

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

W.P.(C).No.24720 of 2015 (L)

PETITIONER(S):-

1. SAJEESH.S.,
HIGHER SECONDARY SCHOOL TEACHER (JR.) (BOTANY),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
2. JIJESH.I.V.,
HIGHER SECONDARY SCHOOL TEACHER (PHYSICS),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
3. KAILAS.B.,
HIGHER SECONDARY SCHOOL TEACHER (ENGLISH),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
4. HAREESH.K.,
HIGHER SECONDARY SCHOOL TEACHER (MAHTEMATICS),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
5. VIBINLAL.C.H.,
HIGHER SECONDARY SCHOOL TEACHER (GEOGRAPHY),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
6. DHANYA.M.,
HIGHER SECONDARY SCHOOL TEACHER (JR.) (ZOOLOGY),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
7. ANEESH.S.,
HIGHER SECONDARY SCHOOL TEACHER (HISTORY),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.

8. DHANYA T.V.,
HIGHER SECONDARY SCHOOL TEACHER (ECONOMICS),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
9. MANJULA.E.,
HIGHER SECONDARY SCHOOL TEACHER(JR.) (HINDI),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
10. SRUTHI.S
HIGHER SECONDARY SCHOOL TEACHER (CHEMISTRY),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
11. SABHITH. P.K.,
HIGHER SECONDARY SCHOOL TEACHER (MALAYALAM),
KARIYAD NAMBIAR'S HIGHER SECONDARY SCHOOL,
KARIYAD SOUTH PO, THALASSERY, KANNUR DISTRICT.
12. SMIJA. P.S.,
HIGHER SECONDARY SCHOOL TEACHER (COMMERCE),
SEVAMANDIR POST BASIC HIGHER SECONDARY SCHOOL,
RAMANATTUKARA, RAMANATTUKARA PO, KOZHIKODE DISTRICT.
13. ANISH KUNNATH,
HIGHER SECONDARY SCHOOL TEACHER (MATHEMATICS),
SEVAMANDIR POST BASIC HIGHER SECONDARY SCHOOL,
RAMANATTUKARA, RAMANATTUKARA PO, KOZHIKODE DISTRICT.
14. SANTHOSH KUMAR. K.V.,
HIGHER SECONDARY SCHOOL TEACHER (MATHEMATICS),
SEVAMANDIR POST BASIC HIGHER SECONDARY SCHOOL,
RAMANATTUKARA, RAMANATTUKARA PO, KOZHIKODE DISTRICT.

BY ADVS.SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM. PIN - 695 001.
2. DIRECTOR FO HIGHER SECONDARY EDUCATION
SANTHI NAGER, THIRUVANANTHAPURAM, PIN - 695 001.
3. REGIONAL DEPUTY DIRECTOR OF EDUCATION,
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE,
KANNUR, PIN - 670 001.

4. REGIONAL DEPUTY DIRECTOR OF EDUCATION,
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE,
KOZHIKODE, PIN - 673 001.

R1 TO R4 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1- A TRUE COPY OF THE GO (MS)NO.211/2011 DATED 24/10/11.
- EXT.P2- A TRUE COPY OF THE CIRUCLAR NO. ACD-B5/47005/HSE/10
DATED 15.11.2011.
- EXT.P3- TRUE COPY OF THE ORDER NO A4/13990(7)/2011
DATED 22.10.2012 APPROVING THE APPOINTMENT OF THE
1ST PETITIONER.
- EXT.P4- TRUE COPY OF THE ORDER NO.A4/13990/2011(3)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
2ND PETITIONER.
- EXT.P5- TRUE COPY OF THE ORDER NO.A4/13990/2011 (5)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
3RD PETITIONER.
- EXT.P6- TRUE COPY OF THE ORDER NO.A4/13990/2011(1)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
4TH PETITIONER.
- EXT.P7- TRUE COPY OF THE ORDER NO.A4/13990/2011(1)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
5TH PETITIONER.
- EXT.P8- TRUE COPY OF THE ORDER NO.A4/13990/2011(2)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
6TH PETITIONER.
- EXT.P9- TRUE COPY OF THE ORDER NO.A4/13990/2011 DATED 24.5.2012
APPROVING THE APPOINTMENT OF THE 7TH PETITIONER.
- EXT.P10- TRUE COPY OF THE ORDER NO.A4/13990/2011(4)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
8TH PETITIONER.
- EXT.P11- TRUE COPY OF THE ORDER NO.A4/13990/2011(6)
DATED 22.8.2012 APPROVING THE APPOINTMENT OF THE
9TH PETITIONER.
- EXT.P12- TRUE COPY OF THE ORDER NO.A4/13990/2011(8)
DATED 19.1.2013 APPROVING THE APPOINTMENT OF THE
10TH PETITIONER.
- EXT.P13- TRUE COPY OF THE ORDER NO.A4/13990/2011 DATED 24.5.2012
APPROVING THE APPOINTMENT OF THE 11TH PETITIONER.

- EXT.P14- TRUE COPY OF THE ORDER NO.A5/14004/2011/HSE(3)
DATED 16.07.2012 APPROVING THE APPOINTMENT OF THE
12TH PETITIONER.
- EXT.P15- TRUE COPY OF THE ORDER NO.A5/14004/2011/HSE(2)
DATED 16.07.2012 APPROVING THE APPOINTMENT OF THE
13TH PETITIONER.
- EXT.P16- TRUE COPY OF THE ORDER NO.A5/14004/2011
DATED 16.07.2012 APPROVING THE APPOINTMENT OF THE
14TH PETITIONER.
- EXT.P17- TRUE COPY OF THE GOVERNMENT ORDER NO.G.O(MS)
NO.126/1992/G/.EDN, DATED 17.6.1992.
- EXT.P18- A TRUE COPY OF THE COMMUNICATION
NO.ACD C3/53830/HSE/2013 DATED 19.12.2013.
- EXT.P19- A TRUE COPY FO THE ORDER NO. A3/12735/2011
DATED 19.4.2012.
- EXT.P20- TRUE COPY OF THE JUDGMENT DATED 4.12.2014 IN
WP(C) NO.15651/2014.
- EXT.P21- TRUE COPY FO THE GOVERNMENT ORDER DATED 3.3.2015.
- EXT.P22- TRUE COPY OF THE ORDER DATED 21.5.2015 ISSUED BY THE
2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.24720 of 2015-L

Dated this the 02nd day of September, 2015

JUDGMENT

The issue raised in the above writ petition with respect to eligibility for vacation salary is squarely covered by the decision of this Court in Exhibit P20, wherein it was held so:-

“5. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that in the orders issued by the 3rd respondent, approving the appointments of the petitioners to posts of HSST Junior in the respective Colleges, there is a condition inserted which qualified their approval by stating that the petitioners would not be entitled to vacation salary in the year of their appointment. The orders passed by the 3rd respondent would indicate that the stand taken by the 3rd respondent was on account of Rule 49 of Chapter XIVA of KER which deals with the non-payment of vacation salary to teachers appointed in terms of that Chapter under certain specified circumstances. While no provision has been brought to my notice that would suggest that there is a similar Rule applicable in respect of persons appointed as HSSTs in Higher Secondary Schools covered by Chapter XXXII of the KER, I note that by way of Ext.P22 order of the Government and Ext.P23 clarification issued by the Directorate of Higher

Secondary Education, it has been made clear that persons such as the petitioners, who were appointed to permanent vacancies in Higher Secondary Schools, would be entitled to vacation salary so long as the appointment persisted even for the period subsequent to 31st March of the calendar year. In the light of Ext.P23 clarification, I do not see any reason why the petitioners should be denied the benefit of vacation salary, more so when there is no statutory provision that is brought to my notice which would indicate that the petitioners are not entitled to such vacation salary. It might also be relevant to refer to the judgment of the Division Bench of this Court in **Pathanapuram Taluk Samajam Corporate Management Schools v. Sreelatha [2006 (3) KLT 867]**, which was rendered in the context of a case where the applicability of Rule 51B of Chapter XIVA of the KER to appointments effected under Chapter XXXII of the KER, came up for consideration, and it was held that unless a similar provision, as contained in Rule 51B, was incorporated in Chapter XXXII, it was not possible to contend that the benefits of employment assistance available to dependents of aided High School and Primary School teachers could be extended to vacancies available in Higher Secondary Section. Drawing analogy from the said decision, and also noticing that there is no provision similar to Rule 49A of Chapter XIVA in Chapter XXXII of the KER, I am of the view that the condition impugned in the orders passed by the 3rd respondent

cannot be legally sustained. Accordingly, I quash Exts.P3 to P21 in W.P.(C).No.15651/2014 and Exts.P3 and P4 in W.P.(C).No.11048/2014, to the extent they impose a condition that the candidate in question is not entitled to vacation salary in the year 2012 in terms of Rule 49 of Chapter XIVA of the KER. The respondents shall take immediate steps to disburse the vacation salary that is due and payable to the petitioners in the writ petitions within a period of three months from the date of receipt of copy of this judgment”.

2. Accordingly, the above writ petition would stand allowed. The conditions in Exhibits P3 to P16 that the respective petitioners would not be entitled to salary during vacation of the year 2012 would stand set aside. The directions in the afore-cited judgment shall apply to the petitioners herein also.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]