

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 21372 of 2014 (V)

PETITIONER :

**RAJESH.P.K.
URUD TEACHER, KATAMERI UPPER PRIMARY SCHOOL,
P.O.KATAMERI, KOZHIKODE DISTRICT.**

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:-:

- 1. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHI, THIRUVANANTHAPURAM.**
- 3. ASSISTANT EDUCATIONAL OFFICER,
THODANNUR, KOZHIKODE DISTRICT.**

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI. V. VIJULAL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE RELEVANT PAGES OF THE STAFF FIXATION ORDER DATED 27.07.2009.
- EXHIBIT P2: TRUE COPY OF THE APPOINTMENT ORDER IN FORM 27 DATED 01.06.2010 AND THE PROCEEDINGS FOR APPROVAL DATED 02.02.2011.
- EXHIBIT P3: TRUE COPY OF THE ORDER DATED 23.01.2013.
- EXHIBIT P4: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE MANAGER DATED 15.07.2013.
- EXHIBIT P5: TRUE COPY OF GO(MS)129/78/G.EDN DATED 19.09.1978.
- EXHIBIT P5(a): TRUE COPY OF GO(MS)NO.371/2000/G.EDN. DATED 13.11.2000.
- EXHIBIT P5(b): TRUE COPY OF THE GO(MS)NO.220/2010/G.EDN. DATED 04.11.2010.
- EXHIBIT P5(c): TRUE COPY OF THE LETTER NO.13652/J2/11/G.EDN. DATED 23.03.2011.
- EXHIBIT P6: COPY OF THE ORDER DT 27/9/2014.
- EXHIBIT P6(a): A TRUE ENGLISH TRANSLATION OF EXT.P6.
- EXHIBIT P7: COPY OF THE ORDER DT 29/11/2011.
- EXHIBIT P7(a): COPY OF THE ENGLISH TRANSLATION OF EXT P7.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.21372 of 2014

Dated this the 6th day of January, 2015

JUDGMENT

The petitioner while working as Peon was promoted and appointed in the retirement vacancy of P.Abdulla as Urdu Teacher. By Ext.P3 order passed by the Director of Public Instructions, the petitioner's appointment with effect from 1.6.2010 has been directed to be approved as a full time Urdu Teacher. On account of non-implementation of the above order, the petitioner has approached this Court.

2. Pending the writ petition, the Director of Public Instructions reviewed his earlier order and passed Ext.P6. By virtue of Ext.P6, the approval of the petitioner as full time Teacher has been reviewed and the approval has been declined as full time Teacher. The petitioner amended the writ petition and challenges Ext.P6 order.

3. The petitioner points out that his appointment was on 1.6.2010. The petitioner relies on Ext.P5(a) Government Order dated 13.11.2000. The petitioner submits 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. The petitioner submits that his appointment is into the full time post and the finding in Ext.P6 that on account of the retirement of incumbent, the full time post has become part time is erroneous. The petitioner submits that the Director of Public Instructions reviewed his earlier decision based on Ext.P5(b) order dated 04.11.2010. The petitioner submits that the Director of Public Instructions while passing Ext.P6 order did not advert to the fact that the post treated as a full time post on account of Group 'C' diversion cannot be converted as part time. The petitioner further submits that Ext.P6 order is passed

without giving an opportunity of hearing.

4. The learned Government Pleader opposed the prayers of the petitioner. The learned Government Pleader points out that the petitioner was appointed as per Ext.P2 appointment order only to the part time post. It is further submitted that the petitioner is attempting to challenge the staff fixation order passed in the year 2011.

5. The learned counsel for the petitioner would submit that the petitioner has no challenge against the staff fixation order. According to him, the only point that arises is whether full time posts can be reconverted as part time on account of the retirement of the incumbent. The petitioner submits that the post as on the date of his appointment remain as full time post and it cannot be treated as part time post. I am of the view, this matter requires a reconsideration in the light of Exts.P5(a) and (b). No doubt, the aspects which

is pointed out by the learned Government Pleader also be considered whether the appointment was part time or full time. The petitioner has a case that he was appointed as full time and the initial appointment order has been corrected by the Manager. Therefore, necessary orders shall be passed in this matter after hearing the petitioner and the Manager and also verifying the records. In view of the above, Ext.P6 is set aside. Needful shall be done within a period of three months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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