ISSUED BY THE 3RD RESPONDENT.
- EXT. P9 :** TRUE COPY OF THE PROCEEDINGS DATED 26-11-2013 ISSUED BY THE 3RD RESPONDENT.
- EXT. P10 :** TRUE COPY OF THE LETTER DATED 10-12-2013 ISSUED BY THE 2ND RESPONDENT TO SMT.LIGY JOSE.
- EXT. P11 :** TRUE COPY OF THE LETTER DATED 10-12-2013 ISSUED BY THE 2ND RESPNDENT TO SMT.SEETHA MATHEW P.
- EXT. P12 :** TRUE COPY OF THE APPOINTMENT ORDER DATED 18-3-2013 ISSUED TO THE 4TH PETITIONER
- EXT. P13 :** TRUE COPY OF THE PROCEEDINGS DATED 22-2-2014 ISSUED BY THE 3RD RESPONDENT.
- EXT. P14 :** TRUE COPY OF THE APPOINTMENT RORDER DATED 18-3-2013 ISSUED TO THE 7TH PETITIONER.
- EXT. P15 :** TRUE COPY OF THE COMMUNICATION DATED 16-9-2014 ISSUED BY THE 2ND RESPONDENT.

EXT. P16 : TRUE COPY OF THE JUDGMENT DATED 22-5-2012 IN
WPC.NO.5709/2007 OF THIS HON'BLE COURT.

EXT. P17 : TRUE COPY OF THE JUDGMENT DATED 25-9-2012 IN
WPC.NO.24864/2014 OF THIS HON'BLE COURT.

EXT. P18 : TRUE COPY OF GO(RT)NO.1577/2015/G.EDN. DATED 25-4-2015.

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 16696 of 2015

Dated this the 4th day of June, 2015

JUDGMENT

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 2nd respondent through appeals. The said appeals, however, were rejected. 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 the 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 authorities to approve the appointment of the petitioners also with effect from the date of their actual appointment. It is also pointed out that Ext.P16 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. 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.P16 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 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.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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