

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 34179 of 2015 (V)

PETITIONER(S) :

1. SHAJIMON P K,
HIGHER SECONDARY SCHOOL TEACHER (ECONOMICS) ,
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR,
PULPATTA.P.O., MALAPPURAM DISTRICT.

2. ARYA SURENDRAN R.,
HIGHER SECONDARY SCHOOL TEACHER (MALAYALAM)
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR
PULPATTA.P.O., MALAPPURAM DISTRICT.

3. SEENA A.P
HIGHER SECONDARY SCHOOL TEACHER (MATHEMATICS)
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR,
PULPATTA.P.O., MALAPPURAM DISTRICT.

4. ROSHNI BALAKRISHNAN
HIGHER SECONDARY SCHOOL TEACHER (BOTANY)
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR
PULPATTA.P.O., MALAPPURAM DISTRICT.

5. SAYEDRASHEED V.P.,
HIGHER SECONDARY SCHOOL TEACHER (POLITICAL SCIENCE)
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR,
PULPATTA.P.O., MALAPPURAM DISTRICT.

6. MUBARAK M.,
HIGHER SECONDARY SCHOOL TEACHER(JR.) (ZOOLOGY)
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR
PULPATTA.P.O., MALAPPURAM DISTRICT.

7. ABDUL HAMEED O.P.,
HIGHER SECONDARY SCHOOL TEACHER (PHYSICS)
C.H.M.HIGHER SECONDARY SCHOOL, POOKOLATHUR,
PULPATTA.P.O., MALAPPURAM DISTRICT.

8. MOHAMMED BABU P.,
HIGHER SECONDARY SCHOOL TEACHER (SOCIOLOGY)
NAROKKAVU HIGHER SECONDARY SCHOOL
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

9. SUNIL K.,
HIGHER SECONDARY SCHOOL TEACHER (PHYSICS)
NAROKKAVU HIGHER SECONDARY SCHOOL,
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

10. BINU PAUL
HIGHER SECONDARY SCHOOL TEACHER (ECONOMICS)
NAROKKAVU HIGHER SECONDARY SCHOOL
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

11. RAJESH V.V
HIGHER SECONDARY SCHOOL TEACHER (POLITICAL SCIENCE)
NAROKKAVU HIGHER SECONDARY SCHOOL
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

12. AJUKUMAR P
HIGHER SECONDARY SCHOOL TEACHER (BOTANY)
NAROKKAVU HIGHER SECONDARY SCHOOL
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

13. JAFFAR CHUNGATH
HIGHER SECONDARY SCHOOL TEACHER (HISTORY)
NAROKKAVU HIGHER SECONDARY SCHOOL
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

14. ANIL KUMAR P
(PADINHARACHIRA)
HIGHER SECONDARY SCHOOL TEACHER (MATHEMATICS)
NAROKKAVU HIGHER SECONDARY SCHOOL
KUNNUMELPOTTY.P.O., MEKKORAVA, MALAPPURAM DISTRICT.

15. SASIKUMAR K.V.,
HIGHER SECONDARY SCHOOL TEACHER (MATHEMATICS)
RAMANATTUKARA HIGHER SECONDARY SCHOOL
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

16. VIVEK C.,
HIGHER SECONDARY SCHOOL TEACHER (CHEMISTRY)
RAMANATTUKARA HIGHER SECONDARY SCHOOL,
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

17. ABDUL RASHEED T.,
HIGHER SECONDARY SCHOOL TEACHER (POLITICAL SCIENCE)
RAMANATTUKARA HIGHER SECONDARY SCHOOL,
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

18. SUDHA K.P.,
HIGHER SECONDARY SCHOOL TEACHER (ECONOMICS)
RAMANATTUKARA HIGHER SECONDARY SCHOOL,
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

19. JISHA V.,
HIGHER SECONDARY SCHOOL TEACHER (JR.) (BOTANY)
RAMANATTUKARA HIGHER SECONDARY SCHOOL
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

20. JAITHRA V.S.,
HIGHER SECONDARY SCHOOL TEACHER (JR.) (ZOOLOGY)
RAMANATTUKARA HIGHER SECONDARY SCHOOL
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

21. SREEJA E
HIGHER SECONDARY SCHOOL TEACHER (MALAYALAM)
RAMANATTUKARA HIGHER SECONDARY SCHOOL
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

22. JEEJA T
HIGHER SECONDARY SCHOOL TEACHER (PHYSICS)
RAMANATTUKARA HIGHER SECONDARY SCHOOL
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

23. RAJEENA N.B.,
HIGHER SECONDARY SCHOOL TEACHER (SOCIOLOGY)
RAMANATTUKARA HIGHER SECONDARY SCHOOL,
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

24. SRIJITH M.,
HIGHER SECONDARY SCHOOL TEACHER (HISTORY)
RAMANATTUKARA HIGHER SECONDARY SCHOOL
VYDIARANGADI.P.O., MALAPPURAM DISTRICT.

25. ANOOP GEORGE
HIGHER SECONDARY SCHOOL TEACHER (JR.) (MATHEMATICS)
ST.STEPHEN'S HIGHER SECONDARY SCHOOL, PATHANAPURAM
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.K.T.SHYAM KUMAR
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 OF HIGHER SECONDARY EDUCATION
SANTHI NAGER, THIRUVANANTHAPURAM. PIN-695 001.

3. REGIONAL DEPUTY DIRECTOR OF EDUCATION
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE
MALAPPURAM. PIN-673 003.

4. REGIONAL DEPUTY DIRECTOR OF EDUCATION
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE, KOZHIKODE
PIN-673 082.

5. REGIONAL DEPUTY DIRECTOR OF EDUCATION
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE
THIRUVANANTHAPURAM. PIN-695 001.

R BY GOVERNMENT PLEADER SMT.A.LOWSY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- A TRUE COPY OF THE G.O. (MS) NO.211/2011/G.EDN. DATED 24.10.2011.

P2- A TRUE COPY OF THE CIRCULAR NO.ACD-B5/47005/HSE/10 DATED 15.11.2011.

P3- TRUE COPY OF THE ORDER NO.B3/14023/2011 DATED 26.04.2012 APPROVING THE APPOINTMENT OF THE 1ST PETITIONER.

P4- TRUE COPY OF THE ORDER NO.B3/14023/2011 DATED 26.04.2012 APPROVING THE APPOINTMENT OF THE 2ND PETITIONER.

P5- TRUE COPY OF THE ORDER NO.B3/14023/2011 DATED 26.04.2012 APPROVING THE APPOINTMENT OF THE 3RD PETITIONER.

P6- TRUE COPY OF THE ORDER NO.B3/14023/2011 DATED 26.04.2012 APPROVING THE APPOINTMENT OF THE 4TH PETITIONER.

P7- TRUE COPY OF THE ORDER NO.B3/14023/2011 DATED 12.09.2012 APPROVING THE APPOINTMENT OF THE 5TH PETITIONER.

P8- TRUE COPY OF THE ORDER NO.B3/14023/2011 DATED 07.09.2012 APPROVING THE APPOINTMENT OF THE 6TH PETITIONER.

P9- TRUE COPY OF THE ORDER NO.B4/2419/2013 DATED 05.07.2013 APPROVING THE APPOINTMENT OF THE 7TH PETITIONER.

P10- TRUE COPY OF THE ORDER NO.B4/14037/2011(7) DATED 04.09.2012 APPROVING THE APPOINTMENT OF THE 8TH PETITIONER.

P11- TRUE COPY OF THE ORDER NO.B4/14037/2011 DATED 11.09.2012 APPROVING THE APPOINTMENT OF THE 9TH PETITIONER.

P12- TRUE COPY OF THE ORDER NO.B4/14037/2011(2) DATED 10.07.2012 APPROVING THE APPOINTMENT OF THE 10TH PETITIONER.

P13- TRUE COPY OF THE ORDER NO.B4/14037/2011(4) DATED 10.07.2012 APPROVING THE APPOINTMENT OF THE 11TH PETITIONER.

P14- TRUE COPY OF THE ORDER NO.B4/14037/2011 DATED 13.07.2012 APPROVING THE APPOINTMENT OF THE 12TH PETITIONER.

P15- TRUE COPY OF THE ORDER NO.B4/14037/2011(6) DATED 04.09.2012 APPROVING THE APPOINTMENT OF THE 13TH PETITIONER.

P16- TRUE COPY OF THE ORDER NO.B4/14037/2011(12) DATED 22.09.2012 APPROVING THE APPOINTMENT OF THE 14TH PETITIONER.

P17- TRUE COPY OF THE ORDER NO.A1/3342/2012(B) DATED 31.07.2012 APPROVING THE APPOINTMENT OF THE 15TH PETITIONER.

P18- TRUE COPY OF THE ORDER NO.A1/3342/2012(J) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 16TH PETITIONER.

P19- TRUE COPY OF THE ORDER NO.A1/3342/2012(C) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 17TH PETITIONER.

P20- TRUE COPY OF THE ORDER NO.A1/3342/2012(A) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 18TH PETITIONER.

P21- TRUE COPY OF THE ORDER NO.A1/3342/2012(E) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 19TH PETITIONER.

P22- TRUE COPY OF THE ORDER NO.A1/3342/2012(F) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 20TH PETITIONER.

P23- TRUE COPY OF THE ORDER NO.A1/3342/2012(I) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 21ST PETITIONER.

P24- TRUE COPY OF THE ORDER NO.A1/3342/2012(K) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 22ND PETITIONER.

P25- TRUE COPY OF THE ORDER NO.A1/3342/2012(G) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 23RD PETITIONER.

P26- TRUE COPY OF THE ORDER NO.A1/3342/2012(D) DATED 31.07.2012
APPROVING THE APPOINTMENT OF THE 24TH PETITIONER.

P27- TRUE COPY OF THE ORDER NO.A3/2899/2012(I) DATED 03.08.2012
APPROVING THE APPOINTMENT OF THE 25TH PETITIONER.

P28- TRUE COPY OF THE GOVERNMENT ORDER NO.G.O. (MS) NO.126/1992/G.EDN.
DATED 17.6.1992.

P29- A TRUE COPY OF THE COMMUNICATION NO.ACD-C3/53830/HSE/2013 DATED
19.12.2013.

P30- A TRUE COPY OF THE ORDER NO.A3/12735/2011 DATED 19.04.2012.

P31- TRUE COPY OF THE JUDGMENT DATED 4.12.2014 IN W.P[C]
NO.15651/2014.

P32- TRUE COPY OF THE GOVERNMENT ORDER DATED 3.3.2015.

P33- TRUE COPY OF THE ORDER DATED 21.5.2015 ISSUED BY THE 2ND
RESPONDENT.

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C) No.34179 of 2015

Dated this the 19th day of November, 2015

J U D G M E N T

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 P31, 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 calender 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 P27 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

AV/21/11