

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V  
WEDNESDAY, THE 26<sup>TH</sup> DAY OF OCTOBER 2022 / 4TH KARTHIKA, 1944

WP(C) NO. 31861 OF 2022

**PETITIONER:**

JOLLYAMMA V.THOMAS  
AGED 55 YEARS  
W/O.BAJI MATHEW, NOW WORKING AS HIGHER SECONDARY  
SCHOOL TEACHER(HSST) HINDI,  
ST.SEBASTIAN'S HSS, KOODARANHI, KOZHIKODE DISTRICT,  
PIN-673604.

BY ADV PAULSON THOMAS

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM,  
PIN-695001.
- 2 THE DIRECTOR OF GENERAL EDUCATION,  
GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF KERALA,  
JAGATHY,  
THIRUVANANTHAPURAM, PIN-695005.
- 3 THE REGIONAL DEPUTY DIRECTOR, HIGHER SECONDARY  
EDUCATION  
KOZHIKODE, PIN-673001.
- 4 CORPORATE MANAGER,  
CORPORATE EDUCATIONAL AGENCY, DIOCESE OF  
THAMARASSERY,  
KOZHIKODE DISTRICT, THAMARASSERY.P.O, PIN-673573.

SMT MARY BEENA JOSEPH, SR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 26.10.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**"CR"**

**JUDGMENT**

The petitioner is employed as an HSST (Hindi) at St. Sebastian HSS, Koodaranji, an Aided School governed by the provisions of the Kerala Education Act and the Rules framed thereunder and managed by the 4th respondent, Corporate Educational Agency. The grievance projected by the petitioner in this writ petition concerns the 3rd respondent's refusal to grant approval of her appointment with effect from 01.06.2016 onwards. Her request for approval has been rejected by Exhibit P6 order, the relevant portion of which reads as under

“സെലക്ഷൻ നടപടിക്രമം പാലിക്കാതെ ഗവണ്മെന്റ് നോമിനിയുടെ അഭാവത്തിൽ നടത്തിയ 01.06.2016 മുതൽക്കുള്ള ശ്രീമതി ജോളിയമ്മ വി തോമസിന്റെ ആദ്യ നിയമനം ക്രമരഹിതവും നിലവിലെ നിയമന പ്രക്രിയയ്ക്കെതിരായതിനാലും അംഗീകരിക്കുവാൻ നിർവാഹമില്ല എന്ന വിവരം അറിയിക്കുന്നു.”

2. Exhibit P6 order reveals that the concerned Secretary has rejected the proposal holding that the selection was carried out without constituting a Selection Board consisting of a Government Nominee, and therefore the same is against the extant Rules and orders.

3. Prior to discussing the bare facts, it must be stated that the reasons stated in Exhibit P6 for rejecting the proposal are clearly against the Rules, the Government orders regarding the modalities of appointment by transfer appointees, and against the binding precedents, including Exhibit P8, which is a judgment rendered by a Division Bench of this Court. This Court, while sitting in this jurisdiction, is presented with writ petitions contesting orders of a similar sort, which could have been avoided if the concerned respondent had complied with Government instructions and this Court's rulings. In aided schools, teachers are required to spend time and money before statutory authorities and courts, preventing them from focusing on their divine responsibility of teaching. Unfortunately, Exhibit P7 is issued by the concerned Secretary of the Government, and this fact demonstrates that even at the highest levels, officers are either unprepared or uninformed of the relevant Rules and the law interpreted by this Court based on the provisions of the law. If the concerned authorities do not take immediate action to fix these teething issues, the same situation would continue unabated. Using the insights I have gathered from Smt.Nisha Bose, the learned Senior Senior Government Pleader, and the counsel who

represents the petitioners in various cases, I would request the State to initiate immediate measures to resolve the issues.

4. Before venturing to conduct such an exercise, I shall detail the facts of this case in brief:

The records placed before this Court reveal that while the petitioner was working as HSA (Hindi) in the school, a vacancy in the post of HSST arose due to the retirement of a certain Philomena Mathai on 31.05.2016. The Manager promoted the petitioner to the post of HSST (Hindi) with effect from 01.06.2016 as per Exhibit P1 order. The 3rd respondent returned the proposal for approval on the ground that the appointment was not based on recommendations issued by a selection committee in terms of the relevant provisions contained in Chapter XXXII of the Kerala Education Rules. In the said circumstances, and to ensure compliance with the directions issued by the 3rd respondent, the Manager undertook a fresh selection after constituting a committee and issued a fresh appointment order as Exhibit P3. The matter was taken up before the Government, and pursuant to directions issued, Exhibit P4 order was issued by the 3rd respondent granting approval to the appointment to the petitioner as HSST (Hindi) by proceedings dated 23.10.2021 with effect from 25.03.2017. The petitioner

contends that owing to the above fact, the appointment of the petitioner for the period from 01.06.2016 to 25.03.2017 still remains unapproved. In the said circumstances, the Manager preferred Exhibit P5 revision petition seeking approval from the initial date but the same stands dismissed by Exhibit P6 order issued by the Deputy Secretary for and on behalf of the Government. Being aggrieved, the petitioner is before this Court seeking the following reliefs.

i) issue a writ of certiorari quashing Exhibit P6.

ii) issue a writ of mandamus or appropriate writ or direction directing the 3rd respondent to regularize the service of the petitioner as HSST(Hindi) for the period 01.06.2016 to 24.03.2017, by granting approval to the petitioner's appointment as HSST (Hindi) w.e.f 01.06.2016 with all consequential benefits.

iii) declare that the selection committee in rule 5 of Chapter 32 KER is required only for direct recruitment of HSSTs and recommendation of the selection committee is not contemplated in the case of appointment by transfer, the criterion for appointment being seniority of qualified in-service teachers, and in any case no selection committee is required if there is only one qualified hand available for appointment by transfer in the respective subject and therefore Exhibit P1 appointment w.e.f 01.06.2016 is valid.

5. I have heard Sri.Paulson Thomas, the learned counsel appearing for the petitioner, and Smt.Nisha Bose, the learned Government Pleader.

6. Chapter XXXII Rule 4(2) of the KER deals with the method of appointment to the post of HSST. The provision provides that the post of Higher Secondary School Teacher is to be filled up first by transfer from Junior Lecturer in the subject concerned under the Management/Higher Secondary School Teacher (Jr.). In the absence of qualified hands under clause (1) above, the vacancy is to be apportioned in the ratio 1:3 between appointment by transfer and direct appointment in the manner mentioned in the Rule. As per Rule 4(2), (2)(i)(a), in the absence of qualified hands under clause (1), the method of appointment is to be by transfer from High School Assistants who possess the requisite qualifications under the educational agencies. In the absence of qualified hands under (a) above, the appointment has to be by transfer from qualified Upper Primary School Assistant/Lower Primary School Assistants who possess the requisite qualification in the subject concerned under the educational agencies and by direct appointment. Note (i) under Rule 4(2) is of some relevance. It says that when qualified persons are not available to fill up the vacancies set

apart for appointment by transfer under item 2(i) above, such vacancies shall also be allotted for direct appointment. Note (ii) provides that appointments under item (i) above shall be made from a select list of qualified persons prepared based on seniority and merit.

7. The General Education (T) Department has issued G.O.(Ms) No. 162/98 G.Edn. dated 13.5.1998 detailing the manner in which the post of HSST in Government Higher Secondary Schools and Aided Schools are to be filled up. The relevant portion of the order reads thus:

"1 .....

2. The posts of Higher Secondary School teachers in Government Higher Secondary Schools and Aided Higher Secondary Schools will be filled up as follows:
  - i. 25% vacancies will be reserved for appointment from qualified High School Assistants and Primary School Teachers.
  - ii. The remaining 75% of posts in Government Schools will be filled up by direct recruitment through the Public Service Commission.
  - iii. Appointments to the 75% vacancies earmarked for direct recruitment in the Aided Higher Secondary Schools will be done by the management. If qualified teachers are not available for appointment as mentioned in item (i) above, the management will fill up such vacancies also by direct recruitment. Selection of candidates for direct recruitment in Aided Higher Secondary Schools will be done by a Staff Selection Committee consisting of the Manager or his representative, the Principal of the School and a Government nominee from the panel of officers consisting of Deputy Director, Education, D.E.O. of the area and DIET Principal of the District. The management can select a nominee from

among the above officers. The above officers are permitted to attend the Staff Selection Committee meeting without further sanction.

8. The Apex Court in **Valsala Kumari Devi v Director, Higher Secondary Education**<sup>1</sup>, while explaining the expression "*subject to seniority and suitability*," observed that the expression does not mean the comparative assessment of suitability and it only means the suitability for the particular post and the suitability is related to the prescribed qualification and requisite experience.

9. The solitary reason stated in Exhibit P6 order, while refusing approval, is that the appointment of the petitioner was without constituting a selection committee by including a Government Nominee and, therefore, against the appointment rules and regulations. As rightly submitted by the learned counsel appearing for the petitioner, Exhibit P6 order issued by the Government is clearly against the law settled by this Court and even against earlier Government orders such as Exhibit P7 and P9.

10. The appointment of the petitioner was in the in-service quota set apart for qualified High School teachers and the solitary criteria is seniority. A Division Bench of this Court in W.A.No.280/2020 has held in

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<sup>1</sup> [2007 (4) KLT 494]



unmistakable terms that in view of G.O.(Rt.) No 247/2019 dated 21.01.2019 (Exhibit P7) while making by-transfer appointments, there is no need to constitute a selection committee by including a Government Nominee. All that is required is for the Manager to ensure that the appointment is in terms of the Rules.

11. In view of the settled pronouncements of this Court, and in view of the emphatic assertion of the above proposition in Exhibit P7 Government order, there is no reason why the respondents ignored the same and issued Exhibit P6 order.

12. In that view of the matter, Exhibit P6 cannot be sustained under the law, and the same is quashed. I hold that the selection committee, in terms of Chapter XXXIII of the KER, is required only for the direct recruitment of Higher Secondary School Teachers. The constitution of a Selection Committee with a Government Nominee is not required in case of appointment by 'by-transfer' mode. The 3rd respondent is directed to regularise the service of the petitioner as HSST (Hindi) for the period from 1.6.2016 to 24.3.2017 by granting approval to the appointment of the petitioner as HSST (Hindi) with effect from 1.6.2016 and grant her all consequential benefits. This writ petition is allowed as above.

13. As recorded by me in the preface, I cannot help but notice that litigation challenging orders issued by the General Education Department have reached unprecedented levels. Having sat in this Court for well over six months, I believe that if the Department implements some improvements by leveraging the power of information and communication technology, a substantial amount of litigation can be avoided. In addition, the officials must be told unequivocally that they are obligated to guarantee strict conformity with the applicable Rules and Government Orders when considering statutory petitions and implementing their action in terms of the requirements of the Act.

14. One of the causes for the proliferation of petitions challenging various orders is the apparent absence of accurate data on students, instructors, and non-teaching personnel in the State's Government and Aided Schools. The Information Technology (B) Department has issued G.O.(MS) No. 32/2013/ITD dated 26.10.2013 authorizing the integration and sharing of a digitized database of Government departments with the goal of enabling transparent electronic delivery of services and achieving online verification of data, under the condition that only 'read-only permission' will be granted regarding the data of other departments. The NIC Director,

KSITM, has been tasked with integrating departmental applications built independently by departments, with the assistance of State e-Governance Mission Teams (SeMT). The respective departments have been tasked with identifying the shared departmental database. I have come to understand that no advances have yet been made, and there is no provision for sharing of data among Government Departments.

15. According to my understanding, the Government of Kerala has established the Kerala Infrastructure and Technology for Education (KITE) to develop, promote, and implement the modernization of State-owned or Government-aided educational institutions in the State of Kerala. KITE was founded with the goal of transforming Kerala into a knowledge society by boosting the quality of educational inputs through inclusive, sustainable, technology-assisted interventions. The KITE has launched a program called "SAMETHAM" to disseminate accurate information regarding the academic and physical infrastructure of Government, aided, and recognized unaided schools in Kerala. A person with access to SAMETHAM can view the basic details of schools, such as its physical infrastructure, governing mechanisms, approved classes in the school, details of students in each class, teachers and non-teaching staff without personal details, etc., which can be used for

the generation of various reports at the school, educational subdistrict, educational district, revenue district, and State level.

16. I understand that the services of the KITE have been retained to carry out staff fixation at Government/Aided Schools in the State and to approve the hiring of teachers and that a portal called "SAMANWAYA" has been established to facilitate this. The General Education Department has also developed portals such as "SAMAGRA" and "SAMPOORNA" to facilitate the department's different functions. However, I notice that the portals are not integrated seamlessly, and no steps have been taken to share data from other departments. It would be relevant to note that the University Grants Commission has come up with National Academic Depository (NAD) ( <https://nad.gov.in/> ) to provide an online repository of all academic awards, including Certificates, Diplomas, Degrees, Mark-sheets, etc., that have been digitized and lodged by academic institutions/boards/eligibility assessment bodies, etc. The NAD facilitates the safe storage and retrieval of academic awards.

17. If the data exchange between various Universities in the State and outside the State, other educational institutions, and certifying authorities, etc. is achieved, it would be a clean, efficient and transparent

task to determine the qualifications of Teachers and Non-teaching staff without using paper documents, saving time and money and ensuring transparency. I believe that it is time for the General Education Department to form a committee comprised of former DGEs with experience, experts from State Government initiatives such as the KITE, Digital University Kerala, Indian Institute of Information Technology and Management-Kerala, and legal professionals with practical knowledge of the issues plaguing the General Education Department to sort out these issues. With such a committee in place, many of the problems plaguing the Education Department could be resolved.

18. Having outlined the broad steps that need to be undertaken by the department, I would like to point out certain specific instances where intervention is required without delay. If proper measures are taken, it would go a long way in easing the way in which the Department functions.

**a) Database of students:**

Create a failsafe database of all children pursuing education in the State, including those attending Government, Aided, Recognized, Unaided, and Private schools, and link them to the schools at which

they are enrolled. The department shall evaluate if biometric or other attendance systems can be implemented in schools for students and teachers and whether the same can be linked with the portal maintained by the Department of Education. I also understand that the department has made the allotment of a UID-based admission system compulsory for students in Government schools. The department would do well to insist upon a UID-based admission for students in all CBSE, ICSE, and other unaided recognized schools in the State. If such an exercise is carried out, the incidence of bogus admission in aided schools can be wiped off.

**b) Database of Teachers**

The respondents would do well to refine and update the database of all teachers to whom the provisions of the Kerala Education Act and the Rules apply, including the date of their entry into service, their qualifications, and any other information that may provide those teachers with advantage under the Act and the Rules. The database of teachers, the Staff Fixation Orders, the Seniority List, and Fitness Certificates of School buildings are to be compulsorily linked to the portal maintained by the Department of Education, and separate

dashboards have to be provided to all the stakeholders, including the Educational Agency, Manager, Principal, Staff, etc.

**c) Online depository of certificates, Diplomas, etc.**

As envisioned by the National Academic Depository (NAD), there should be an online repository of all academic awards, such as certificates, diplomas, degrees, mark sheets, etc., duly digitized and deposited by academic institutions/boards/eligibility assessment bodies, etc., so that there is no controversy regarding the acquisition of their qualifications. By establishing an error-free and accurate database for individual educational agencies and corporate, educational agencies, as envisioned by the Act and Rules, the majority of potential seniority conflicts can be avoided. Steps are to be taken to provide access to certificates and Diplomas from the Universities through Application Program Interfaces (API) so that the Educational authorities shall be aware of the qualifications of the teachers/non-teaching staff.

**d) Consideration of Statutory Appeals/ Revisions**

The vast majority of matters brought before the Constitutional Court are for the issuance of directives to the revisional/appellate authority to accept and dispose of outstanding cases before said

authority. Invariably, in every instance, it is argued that until directions are issued, the matter may not be considered promptly. I understand that revision petitions filed even in 2017 are pending before the statutory Authorities. A person who has the financial resources to approach this Court obtains an expeditious disposal order, while the matter which was filed earlier is not taken up for consideration. Even though statutory petitions are filed electronically, there is no clear process to indicate the authority before whom the matter is pending, whether notice has been issued, and when it is likely to be heard. Additionally, the authorities can hear the case electronically to save time and money. The General Education Department is obligated to take immediate action to increase the transparency of the posting and hearing of these matters by posting updated hearing dates and petitions online. This bodes well for making the proceedings more open and efficient. By adopting methods like e-office, the file movement system in the office of the AEO/DEO/DDE can be made more transparent, and efficiency can be achieved.



**e) Prompt finalization of Seniority Lists**

Following Rule 35 Note 2 of Chapter XIV A, a seniority list must be compiled and submitted by the 31st of May of each academic year. Since the time frame is not rigorously adhered to, disputes invariably arise. Several of these disputes can be avoided if the finalization is carried out before the deadline. The department may do well to make the submission of the same compulsory. The data must be accessible online, and the concerned parties must be able to examine the same. Disputes between managers/teachers/non-teaching employees can be resolved in a transparent manner if the aforementioned procedure is followed.

**f) Issues about the functioning of the Officers and their failure to adhere to the Rules**

- (i) Omission on the part of the officers to conduct the disciplinary proceedings consequent to the detection of bogus admission in terms of the Rules is yet another reason for the burgeoning of litigation. As I have stated earlier, if clear details of the students viz a viz the schools they are attending are available, there would not be any bogus admissions. As per the prevailing

practice, when the super check cell finds that there is bogus admission and teachers are liable for causing financial loss to the Government, the teachers can be proceeded against as per the law only after taking disciplinary action against them. Without acting in terms of the Rules, recovery proceedings are initiated by the officers. This would lead to a proliferation of litigation. The officers are to be provided with adequate training to do their work in terms of the Rules.

(ii) Despite the pronouncement of law by this Court, the officers fail to act in terms of the law laid down either due to unawareness or lack of diligence. I would like to cite some examples.

a) As per Section 10 of KER and Chapter XXXI, the qualifications for teachers are specified. It is not required that they study Malayalam as a medium of instruction at the SSLC level. This Court has already held that respondents would not be justified in insisting that they shall study Malayalam since the KER/KE Act does not mandate such a qualification as a prerequisite for the appointment of teachers (Judgment dated 7.8.2017 in WA No. 135/17).

Unless an amendment is carried out in the relevant statute, such a stand cannot be taken. However, the Educational Officers and the Government continue to deny approval stating that applicants have not studied Malayalam.

- b) As per the extant Rules, if one year's notice is given by the Manager for the closure of his School, then School should be allowed to be closed. But Educational Officers, as well as Government, refuses the request of the Managers on the ground that the policy of the Government is not to close down the Schools. This Court has held that in terms of Section 7(6) of the KE Act and Rule 24(1) of Chapter V of KER, the education authority cannot prevent the Manager from closing down their school if they have given one year's notice for closure of School before the Director of General Education. The Government cannot insist that since there is an educational need, the Schools cannot be closed down (See **Subramanian v. State of Kerala and others**<sup>2</sup>,

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<sup>2</sup> [1986 KHC 95]

**Balakrishnan v. Rameshan<sup>3</sup> , State of Kerala & others  
v. Manager Aided UPSEA, Kozhikode<sup>4</sup>).**

- c) In the Higher Secondary Section for making appointments through by-transfer, the Hon'ble Court has held in W.A.No.280 of 2020 that Selection Committee cannot be insisted since they are already in service and they have entered into service through a selection process. Only for direct recruitment, Selection Committee can be insisted. Even then, approvals are rejected on the ground that the Selection Committee is not constituted. So, if the Government wants to introduce the same, that can be done only by amendment of the KE Act and Rules. The failure of the Government to stick to the law laid down in the above judgment has led to the filing of this writ petition seeking intervention.
- d) When a Manager initiates Disciplinary Proceedings against a teacher/staff, the inquiry has to be conducted by the

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<sup>3</sup> [1993 KHC 191]

<sup>4</sup> [2016 (2) KHC 629]

Educational Officers. However, invariably, they fail to follow the procedure outlined in Rule 75 of Chapter XIV A KER for whatever cause. Urgent actions and training are required to ensure that the officers adhere to the method outlined in the Rules. The Government can release a circular with a comprehensive checklist.

- e) The registration of offenses for child harassment or offenses under the Protection of Children from Sexual Offenses Act against the teacher/staff is yet another serious issue that has come to light. As soon as a teacher is arrested for a crime, they are suspended from their service. However, in the majority of instances, educational authorities do not complete the disciplinary processes. They appear to believe that they cannot proceed against the teacher until the Criminal Court has rendered a decision in the pending case. Criminal proceedings and disciplinary procedures have distinct strategies and objectives. The suspension of disciplinary actions pending the outcome of criminal proceedings is not required. If the defendant secures an

acquittal, regardless of whether it is an honorable acquittal or because the witnesses and survivor turned hostile, they demand that their suspended term be reinstated as a duty. Since there is no ban on continuing disciplinary processes while criminal court proceedings are pending, specific instructions are to be given to expedite the disciplinary action.

19. The issues highlighted above require urgent intervention.

20. Let respondents 1 and 2 respond to the suggestions made by this Court to form an expert committee as detailed in paragraphs 14 to 17 above. They shall also respond to the suggestions made by this Court in paragraph 18 above. The response shall be placed before this Court on 25/11/2022.

The Registry is directed to place this matter before this Court on 25/11/2022.

Sd/-

**RAJA VIJAYARAGHAVAN V  
JUDGE**

**APPENDIX OF WP(C) 31861/2022**

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE APPOINTMENT ORDER DATED 01-06-2016 APPOINTING THE PETITIONER AS HSST (HINDI) W.E.F. 01-06-2016.
- Exhibit P1(A) TRUE COPY OF THE RELIEVING ORDER DATED 01-06-2016.
- Exhibit P1(B) TRUE COPY OF THE JOINING REPORT IN RESPECT OF APPOINTMENT AS HSST DATED 01-06-2016.
- Exhibit P1(C) TRUE COPY OF THE CHANGE OF STAFF STATEMENT DATED 01-06-2016.
- Exhibit P2 TRUE COPY OF THE PROPOSAL OF THE MANAGER DATED 10-06-2016.
- Exhibit P3 TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 25-03-2017.
- Exhibit P4 TRUE COPY OF THE ORDER OF THE RDD, KOZHIKODE WITH NO.A4/4629/2021/KDS DATED 23-10-2021.
- Exhibit P5 TRUE COPY OF THE REVISION PETITION NO. 200/2021(3) DATED 27-12-2021.
- Exhibit P6 TRUE COPY OF THE LETTER NO. L2/8/ 2022/G.EDN. DATED 05-05-2022 ISSUED BY THE SECRETARY TO GOVERNMENT.
- Exhibit P7 TRUE COPY OF G.O. (RT.)NO. 247/2019/ G.EDN. DATED 21-01-2019.

Exhibit P8                    TRUE COPY OF THE JUDGMENT IN WRIT APPEAL  
NO. 280/2020 DATED 16-09-2020.

Exhibit P9                    TRUE COPY OF THE G.O.(MS)NO. 141/2008/  
G.EDN. DATED 18-08-2008.

RESPONDENTS' EXHIBITS:    NIL