IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

WP(C) NO. 11180 OF 2024

PETITIONER:

HAFIS, AGED 40 YEARS,
S/O.ABDU RAHIMAN, PURAYIL HOUSE, PUTHOOR P.O,
OMASSERY(VIA) KOZHIKODE, PIN - 673 582.

BY ADVS. K.MOHANAKANNAN
D.S.THUSHARA

RESPONDENTS:

1 *STATE OF KERALA,*
REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM,
PIN - 695 001.

2 *THE DIRECTOR OF GENERAL EDUCATION,*
OFFICE OF THE DIRECTOR OF GENERAL EDUCATION, JAGATHY THIRUVANANTHAPURAM-, PIN - 695 014.

3 *THE DEPUTY DIRECTOR OF EDUCATION,*
TAZHEKKOD, KOZHIKODE, PIN - 673 004.

4 *THE DISTRICT EDUCATIONAL OFFICER,*
THAMARASSERI, KOZHIKODE, PIN - 673 573.

5 *THE MANAGER,*
KUNNAMANGALAM HIGHER SECONDARY SCHOOL, KUNNAMANGALAM P.O, KOZHIKODE, PIN - 673 571.

BY ADVS.
SMT.K.G.SAROJINI, GOVERNMENT PLEADER
Nandakumar P
VIVEK VIJAYAKUMAR(K/1018/2016)
SILPA SREEKUMAR(K/228/2023)
MERIN K JIMMY(K/003922/2023)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is presently working as L.G.Arabic Teacher with effect from 15.07.2021 in the School managed by the 5th respondent. The case of the petitioner is that, despite the fact that he had the right to be appointed as HST (Arabic) on the basis of Rule 51 A of Chapter XIV A KER, the Manager did not grant appointment. Therefore, the petitioner moved the authorities concerned, which ultimately resulted in an Ext.P8 order passed by the 3rd respondent directing the 5th respondent Manager to give an appointment to the petitioner as HST (Arabic) and to make necessary adjustments in the post. On the basis of Ext.P8, Ext.P9 order was issued by the 4th respondent directing the 5th respondent to implement Ext.P8. As no action has been taken for implementing Ext.P8 and P9, this writ petition was submitted by the petitioner seeking the following reliefs:

> "(i) To issue a Writ of mandamus or any other appropriate Writ order or direction directing the Respondents 3 and 4 to ensure that Ext.P8 is implemented by the 5th Respondent within a time frame to be fixed by this Hon'ble Court;

(ii) To issue a Writ of mandamus or any other appropriate writ order or direction directing the 5th Respondent to implement Ext.P8 and P9 and to produce the order before this Hon'ble Court within a time frame to be fixed by this Hon'ble Court;

(iii) To issue a Writ of mandamus or any other appropriate Writ order or direction directing the Respondents 3 and 4 to ensure that Ext.P8 is implemented by the 5th Respondent and the Petitioner is appointed as HST(Arabic) within a time frame to be fixed by this Hon'ble Court;

(iv) To dispense with filing of the translation of vernacular documents;

(v) To grant such other and further reliefs as are just, proper and necessary in the facts and circumstances of the case.

2. A counter affidavit has been placed on record by the 5th respondent, wherein it was contended that the petitioner does not have any right to claim Rule 51A of Chapter XIV A KER, in view of the fact that the petitioner himself left the job and it is not a termination which enables him to claim right under Rule 51A. Besides, it was also contended that the vacancy of HST (Arabic) has been filled up by appointing one Mr.Subair M.K with effect from 01.06.2021, who was a claimant under Rule 43 of Chapter

XIV A of KER. Therefore, it is contended that the prayer sought by the petitioner cannot be entertained. As far as Ext.P8 order is concerned, the 5th respondent had already invoked the statutory remedy by submitting an appeal before the 2nd respondent dated 04.01.2024, which is produced before this Court along with a memo dated 26.07.2024.

3. I have heard Sri.K.Mohanakannan, learned counsel for the petitioner, Smt.K.G.Sarojini, learned Government Pleader and Sri.P.Nandakumar, learned counsel for the 5th respondent.

4. The claim of the petitioner under Rule 51 A is seriously disputed by the 5th respondent and according to him, the finding in Ext.P8 upholding the right of the petitioner is not legally justifiable. It is also discernible that the 5th respondent has already invoked the statutory remedy by submitting an appeal before the 2nd respondent, which is now pending consideration. Therefore, it is only proper that the issue be decided by the 2nd respondent within a time frame.

In such circumstances, I am inclined to dispose of this writ petition without entering into any finding on the merits and directing the 2nd respondent to take up the appeal dated

04.01.2024 submitted by the 5th respondent against Ext.P8 order. A decision in this regard shall be taken by the 2nd respondent after hearing the petitioner, the 5th respondent and Sri.Subair M.K, the person who is now working in the post of HST (Arabic) in the School managed by the 5th respondent. The decision in this regard shall be taken within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

DG/29.7.24

APPENDIX OF WP(C) 11180/2024

PETITIONER EXHIBITS

Exhibit P1	*TRUE COPY OF THE COMMUNICATION SENT BY THE MANAGER TO THE HEADMASTER DATED 15-7-2021*
Exhibit P2	*TRUE COPY OF THE DECLARATION GIVEN BY THE MANAGER DATED 6-6-2019*
Exhibit P3	*TRUE COPY OF THE RELEVANT PAGES (18-25) OF THE SERVICE BOOK OF THE PETITIONER*
Exhibit P4	*TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 3 RD RESPONDENT DATED 4-8-2021*
Exhibit P5	*TRUE COPY OF THE COVERING LETTER DATED 4-8- 2021 OF THE HM TO THE 3 RD RESPONDENT*
Exhibit P6	*TRUE COPY OF THE HEARING NOTICE DATED 16-7- 2022 OF THE 3 RD RESPONDENT*
Exhibit P7	*TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER BEFORE THE 3 RD RESPONDENT 06-08-2022*
Exhibit P8	*TRUE COPY OF THE ORDER NO.B1/11404/ 2021 DATED 29-12-2023 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, KOZHIKODE*
Exhibit P9	*TRUE COPY OF THE PROCEEDINGS NO.DEOTSY/589/2023-B2 DATED 10-2-2024 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, THAMARASSERY*