

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 29093 of 2007 (L)

PETITIONER:

**P.G.SREELATHA, AGED 50 YEARS,
W/O. V.PADMAKUMAR, SELECTION GRADE LECTURER
DEPARTMENT OF ENGLISH, N.S.S. COLLEGE, CHERTHALA
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.K.K.CHANDRAN PILLAI
SRI.A.S.SAJUSH PAUL**

RESPONDENTS:

- 1. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
ERNAKULAM.**
- 2. THE MANAGER,
N.S.S.COLLEGE, CENTRAL COMMITTEE, CHANGANACHERRY.**
- 3. THE PRINCIPAL COLLEGE,
N.S.S. COLLEGE, CHERTHALA.**
- 4. THE PRINCIPAL
N.S.S. COLLEGE, PANDALAM.**
- 5. STATE OF KERALA,
REPRESENTED BY THE SPECIAL SECRETARY
FOR HIGHER EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
- 6. THE UNIVERSITY OF KERALA,
REPRESENTED BY ITS REGISTRAR, THIRUVANANTHAPURAM.**

**BY ADVS. SRI.M.RAJAGOPALAN NAIR, SC, KERALA UNIVERSITY
SRI.P.GPARAMESWARA PANICKER (SR.)
SRI.P.GOPAL
SRI.GEORGE POONTHOTTAM,SC,KERALA UNIVERSITY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 - COPY OF APPOINTMENT ORDER DATED 10.11.1980 ISSUED TO THE PETITIONER
- EXHIBIT P3 - COPY OF PROCEEDINGS OF THE UNIVERSITY DATED 20.08.1981 APPROVING THE APPOINTMENT OF THE PETITIONER.
- EXHIBIT P4 - COPY OF LETTER DATED 13.03.2002 ISSUED TO THE PETITIONER BY THE PRINCIPAL.
- EXHIBIT P5 - COPY OF ORDER DATED 21.06.2006 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P6 - COPY OF THE LETTER DATED 23.06.2007 FROM THE GOVERNMENT TO THE PETITIONER.
- EXHIBIT P7 - COPY OF MEMO DATED 04.06.2007 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P8 - COPY OF THE ORDER DATED 11.10.1999 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER.
- EXHIBIT P9 - COPY OF THE COMMUNICATION DATED 11.09.2007 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P10 - COPY OF STATEMENT SHOWING WORKLOAD OF ENGLISH CLASSES IN THE COLLEGE DATED 30.11.2006.

RESPONDENTS' EXHIBITS:-

- EXHIBIT R3(A)- COPY OF THE WORKLOAD STATEMENT ISSUED BY THE ADDITIONAL DIRECTOR OF COLLEGIATE EDUCATION DATED 16.10.2003.
- EXHIBIT R3(B)- COPY OF THE ORDER OF THE GOVERNMENT DATED 27.03.2001 ALONG WITH THE APPENDIX.

//TRUE COPY//

P.A TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.29093 of 2007

Dated this the 14th day of September, 2015.

JUDGMENT

The petitioner, a Selection Grade Lecturer, is aggrieved by Ext.P9, by which her salary, after her transfer to N.S.S. College, Cherthala, had not been sanctioned. This Court in the above writ petition by an interim order dated 15.02.2008, directed sanction of the salary, but however indicated that if the writ petition is eventually dismissed, the petitioner would be liable to refund the amounts drawn.

2. I have heard the learned Senior Counsel appearing for the petitioner, the learned counsel appearing for respondents 2 to 5 and also the learned Government Pleader.

3. The controversy arose in view of discrepancy in the sanction of workload in the English Department as also an additional issue as to the Government sanctioning two courses

without any additional liability fixed on the Government. Admittedly, the N.S.S. College, Cherthala had been sanctioned only 104 periods in English. The Deputy Director, while considering the sanction of the salary due to the petitioner, reckoned 16 hours for each teacher and found that there is only need for 6 teachers including the Head of the Department.

4. The respondents 2 to 5 would in fact contend that any additional periods above 6 require an additional post to be sanctioned. Even adopting the computation made by the Deputy Director, of 16 periods allotted to each teacher would satisfy only 96 periods as against the sanctioned strength of 6 teachers. Admittedly, any period in excess of 6 would require an additional post to be sanctioned. The balance periods being 8, in the present case, definitely there was a requirement for an additional post. Further, it is also to be noticed that the permissible periods for the Head of the Department is only 13, which would in fact make the additional periods to be 11, further fortifying the requirement for sanction of an additional post.

5. There is also an additional contention by respondents 2

to 5 that there were two new courses carried on in the N.S.S. College, Cherthala, one B.A. English and the other B.Sc. Environmental Science, which was sanctioned on condition that there would be no financial liability on the Government. There was a controversy with respect to that, especially since the Government had brought out GO(MS) No.95/06 Higher Edn. dated 10.08.2006, by which the strength of teaching staff allowable in the Aided College, consequent on the de-linking of Pre-degree Course, was to be re-worked while considering the course sanction for 1998-2001. The above courses were sanctioned in the said period, but however without any financial liability on the Government. The respondents 2 to 5 contend that the 16 periods together, for English in the above two courses, would in fact raise the requirement of sanctioned period to 120.

6. The said contention is supported by a decision of the Division Bench of this Court in ***State of Kerala v. Arun George [2009 (4) KLT 972]***, wherein the sanctioning of new courses of Government, subject to condition of no financial commitment, was set aside. It was categorically held that aided courses

governed by Direct Payment Agreement would have to be ordered by the Government and no unilateral conditions could be fixed, absolving itself from the financial liability cast on it. The said decision has been affirmed by the Hon'ble Supreme Court in ***State of Kerala v. Arun George [2015 (1) KLT 833]***.

Hence, looking at any angle, the writ petition has to be allowed. The petitioner's transfer and posting at N.S.S. College, Cherthala cannot be said to be creating an excess teacher in the English Department. Petitioner's appointment, hence, has to be approved and the salary due to the petitioner should be paid. The petitioner is said to have retired and the salary also had been paid in accordance with the interim order of this Court. In such circumstances, the petitioner's transfer and payment of salary would stand regularized.

The writ petition would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge