

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 21497 of 2014 (J)

PETITIONER(S):

- 1. DR.SOUMYA P.SUSHEEL
HIGHER SECONDARY SCHOOL TEACHER (ENGLISH)
N.S.S. HIGHER SECODARY SCHOOL, MULLOORKARA
THRISSUR DISTRICT.**
- 2. SUJA.P.E.,
HIGHER SECONDARY SCHOOL TEACHER (ECONOMICS)
N.S.S. HIGHER SECODARY SCHOOL, MULLOORKARA
THRISSUR DISTRICT.**
- 3. SATHEESH.C.
HIGHER SECONDARY SCHOOL TEACHER (CHEMISTRY)
N.S.S. HIGHER SECODARY SCHOOL, MULLOORKARA
THRISSUR DISTRICT.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR,
HIGHER SECONDARY EDUCATION
THIRUVANANTHAPURAM-695001.**
- 3. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION, ERNAKULAM.**
- 4. THE GENERAL MANAGER & INSPECTOR,
N.S.S. SCHOOL, PERUNNAI, CHANGANASSERY.**
- 5. THE N.S.S. HIGHER SECONDARY SCHOOL,
MULLOORKKARA
THRISSUR DIST. REPRESENTED BY ITS PRINCIPAL.**

**R4&5 BY ADV. SRI.P.GOPAL
R4&5 BY ADV. SRI.B.MURALEEDHARAN
R1 -R 3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE ORDER DATED 23-8-2001 ISSUED BY THE FOURTH RESPONDENT.

EXT.P2. TRUE COPY OF THE ORDER DATED 02-12-2011 ISSUED BY THE FOURTH RESPONDENT.

EXT.P3. TRUE COPY OF THE ORDER DATED 19-09-1998 ISSUED BY THE FOURTH RESPONDENT.

EXT.P4. PROCEEDINGS OF THE FOURTH RESPONDENT.

EXT.P5. TRUE COPY OF THE PROCEEDINGS OF THE FOURTH RESPONDENT DATED 30-6-2012.

EXT.P6. TRUE COPY OF THE G.O. DATED 20-7-2010.

EXT.P7. TRUE COPY OF THE GOVERNMENT BY ORDER DATED 23-2-2013.

EXT.P8. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE FOURTH RESPONDENT.

EXT.P9. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE SECOND RESPONDENT THROUGH PROPER CHANNEL.

RESPONDENT(S)' EXHIBITS:

EXT.R4(A): COPY OF THE JUDGMENT DATED 19.9.2014 IN W.P.(C).NO.20849 OF 2013.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.21497 OF 2014 (J)

Dated this the 27th day of July, 2015

J U D G M E N T

The petitioners were working as Higher Secondary School Teachers [HSST] in various schools under the 4th respondent. By separate orders of transfer, they were transferred to the N.S.S. Higher Secondary High School, Mulloorkara, where, at the time of their transfer, there were no sanctioned posts of HSST. By Ext.P7 Government order dated 23.2.2013, posts were sanctioned in the said School with prospective effect. The petitioners, therefore, received salary only with effect from 23.2.2013, the date of Ext.P7 Government order. In the writ petition, the petitioners are aggrieved by the non-disbursal of salary for the period from the dates of their transfer to the 5th respondent School till 23.2.2013, the date on which Ext.P7 Government order came into force. It is their contention in the writ petition that, from the date on which they were transferred to the 5th respondent school, they have been teaching students in the Higher Secondary course, and the sanctioning of posts was only a formal creation of posts by the Government taking note of the

recommendation of the Director of Higher Secondary Education.

2. A counter affidavit has been filed by the 3rd respondent, wherein, the stand taken is that the petitioners were transferred to Mulloorkara at a time when there were no HSST posts in the School in the subjects concerned. It is their contention that inasmuch as the posts were created only with effect from 23.2.2013, the petitioners could be treated as having worked against the sanctioned posts only with effect from that date, and salary can be disbursed to them only for the period subsequent to 23.2.2013.

3. I have heard the learned counsel for the petitioners, the learned Standing counsel for respondents 4 and 5 as also the learned Government Pleader for the official respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, in almost identical circumstances, this Court had, by a judgment dated 19.9.2014 in W.P.(C).No.20849/2013, taken the view that there is no legal or rational basis for an artificial cut off date of 23.2.2013, the

date of the Government order that upgraded/created new posts in Schools that were already conducting higher secondary courses. It was found that the purpose of upgradation or creation of posts was only to recognise the services rendered by the teachers, who had been accommodated in the school to teach the subjects, the posts in respect of which were subsequently sanctioned. Accordingly, it was found that the Government order creating/upgrading posts, in its application to the teachers, would have effect from the commencement of the academic year in which the course was commenced in the school subject to physical verification as to whether the teachers qualified to hold the post of HSST in terms of Rule 1 (d) of Chapter XXXII of the Kerala Education Rules. In the instant case, it is not in dispute that the petitioners were already holding the post of HSST and working against sanctioned posts in other Schools under the management of the 4th respondent. It was consequent to their transfer to the 5th respondent School that they found themselves in a situation where they had to teach students in the subjects concerned despite the fact that the necessary posts to accommodate them had not been sanctioned by the Government. It is apparent from the counter affidavits filed on behalf of the 4th and 5th respondents that there were

sufficient periods for the petitioners to teach the students in the subjects concerned. In that view of the matter, therefore, I see no reason why the petitioners also should not be extended the benefit of Ext.R4(a) judgment, to the extent it covers the period from the date of transfer of the petitioners to the 5th respondent School till 23.2.2013, the date of Ext.P7 Government order that created posts in the School. Resultantly, the respondents shall treat the petitioners as having worked against the sanctioned posts contemplated in Ext.P7 Government Order, from the date on which they assumed charge in the School pursuant to their transfer by Exts.P2, P4 and P5 orders. The respondents shall disburse the monetary benefits, flowing to the petitioners from an approval for the period from their date of transfer to the 5th respondent School, till 23.2.2013, within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp