**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

**FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942**

**WP(C).No.4757 OF 2019(T)**

**PETITIONER :-**

**SUNIL JOSEPH,**
**HIGHER SECONDARY SCHOOL TEACHER (HINDI),**
**ST.THOMAS HIGHER SECONDARY SCHOOL, NADAVAYAL,**
**NADAVAYAL P.O., WAYANAD DISTRICT.**

**BY ADVS.**
**SRI.V.MADHUSUDHANAN**
**SRI.T.ISSAC**

**RESPONDENTS :-**

1 **STATE OF KERALA,**
**REPRESENTED BY ITS SECRETARY,**
**GENERAL EDUCATION-HIGHER SECONDARY EDUCATION,**
**SECRETARIAT, THIRUVANANTHAPURAM – 695 001.**

2 **THE DIRECTOR OF HIGHER SECONDARY EDUCATION,**
**HOUSING BOARD BUILDING, SANTHI NAGAR,**
**THIRUVANANTHAPURAM – 695 001.**

3 **THE REGIONAL DEPUTY DIRECTOR,**
**HIGHER SECONDARY EDUCATION,**
**KOZHIKODE – 673 004.**

4 **THE MANAGER,**
**ST.THOMAS HIGHER SECONDARY SCHOOL, NADAVAYAL,**
**NADAVAYAL P.O., WAYANAD DISTRICT – 670 721.**

**BY SRI.P.M. MANOJ, SR.GP.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# JUDGMENT

**Dated this the 4th day of December 2020**

This writ petition is filed seeking the following reliefs :-

"i. to declare that the post of HSST (Hindi) in 4th respondent school is to be sanctioned with effect from the academic year 2013-14.

ii. issue a writ of certiorari quashing/setting aside Exhibit P-10 order to the extent the post of HSST (Hindi) is sanctioned only with effect from 21/08/17.

iii. issue writ of mandamus directing the 2nd respondent to sanction the post of HSST from the academic year 2013-2014 and approve the appointment of the petitioner as HSST (Hindi) w.e.f 8-07-2013 with all consequential benefits."

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted that the petitioner was appointed as HSA in the 4th respondent school with effect from 6.6.2001. The petitioner was later appointed as HSST (Jr.) in Hindi in a retirement vacancy which arose on 1.6.2013. The said appointment was approved from 3.6.2013 onwards. The learned counsel for the petitioner submits that the staff fixation orders for the year 2013 to 2017-18 would show that there were 18 periods of work available in Hindi at the very minimum in all the academic years. In the year 2014-15, an additional post was sanctioned and the number of periods was increased to 24. However, the petitioner was

continued against the post of HSST (Jr.) and was drawing salary only as HSST (Jr.) on the basis of orders of approval. It is submitted that the petitioner as well as the Manager had approached the respondents seeking up-gradation of the post as HSST on the basis of the workload available. But, the request was rejected. Ultimately, Ext.P10 order was passed on 21.8.2017 upgrading the post of HSST (Jr.) in Hindi available in the school as HSST. However, it is stated in Ext.P10 that the up-gradation and the creation of post would be prospective and that no benefits would be available retrospectively. The learned counsel for the petitioner submits that Ext.P10 relates only to up-gradation of post and creation of posts. It is the petitioner's contention that since there were 18 periods of work available from 2013 onwards, the school was entitled to a post of HSST and not of HSST (Jr.). The learned counsel also draws attention to Rule 1(d) of Chapter XXXII KER to contend that a teacher appointed in a higher secondary school to teach with a workload of 15 hours or more per week per subject is undoubtedly a Higher Secondary School Teacher and is entitled to all the benefits as such. It is, therefore, contended that in view of the admitted position that there were 18 periods of work from 2013 onwards, the petitioner was eligible for approval as HSST from 8.7.2013, that too, with all attendant benefits.

4. A counter affidavit has been placed on record by the 2nd respondent. It is contended therein that the post initially sanctioned to the 4th respondent school was HSST (Jr.). It is contended that the petitioner was appointed as HSST (Jr.) in Hindi in the school. It is stated in the counter affidavit that the Manager appointed the petitioner as HSST (Hindi) considering only the periods in the academic year 2013-14 and in anticipation of sanctioning the higher post of HSST. It is stated that the appointment as HSST (Jr.) was approved with effect from 3.6.2013. It is further submitted that a proposal had been submitted for upgrading the post held by the petitioner from the year 2013-14 as there were sufficient periods to upgrade the post as HSST. However, it is stated that to upgrade a post of second language, there should be sufficient student strength for three continuous years. It is stated that in the academic year 2014-15, an additional batch was sanctioned in the school as per Government Order dated 24.11.2014. It is stated that as there had been sufficient student strength continuously for three years, the Director of Higher Secondary Education submitted proposal for upgrading the post held by the petitioner as HSST and that the said Government Order only has prospective effect.

5. I have considered the contentions advanced on either side. It is not in dispute before me that the petitioner was appointed against a retirement vacancy of HSST (Jr.) by the Manager on 1.6.2013. Chapter XXXII Rule 1(d) of the KER defines a Higher Secondary School Teacher to mean a Higher Secondary School Teacher of an aided school whose workload is 15 or more periods per week per subject. It is the specific contention of the petitioner that from academic year 2013-14 onwards, the school admittedly had a workload of 18 periods of work per week in Hindi. The petitioner as well as the Manager had made representations before the respondents seeking sanction of a post of HSST and the grant of benefits to the petitioner with effect from the date of approval of his appointment as HSST (Jr.). However, by Ext.P10, the Government considered the issue of sanctioning of post and up-gradation of post consequent to the sanctioning of a new batch in the year 2014-15. The post held by the petitioner was upgraded as Higher Secondary School Teacher taking note of the sanction of an additional batch in the year 2014-15. This up-gradation was to be prospective in effect. However, the specific contention of the petitioner that there were 18 periods of work per week in Hindi from the initial date of appointment itself has not been considered by the respondents. The learned counsel for the petitioner submits

that even *de hors* Ext.P10 Government Order and the up-gradation of the post, the petitioner who was teaching more than 15 hours of work per week in Hindi in the school was eligible for sanction of the post of HSST and for grant of the benefits thereof. This aspect has not been addressed either in the counter affidavit filed by the 2nd respondent or in the orders of rejection.

6. I am of the opinion that the specific aspect of the matter where the petitioner contends that even without the sanction of the additional batch, the petitioner, whose workload was 18 hours of work per week going by the staff fixation orders, was eligible for appointment as HSST from the academic year 2013-14 itself and for the monetary benefits thereof ought to be considered by the Government.

In the above view of the matter, the orders impugned in the writ petition are set aside. There will be a direction to the Government to consider the claim of the petitioner for appointment as HSST by the up-gradation of the post from 2013-14 onwards and for payment of the benefits due on the basis of the admitted position that there were 18 hours of work per week from the year 2013-14 onwards in the school. Appropriate orders shall be passed, after hearing the petitioner as well as the Manager, within a period of three months from the date of receipt of a copy of this

judgment. If the petitioner is found eligible, the monetary benefits shall be disbursed within a period of two months thereafter.

This writ petition is ordered accordingly.

**Sd/-**
**ANU SIVARAMAN**
**JUDGE**

Jvt/7.12.2020

# APPENDIX

**PETITIONER'S EXHIBITS:**

**EXHIBIT P1** **TRUE COPY OF THE ORDER NO.A3/7428/2013/K.DIS DATED 29.08.2014 ISSUED BY THE 3RD RESPONDENT.**

**EXHIBIT P2** **TRUE COPY OF THE ORDER NO.112A/PHSS/2013 DATED 08.07.2013 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.**

**EXHIBIT P3** **TRUE COPY OF THE G.O.(MS)NO.398/2002/G.EDN DATED 29.11.2002.**

**EXHIBIT P4** **TRUE COPY OF THE STAFF FIXATION ORDER NO.A3/7422/13 D.DIS DATED 26.02.2014 ISSUED BY THE 3RD RESPONDENT.**

**EXHIBIT P5** **TRUE COPY OF THE RELEVANT PORTION OF THE GO(P)NO.247/2014/G.EDN DATED 24.11.2014.**

**EXHIBIT P6** **TRUE COPY OF THE ORDER NO.A3/8230/2017 DATED 27.12.2017 ISSUED BY THE 3RD RESPONDENT.**

**EXHIBIT P7** **TRUE COPY OF THE LETTER NO.A3/5259/2014 DATED 25.09.2014 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.**

**EXHIBIT P8** **TRUE COPY OF THE LETTER NO.A3/5259/16 DATED 28.03.2016 FORWARDING THE STUDENT STRENGTH BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.**

**EXHIBIT P9** **TRUE COPY OF THE LETTER NO.A3/2984/2017 DATED 25.04.2017 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT.**

**EXHIBIT P10** **TRUE COPY OF THE G.O(MS)NO.106/2017/G.EDN DATED 21.08.2017 ALONG WITH RELEVANT PORTION OF ANNEXURE.**

**EXHIBIT P11** **TRUE COPY OF THE ORDER NO.A3/866/2018/K.DIS DATED 24.07.2018 ISSUED BY THE 3RD RESPONDENT.**

//TRUE COPY//

P.A. TO JUDGE