

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 29761 of 2013 (U)

PETITIONER(S) :

K.IBRAHIM,
MANAGER, AKM HIGHER SECONDARY SCHOOL,
KOTTOR, INDIANOR,
KOTTAKKAL, MALAPPURAM DISTRICT.

BY ADVS.SRI.AUGUSTINE JOSEPH
SRI.K.S.ROCKEY
SRI.TONY AUGUSTINE.

RESPONDENT(S) :

1. REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
CALICUT-673 001.
2. THE DIRECTOR,
HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM - 695 001.
3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

*ADDL. R4 IS IMPEADED

R4. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
MALAPPURAM.

(*ADDL. R4 IS IMPEADED AS PER ORDER DATED 31/03/2014 IN IA
3944/2014.)

R1-R3 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
BY GOVERNMENT PLEADER SMT.LOWSY A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1. TRUE COPY OF THE ORDER DATED 27-2-12 FROM THE 3RD RESPONDENT.
- EXT. P2. TRUE COPY OF THE LETTER DATED 25-9-2012 FROM THE 1ST RESPONDENT.
- EXT. P3. TRUE COPY OF THE JUDGMENT IN WPC NO. 25285/2012 DT. 2-1-13.
- EXT. P4. TRUE COPY OF THE ORDER DATED 20-3-2013 FROM THE 1ST RESPONDENT.
- EXT. P5. TRUE COPY OF THE JUDGMENT IN WPC NO. 8659/2013 DT. 4-6-2013.
- EXT. P6. TRUE COPY OF THE REPRESENTATION DATED 30-7-2013 FROM THE PETITIONER TO 1ST RESPONDENT.
- EXT. P(A) TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO SRI. MUJEEB RAHMAN M. AS HSST JUNIOR ENGLISH DATED 8-7-2013.
- EXT. P7(B) . TRUE COPY OF THE APPOINTMENT ORDER ISSUED TO FAHAD ELIKKOTIL AS HSST JUNIOR COMMERCE DATED 8-7-2013.
- EXT. P7(C) . TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO ABDUL GAFOOR T.C. AS HSST SENIOR COMPUTER APPLICATION.
- EXT. P7D. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO SHOUKATHALI P. AS HSST SENIOR ENGLISH.
- EXT. P7E. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO SAILATH P.K. AS HSST SENIOR CHEMISTRY.
- EXT. P7F. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO JISMITH B.C. AS HSST SENIOR MATHS.
- EXT. P7G. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO ABDUL LATHEEF A.C. AS HSST SENIOR ECONOMICS.
- EXT. P7H. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO JENOY MATHEW AS HSST SENIOR PHYSICS.
- EXT. P7I. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO SAFEER K. AS LABORATORY ASSISTANT.
- EXT. P7J. TRUE COPY OF THE APPOINTMENT ORDER DATED 8-7-2013 ISSUED TO KUNHALAN K. AS LABORATORY ASSISTANT.
- EXT. P8. TRUE COPY OF THE CABINET NOTES AND DECISION DATED 01/02/2012 OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT TO PROVE THE CONCURRENCE OF THE FINANCE.

EXT. P9. TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED
01/12/2012.

EXT. P10. TRUE COPY OF THE SELECT LIST OF THE TEACHERS OF THE
SCHOOL INTERVIEWED ON 29/12/2012.

EXT. P11. TRUE COPY OF THE ORDER IN G.O.(MS) NO.48/13/G.EDN.
DATED 04/03/2014.

EXT. P12. TRUE COPY OF THE LETTER DATED 24/10/2014 SUBMITTED
BEFORE THE 1ST RESPONDENT.

EXT. P13. TRUE COPY OF THE LETTER FROM THE 1ST RESPONDENT DATED
20/12/2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.29761 of 2013

Dated this the 25th day of February, 2015

JUDGMENT

The petitioner is the Manager of an aided school. There were certain issues regarding newly sanctioned posts for the year 2012-2013. In fact, the Government by Government Order dated 4.3.2014 sanctioned one post of HSST and six posts of HSST (Junior). This Court in W.P.(C) Nos.4/2014 and 8342/2014 found that reduction of the sanctioned posts to the petitioner's School is illegal. The Regional Deputy Director of Higher Secondary Education, Kozhikode granted sanctioned posts. The Government cannot reduce the sanctioned strength granted by the Regional Deputy Director of Higher Secondary Education, Kozhikode pursuant to the directions of this Court in W.P.(C) No.25285/2012 dated 2.1.2013. Therefore, the petitioner's School was having ten posts of HSST (Junior) and

one post of HSST for the academic year 2013-2014. This writ petition pertains to the year 2013-2014 in the context of upgradation.

2. The petitioner started academic admitted students and started classes from 8.7.2013 onwards. The Government as per Ext.P11 dated 4.3.2014 only sanctioned 5 posts of HSST (Seniors), six posts of HSST (Juniors) and one Lab Assistant that too with effect from 4.3.2014. The petitioner challenges the above order of the Government.

3. The petitioner has two fold grievances. First one is in respect of prospective application of the sanctioned posts. Secondly, with regard to reckoning the working period to sanction the post. In respect of the first objection, I am of the view, once that upgradation is allowed and the students were admitted commencement of the academic year itself, the approval cannot be accorded prospectively. The approval ought to have been with effect from the commencement of the academic year itself as it is only a matter relating to

upgradation of teaching post in the existing higher secondary school.

4. However, with regard to the grievance raised by the petitioner that the Government did not reckon the actual working period, I am of the view, the petitioner has to place relevant materials before the Government. The petitioner's case is that he is entitled for one post of HSST (Junior) in English and Commerce and also one more Lab Assistant. The petitioner submits that anticipating upgradation and considering the students strength and the working period, he has already made appointment and on account of non-sanctioning the post for accommodating one posts of HSST (Junior) in English, Commerce and Lab Assistant, those teachers are not paid salary. The petitioner referred to the working periods available in the school and relevant Government Orders to reckon the number of post that could have been noted for upgradation by the Government. Essentially, this is a factual aspect has to be apprised before the Government in respect of the working

period available in the School. If the schools are otherwise entitled to sanction for one more posts of HSST (Junior) in English, Commerce and one Lab Assistant, that cannot be denied. However, the Government have to apprise existence of the fact for sanctioning the post. Therefore, the petitioner shall move the third respondent by giving details about the working periods of the School from 2013-2014 within a period of two weeks from the date of receipt of a copy of this judgment. If necessary working periods were available to accommodate those teachers, necessarily, the permission should be given with retrospective effect. Necessary decision shall be taken by the third respondent within a further period of two months.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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