

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 30537 of 2013 (N)

PETITIONER(S):

**GOKULAN. K., MANAGER,
MANNUR NORTH A.U.P. SCHOOL, MANNUR,
ERANHIPALAM P.O, KOZHIKODE-673 328.**

**BY SRI.KURIAN GEORGE KANNANTHANAM, SENIOR ADVOCATE.
ADV. SRI.JIJI THOMAS.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 001.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE-673 328.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
FEROKE, KOZHIKODE DISTRICT-673 328.**

BY SR. GOVT. PLEADER SMT.M.J. RAJASREE.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 : TRUE COPY OF THE STAFF FIXATION ORDER DATED 29-08-2005 OF THE 4TH RESPONDENT.
- EXHIBIT P2 : TRUE COPY OF THE STAFF FIXATION ORDER DATED 27-10-2006 OF 4TH RESPONDENT.
- EXHIBIT P3 : TRUE COPY OF THE REVISED STAFF FIXATION ORDER DATED 26-03-2007 OF THE 4TH RESPONDENT.
- EXHIBIT P4 : TRUE COPY OF THE SHOW CAUSE NOTICE DATED 15-05-2006 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5 : TRUE COPY OF THE EXPLANATION DATED 15-06-2006 SUBMITTED BY THE PETITIONER.
- EXHIBIT P6 : TRUE COPY OF THE ORDER DATED 16-12-2006 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P7 : TRUE COPY OF THE ORDER DATED 04-09-2008 ISSUED BY THE GOVERNMENT.
- EXHIBIT P8 : TRUE COPY OF THE COMMUNICATION DATED 20-11-2008 BY THE 1ST RESPONDENT.
- EXHIBIT P9 : TRUE COPY OF THE LETTER DATED 17-11-2008 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P10 : TRUE COPY OF THE LETTER DATED 23-09-2008 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P11 : TRUE COPY OF THE JUDGMENT DATED 12-08-2011 IN WP(C).NO. 37837/2008 OF THIS HON.COURT.
- EXHIBIT P12 : TRUE COPY OF THE ORDER DATED 19-11-2011 OF GENERAL EDUCATION (L) DEPARTMENT.
- EXHIBIT P13 : TRUE COPY OF THE JUDGMENT IN WP(C).NO. 2208/2012 DATED 06-03-2013 OF THIS HON. COURT.
- EXHIBIT P14 : TRUE COPY OF THE DETAILS REGARDING THE BOGUS ADMISSION OF PUPILS OF THE PETITIONER'S SCHOOL.
- EXHIBIT P15 : TRUE COPY OF THE ORDER DATED 07/10/2013 OF GENERAL EDUCATION (L) DEPARTMENT.
- EXHIBIT P16 : TRUE COPY OF THE HEARING NOTICE ISSUED BY THE 2ND RESPONDENT DATED 13-11-2013.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

A.M.SHAFFIQUE, J

*** * * * ***

W.P.C.No.30537 of 2013

Dated this the 24th day of February 2015

J U D G M E N T

This writ petition is filed challenging Ext.P15, an order passed by the Government as per the directions issued by this Court in the judgment dated 06/03/2013 in W.P.C.Nos.2208 of 2012 and 6991 of 2012. The said judgment came to be passed when challenge was made to Ext.P12 order which again was pursuant to the directions issued by this Court in the judgment dated 12/08/2011 in W.P.C.Nos.37837 of 2008 and 37692 of 2009. The issue relates to staff fixation order issued by the educational authorities for the year 2005-2006 in respect of the school managed by the petitioner.

2. The aforesaid judgments came to be passed since the Government, while exercising the power of revision under Rule 92 of Chapter XIVA of Kerala Educational Rules, failed to comply with the directions issued in the light of the

observations made therein. It is pointed out that Ext.P15 order is also passed without complying with the directions issued as it is evident from the said order that there is absolute non-compliance of the directions issued. Reference is made to last three paragraphs of Ext.P15 order dated 07/10/2013 which reads as under:

“Government examined the matter in detail. Rule 15A will apply only when the staff strength is fixed originally by the statutory authority and the fixation is revised after September under Rule 12E or 15. When the DPI refers the staff strength on the basis of the report of the Super Check Cell under Rule 16, he is not to give allowance for a fall of 10% in the effective strength. The Super Check Cell makes enquiries to find out whether any irregularity has been committed in staff fixation. On the basis of this report DPI can take appropriate action. Hence Rule 16 is applicable in this case as the staff fixation is based on the inspection of Super Check Cell. Rule 15A cannot be applicable.

As per GO dt.19.11.2011 (Ext.P10) Government have directed the DPI to complete UID implementation and working out the division within a period of two months. But it could not be implemented. The AEO had informed that, the list of UID has been completed, though not implemented and the case can be verified with that list. Accordingly AEO examined the case and furnished a detailed report. On verification of the case, it is noticed that the admission of fourteen students are not seen bogus. Two students have been transferred to the Kannur District.

In the above circumstances this matter is remitted to the DPI with a direction to examine the case afresh as per the report of the AEO dated 27.06.2013 and revise the staff fixation as above within two weeks."

3. As far as the contention regarding applicability of Rule 15A of Chapter XXIII of Kerala Educational Rules is concerned, Government has taken a decision which need not be reconsidered, as matters stand now. However, as far as the claim of the petitioner that there was no bogus

admission and materials were produced before the educational authorities and later before the Government to prove that there was no bogus admission, the said matter has not been considered by the Government despite repeated directions issued by this Court.

4. It is relevant to note that in Ext.P15, while considering the said issue, Government relied upon the report of the Assistant Educational Officer (AEO) and it has been indicated that on verification of the case, it is noticed that admission of 14 students does not seem to be bogus and two students have been transferred to Kannur District. In fact, earlier, educational authorities have formed an opinion that there were 38 bogus admissions and in Ext.P15 order, Government had accepted that as far as 16 students are concerned, those are not bogus admissions. However, the Government directed the matter to be looked into by the Director of Public Instructions (DPI) and the matter has to be examined afresh on the basis of the report of the AEO dated

27/06/2013. There was also a direction to revise the staff fixation within two weeks.

5. Learned senior counsel appearing for the petitioner submits that Ext.P15 order was passed contrary to the directions issued by this Court with reference to the consideration of the question as to whether there were bogus admissions or not. Direction was issued to the Government and therefore it was not open for the Government to remit the matter back to DPI.

6. Incidentally, it is relevant to note that the teachers who lost employment on account of staff fixation of 2005-2006 had filed another writ petition before this Court as W.P.C.No.13753/2014 and by an interim order dated 06/06/2014, a direction was issued by this Court to DPI to pass final orders as directed in Ext.P15. Pursuant to the same, the DPI had issued an order dated 19/06/2014 directing the AEO to revise the staff fixation order from 2005-2006 onwards. The AEO conducted an enquiry and

thereafter issued an order dated 16/07/2014 fixing the staff strength for the years 2005-2006 to 2010-2011 and thereafter certain directions have also been issued to effect appointment of teachers from the year 2006-2007.

7. Though these matters are not placed before this Court in this writ petition, the teachers had filed another writ petition W.P.C.No.29914/2014 seeking for a direction to implement the order issued by the AEO, which is still pending.

8. Under such circumstances, the question to be considered is whether the Government was justified in issuing Ext.P15 without considering the contentions urged by the manager/petitioner as directed by this Court. No Counter affidavit has been filed though this writ petition was filed as early as on 10/12/2013.

9. It is relevant to note that though it is contended by the learned counsel for the petitioner that the Government has not considered the question, it is apparent that the

Government had called for a report from the AEO regarding the bogus admissions and on that basis it was found that in regard to 14 students, the admissions were not bogus and two of the students were transferred. Under such circumstances, it cannot be stated that there was total non-application of mind. However, the matter was remitted back to the DPI to consider the matter afresh. But, as stated above, from the records available in W.P.C.No.29914/2014, it is evident that the DPI, without considering the matter, has relegated the matter to AEO to pass an order which was not warranted under the circumstances as far as the staff fixation order of 2005-2006 is concerned.

10. When a direction was issued by this Court to the Government to consider the matter, definitely it was for the Government to look into the matter. If the Government thought it fit to remit the matter back to DPI, the DPI cannot further remit the matter back to AEO. Under such circumstances, it has to be assumed that as far as staff

fixation order of 2005-2006 is concerned, the contentions urged by the petitioner regarding bogus admissions were not properly considered. In the said circumstances, I am of the view that this matter has to be reconsidered by DPI as per the directions issued in Ext.P15. Of course, in Ext.P15, the Government had formed an opinion that 14+2 admissions were not bogus whereas it is the case of the petitioner that the entire 38 admissions were not bogus. No material is available in Ext.P15 to indicate that there was a consideration of the contentions urged by the petitioner in that regard. Therefore, it is a clear case where the entire factual materials placed on record ought to have been considered and a final decision ought to have been arrived at by the DPI in the light of the directions issued by this Court as well as remittance order passed by the Government.

11. Under such circumstances, without interfering with Ext.P15, there will be a direction to the DPI to consider the

contentions and evidence made available by the petitioner regarding the question as to whether 38 admissions were bogus or not and a decision in that regard shall be taken within a period of two months from the date of receipt of a copy of this judgment. It is made clear that subsequent staff fixation order passed by the AEO with reference to 2005-2006 shall be treated as invalid and a further decision in that respect shall be taken after a decision is taken by DPI in this regard.

This writ petition is disposed of as above.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

