

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

W.P.(C).No.36935 of 2015 (N)

PETITIONER(S):-

SABINA.C.H., AGED 35 YEARS, W/O SUDHISH,
HIGH SCHOOL ASSISTANT (JUNIOR),
KAMBIL MAPPILA HSS, KOLANCHERY POST, KAMBIL, KANNUR.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.V.SATHISH KUMAR.

RESPONDENT(S):-

1. THE STATE OF KERALA,
RERPESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM - 695 001.
3. THE REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION, REGIONAL OFFICE,
KOZHIKODE - 673 101.
4. THE MANAGER,
CORPORATE EDUCATION AGENCY, DIOCESE OF MANANTHAVADY,
NEAR MANANTHAVADY BUS STAND, MANANTHAVADY POST,
WAYANAD DISTRICT, PIN - 673 645.
5. THE MANAGER,
DAMBIL MOPLA HSS, KOLANCHERY POST,
KANNUR DISTRICT, PIN 670 601

R1 TO R3 BY GOVERNMENT PLEADER SMT.A.LOWSY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1 A TRUE COPY OF THE SAID GOVERNMENT ORDER
 GO(MS) NO 211/2011/G.EDN DATED 24-10-2011 ISSUED BY
 THE 1ST RESPONDENT.
- EXHIBIT P2 A TRUE COPY OF THE SAID CURCULAR
 NO ACD B5/47005/HSE/10 DATED 15-11-2011 ISSUED BY THE
 2ND RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE APPROVAL ORDER NO A4/13994/2011
 DATED 06-06-2012 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P4 A TRUE COPYT OF THE SAID GOVERNMENT ORDER
 GO (MS) 126/92 DATED 17-06-92 ISSUED BY THE
 1ST RESPONDENT.
- EXHIBIT P5 A TRUE COPY OF THE SAID COMMUNICATION
 NO MCD C3/53830/HIGHER SECONDARY DEPARTMENT
 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT
 DATED 19-12-2013.
- EXHIBIT P6 A TRUE COPY OF THE SAID JUDGMENT IN WPC NO 15651/2014.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.36935 of 2015-N

Dated this the 22nd day of December, 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 W.P.(C).Nos.11048 of 2014 & connected case, dated 04.12.2014 [Exhibit P6], 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 condition in Exhibit P3 that the petitioner 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 petitioner herein also.

Sd/-

K.Vinod Chandran
Judge.

Vku/-

[true copy]