

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H

WP(C).No. 22772 of 2013 (V)

PETITIONER:

**SREENESH K.
S/O.A.SREEKUMARAN, SANSKRIT TEACHER
C.H.M.K.S.M. UPPER PRIMARY SCHOOL, NANDANKIZHAYA
MUTHALAMADA, KOLLENGODE, PALAKKAD DISTRICT.**

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S):

- 1. THE ASSISTANT EDUCATIONAL OFFICER
KOLLENGODE, PALAKKAD DISTRICT-678 506.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695 001.**
- 3. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.**

BY GOVERNMENT PLEADER SRI.REFEEK V.K.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE APPOINTMENT ORDER SHOWING APPROVAL OF THE PETITIONER AS SANSKRIT TEACHER.

EXHIBIT P2. TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER DATED 21/5/2011.

EXHIBIT P3. TRUE COPY OF THE JUDGMENT IN WPC NO.19771/2012.

EXHIBIT P4. TRUE COPY OF THE ORDER OF THE DIRECTOR OF PUBLIC INSTRUCTIONS DTED 4/5/2013.

EXHIBIT P5. TRUE COPY OF THE REPROT OF THE LOCAL AUDIT OF ACCOUNTS.

EXHIBIT P6. TRUE COPY OF INFOMRATION OBTAINED FROM THE OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER, KOLLENGODE.

EXHIBIT P7. TRUE COPY OF THE COMMUNICATION ISSUED BY THE ASSISTANT EDUCATIONAL OFFICER, DATED 17/7/2013.

EXHIBIT P8. TRUE COPY OF THE REPLY TO EXT.P7 SUBMITTED BY THE PETITIONER AS WLL AS THE ORDER OF TEACHERS OF THE SCHOOL.

EXHIBIT P9. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PEITIONER TO THE ASSISTANT EDUCATIONAL OFFICER, KOLLENGODE DATED 16/8/2013.

EXHIBIT P10: COPY OF THE LETTER DATED 9.10.2013 issued BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXHIBIT P11: COPY OF THE COMMUNICATION ISSUED BY THE ACCOUNTANT GENERAL DATED 21.10.2013.

EXHIBIT P12: COPY OF THE COMMUNICATION ISSUED BY THE ACCOUNTANT GENERAL

RESPONDENTS EXHIBITS:

ANNEXURE R1(A): COPY OF THE REVISED ORDER ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS DATED 9.10.2013

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.22772 OF 2013

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Dated this the 21st day of August, 2015

JUDGMENT

This writ petition was originally filed praying for a direction to the Assistant Educational Officer, Kollengode to implement Ext.P4 order. By Ext.P4 the Director of Public Instructions ('DPI' for short) directed the Assistant Educational Officer, Kollengode to sanction Full Time Sanskrit post for the year 2010-11 through group 'C' diversion, if sufficient periods were available and to revise the staff fixation orders accordingly.

2. The petitioner has been working as a part-time Sanskrit Teacher in C.H.M.K.S.M. Upper Primary School, Nandankizhaya, since 1.6.2010. His appointment was approved with effect from 1.6.2010. The petitioner as well as the Manager claimed conversion of Part time post of Sanskrit as Full Time post, on the basis of the orders issued by the Government. As per G.O. (Rt) No. 5014/68/G.Edn dated 8.11.1968, the Government ordered that one period

from any subject under Group 'C' posts (Craft, Music, Drawing and Physical education) will be diverted for teaching Arabic provided no existing teachers are affected . Later Government extended the benefit to part time Sanskrit Teachers, as per G.O.(Ms) No. 43/78/G.Edn dated 13.4.1978. DPI had issued the order Ext.P4 in the above circumstances.

3. Thereafter, the DPI, by Ext.P10 letter dated 9.10.2013, on a query from AEO, informed him that part time post manned by the petitioner cannot be converted as Full time since Group 'C' diversion has been cancelled as per G.O.(MS)220/10/GEdn dated 4,11.2010.

4. 1st respondent has filed a counter affidavit stating that the petitioner was appointed as Part Time Sanskrit Teacher with effect from 1.6.2010 in a retirement vacancy and his appointment was approved. There are only 12 periods of work available for Sanskrit. One Physical Education Teacher is working in the School on clubbing arrangement with a Govt UP School. The 1st respondent had sought clarification from DPI in view of the Govt order

cancelling group C diversion and pointing out that the Manager had not requested for sanctioning full time post, even when he challenged the staff fixation orders. Thereupon the DPI, as per Ext P10 letter dated 9.10.2013, clarified that the part time post of petitioner cannot be converted as full time, in the light of G.O.(Ms) No.220/2010/G.Edn dated 4.11.2010, by which G.O.(Ms) No.371/2000/G.Edn dated 13.11.2000 was cancelled and group 'C' diversion cannot be allowed. It was also stated that a Physical Education teacher is working in the school under clubbing arrangement with Government UP School Vattekkad and hence no specialist post is admissible to the school in terms of Rule 6 (B) (2) of Chapter XXIII KER.

5. In the light of the contentions raised on either side, it is necessary to have a look at the Govt orders relating to the conversion of part time post of Sanskrit teacher to Full time post on group C diversion. The contention of the respondents is that government has already cancelled diversion of group C subjects, as per G. O (MS) No. 220/2010/G. EDN dated 4.11.2010. On a reading

of the aforesaid order, it can be seen that diversion of group C subjects is not cancelled. On the other hand what is cancelled is G.O (MS) No.371/00/G. EDN dated 13. 11.2000. At the same time it is made clear that the benefit will be extended to the teachers for the current year 2010-11. Coming to the order issued on 13.11.2000 it can be seen the order therein was not to treat the language teachers who got their posts made as Full time by virtue of diversion of periods from Group C subjects, as protected teachers and that they shall not be deployed treating them as protected teachers. It was further ordered that suitable action shall be taken against the erring educational officers. The government order dated 4.11.2010, refers to the consequences of diversion of more periods from group C subjects saying that it will adversely affect the overall development of students on account of reduced number of periods for group C subjects like art education, health and physical education and Work Education and says that any diversion of group C subjects for making part-time language teachers as full-time will adversely affect the

teaching/learning of group C subjects. The operative portion of the order, cancels 'the order read as 1st paper above', while extending such facility to the teachers for the current year 2010-11. The order 'read as 1st paper above' is G.O. (MS) No. 371/2000/G. Edn dated 13.11.2000.

6. In the order dated 13.11. 2000, Government, after referring to the orders issued right from 8.11.1968– the 1st order providing for diversion of periods of subjects under group C for teaching Arabic, which was later extended to Sanskrit, and thereafter referring to the order issued on 2.5.1973 providing for full-time benefit on completion of 5 years service and thereafter to the circular issued on 1.3.1989 by which it was clarified that whenever full-time language teachers having 15 periods of work by virtue of group C diversion take leave, the resultant vacancies can be filled up by full-time teachers, issued clarification in reply to the letter dated 10.5.2000 from DPI, wherein it was stated that educational officers were misinterpreting the relevant government orders and

mentioning the posts sanctioned by virtue of group C diversion as protected. After examining the matter in detail, Govt clarified that the posts created by virtue of group C diversion cannot be treated as protected and that such full-time posts cannot be converted into part-time posts. It was further directed that those educational officers who have already proceeded with the staff fixation and issued irregular orders as mentioned above shall review such orders in accordance with the clarificatory Government order.

7. Now coming back to the order issued on 4.11.2010, it can be seen that what is ordered in its operative portion is only the cancellation of the order issued on 13.11.2000 only, while extending such facility to the teachers for the academic year 2010-11. Therefore even though the heading given to the order is 'diversion of group C subjects and its cancellation', in effect cancellation is only of the order directing not to deploy the teachers who became Full Time by virtue of group C diversion and not to teach such teachers as protected and not to convert such

full-time posts to part-time posts. However the benefit of that order was extended to the teachers for the year 2010-11. Therefore the petitioner who was appointed in the year 2010 is entitled to the benefit of group C diversion. Moreover in the circular no. H2/51483/11/DPI dated 20.9.2011, government have clarified that the teachers who got the benefit of full-time by group C diversion will continue to get the said benefit until their retirement and that the benefit of group C diversion will not be available after their retirement. The circular dated 20.9.2011 will be applicable to the case of the petitioner also.

8. Government, had in the letter No. 51064/J2/91/G.Edn dated 27.12.1991, clarified that if there is no post of specialist/craft teacher in the School, the periods for the Group C subject for which there is no specialist/craft teacher, can be diverted. It is provided therein that one period for the Group C subject per each standard can be diverted for Arabic. Similarly, one period per each standard can be diverted to Sanskrit, Urdu and Hindi.

9. As there is a Physical Education teacher in the School, though on clubbing arrangement, one period each per standard for the subject Crafts can be diverted for Sanskrit and the post can be converted as Full time, in terms of the Government letter dated 27.12.1991 and in the light of the judgment of the the Division Bench of this court in W.A. No. 233/2008.

Under the above circumstances Ext.P10 is quashed. The respondents shall issue orders implementing the order Ext.P4 and shall take steps to convert the post of Part time Sanskrit Teacher to that of Full time Sanskrit teacher and to grant the petitioner all consequential benefits.

Accordingly the writ petition is allowed.

Sd/-
P.V.ASHA, JUDGE

SKV