

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 21059 of 2010 (F)

PETITIONER(S) :

ABDUL JALEEL.K.C.,
H.S.A. (MALAYALAM),
MOHAMMEDALI JOUHAR HIGHER SECONDARY SCHOOL, ELETTIL,
KOZHIKODE DISTRICT, PIN-673 572.

BY ADV. SRI.P.J.MATHEW

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-695 001.
3. HE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE-673 001.
4. THE DISTRICT EDUCATIONAL OFFICER,
THAMARASSERY, KOZHIKODE - 673 573.
5. MANAGER,
M.J.HIGHER SECONDARY SCHOOL,
ELETTIL, P.O.ELETTIL, VIA KODUVALLY
KOZHIKODE DISTRICT, PIN-673 572.

R5 BY ADV. SRI.V.A.MUHAMMED

R5 BY ADV. SRI.K.E.HAMZA

BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT-P1: TRUE COPY OF THE APPOINTMENT ORDER DATED 07/06/2005.
- EXHIBIT-P2: TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 14/06/2006.
- EXHIBIT-P3: TRUE COPY OF BOND DATED 19/06/2006.
- EXHIBIT-P4: TRUE COPY OF LETTER DATED 15/06/2010 OF THE 2ND RESPONDENT.
- EXHIBIT-P5: TRUE COPY OF THE LETTER DATED 25/06/2010.
- EXHIBIT-P6: TRUE COPY OF THE LETTER OF THE 5TH RESPONDENT ALONG WITH THE COVERING LETTER OF THE HEADMASTER DATED 29/06/2010.

RESPONDENT(S) ' EXHIBITS :

- EXHIBIT-R5(A): TRUE COPY OF THE GO(P) NO.178/2002/G.EDN. OF THE GOVERNMENT DATED 28/06/2002.
- EXHIBIT-R5(B): TRUE COPY OF THE CIRCULAR NO.74101/J2/2004/G.EDN. OF THE GOVERNMENT DATED 24/01/2005.
- EXHIBIT-R5(C): TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.2563/2008 DATED 24/09/2008
- EXHIBIT-R5(D): TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.8039/2008-F DATED 01/06/2009.
- EXHIBIT-R5(E): TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.770/1987 DATED 24/10/1987.
- EXHIBIT-R5(F): TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.183/2010 DATED 21/07/2010.
- EXHIBIT-R5(G): TRUE COPY OF THE LETTER NO.A2-6093/10/K.DIS. OF THE DISTRICT EDUCATIONAL OFFICER DATED 30/09/2010.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 21059 of 2010

Dated this the 22nd day of May, 2015

JUDGMENT

The petitioner is working as HSA (Malayalam) at Mohammedali Jouhar Higher Secondary School, Kozhikode. The appointment of the petitioner was by Ext.P1 order dated 07.6.2005. The facts in the writ petition would disclose that the approval to the appointment of the petitioner was initially declined by the 4th respondent. Later, in an appeal preferred by the Manager, the 3rd respondent directed the 4th respondent to grant approval to the appointment of the petitioner with effect from 01.06.2005 and that was given. While granting the approval, there was a condition stipulated that the petitioner should be accommodated in a vacancy that arose due to the retirement of Sri.Raghavan, HSA (Malayalam) on 31.03.2005. By Ext.P2 order of the 3rd respondent dated 14.06.2006, the Manager was also directed to execute a bond undertaking to appoint a protected teacher towards the vacancies that arose from 01.04.2006 due to retirement of one P.K.Thresiamma, who was an HSA (Malayalam). It would appear that three other HSA (Malayalam), were appointed in the School with effect from 01.06.2007 (Thajuddin), 02.06.2008 (Abdul Rasheed) and 01.06.2009 (Shanavas). The appointments of Thajuddin and Abdul Rasheed were also approved by the

educational authority and they are receiving salary from the Government. In the writ petition, the petitioner is aggrieved by Exts.P4 and P5, which are communications issued by the 3rd and 2nd respondents, which indicated that there was a proposal to review the approval given to the appointment of the petitioner. When the petitioner apprehended that the proposal would be given effect to, and consequent steps taken for recovery of the salary already paid to the petitioner, and further, for withholding the future salary of the petitioner, he approached this Court with the present writ petition.

2. A counter affidavit has been filed on behalf of the 5th respondent Manager, wherein, the appointment of the petitioner as HSA (Malayalam) with effect from 07.06.2005 is sought to be justified. Ext.R5(g) is also produced to show that there were no protected teachers that had to be accommodated in the school in the academic year 2005-06. It is the stand of the Manager that the appointment of the petitioner was legal and proper and therefore, there was no merit in the proposal of the respondents to cancel the approval granted to the appointment of the petitioner.

3. In the counter affidavit filed on behalf of the 3rd respondent, while a reference is made to Exts.P4 and P5 communications of the 2nd and 3rd respondents, it is also stated that there were no undeployed HSA (Malayalam) in Kozhikode revenue district and that all protected HSA (Malayalam) in the District were redeployed. The suggestion in the counter affidavit therefore is that there was no protected teacher that had to be accommodated in the vacancy to which the petitioner was appointed and therefore, there was no cause for revoking the approval granted to the appointment of the petitioner. I also take note of the fact that, by an interim order dated 10.11.2010 of this Court, the 4th respondent was directed to disburse the salary and arrears of the salary to the petitioner with a further direction that the arrears of salary should be paid within two months from that date. It is not in dispute that the petitioner has since received the said payments and continues to get the salary due to him from the Government.

4. I have heard Sri.P.J.Mathew, the learned counsel appearing for the petitioner, Sri.P.A. Mohammed, the learned counsel for the 5th respondent Manager, and also the learned

Government Pleader on behalf of the official respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that in the light of the averments in the counter affidavit filed by the 3rd respondent, there seems to be no occasion at present for reviewing the decision to approve the appointment of the petitioner. Thus, I dispose the writ petition by making the interim order absolute, leaving it open to the respondents to take steps to review the approval granted to the appointment of the petitioner if the occasion arises. Needless to say, if any such proposal is contemplated by the official respondents, then action shall be taken only after affording the petitioner, as well as the Manager of the School, an opportunity of being heard, prior to taking any decision.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE