

Ancy Thomas vs the State of Kerala

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Court : Kerala

Decided On : Jul-30-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/25373/2013

Appellant : Ancy Thomas

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943 PETITIONER: ANCY THOMAS, AGED 42 YEARS, WIFE OF VINOY SEBASTIAN, HIGH SCHOOL ASSISTANT (MALAYALAM), NIRMALA HIGH SCHOOL, ETTAM MILE, THARIYODE, WAYANAD DISTRICT - 673 575. BY ADVS. SRI.V.A.MUHAMMED SRI.M.SAJJAD RESPONDENTS:

1 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 2 THE

DIRECTOR OF PUBLIC INSTRUCTIONS, JAGATHY, THIRUVANANTHAPURAM - 695 014. 3 THE DEPUTY DIRECTOR OF EDUCATION, WAYANAD AT KALPETTA - 673 121. 4 THE DISTRICT EDUCATIONAL OFFICER, WAYANAD AT KALPETTA - 673 121. 5 THE MANAGER, NIRMALA HIGH SCHOOL, ETTAM MILE, THARIYODE, WAYANAD DISTRICT - 673 575. 6 THE HEADMASTER, NIRMALA HIGH SCHOOL, ETTAM MILE, THARIYODE, WAYANAD DISTRICT - 673 575. BY ADV.SRI. P.M.MANOJ - SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

The petitioner says that she was appointed as a High School Teacher in Malayalam in the services of 'Nirmala High School', Wayanad, from 21.01.1997 to 25.03.1997 which was approved by the 4th respondent-District Educational Officer (DEO); and that she was, thereafter, appointed from 31.12.1997 to 27.03.1998 and from 18.06.2001 till the end of that academic year, as is evident from Exts.P2 and P3 respectively, which appointments were also approved.

2. The petitioner submits that even though she was appointed thereafter from 02.06.2004 onwards, she was granted approval only with effect

from 01.02.2006, as is clear from Ext.P4; and resultantly impugns Exts.P3 and P4, asserting that she was entitled to be appointed continuously from 18.06.2001 without any limitation in the period -3- and that, in such event, she would have got salary for the months of April-May 2004 as also from June 2004, to 31.01.2006.

3. The petitioner says that she, therefore, preferred Ext.P5 before the Government, but that no action has been taken upon it until now.

4. The petitioner, further alleges that, even when Ext.P5 representation was pending before the Government, the 2nd respondent - Director of Public

Instructions [now re-designated as Director

points out that this has been done apparently on the basis of a Government Letter dated 04.07.2012 referred therein. She asserts that she was never given a copy of the said letter by the Government, nor was ever notified that her approval has been cancelled and contends that this could not have been done in any case, because the approval -4-

covered by Ext.P3 having been properly sanctioned, its cancellation can only be for the specified reasons enumerated in the Kerala Education Rules (KER), and that too by the DGE, under Rule 8A of Chapter XIVA of the KER. She submits that Ext.P6, which cancelled her approval on the dictation of the Government is, therefore, completely illegal; and thus pray that same be set aside.

5. Smt.P.A.Jenzia - learned counsel appearing

for the petitioner, in addition to the above, submitted that her clients request for continuous approval of service from 18.06.2001 is imminently deserving on being granted because, in Exts.P7 and P8, such benefits had been granted to similarly placed persons.

6. Smt.P.A.Jenzia then asserted that since Ext.P6 would result in recovery of amounts paid to her validly when she was in approved service, it is rendered illegal on that Court also because -5-

such recovery is prohibited on account of the various judgments of this Court, namely, Samual John and another v. State of Kerala [2002 (2) KER 369]; Satyapalan v. Deputy Director of Education [1998 (1) KLT 399]; Stanley v. State of Kerala [2000 (2) KLT 431; Jayasree v. State of Kerala [2002 (3) KLT 803] and Mohan v. State of Kerala [1990 (2) KLJ 869]. She thus reiteratingly prayed that Ext.P6 be set aside and the respondents be directed to grant vacation salary to her client

for the month of April and May 2004, as also salary from June 2004 to 31.01.2006, within a time frame to be fixed by this Court.

7. Sri.P.M.Manoj - learned Senior Government

Pleader, in response, submitted that,

-6- explained that, at the time when the petitioner was appointed from 18.06.2001, two Protected High School Assistants in Malayalam were awaiting absorption in the Wayanad District and therefore, that her appointment could not to have been approved by the competent Authority, as has been done earlier. He submitted that, therefore, the DGE was completely without error in having issued Ext.P6 and prayed that this writ petition be dismissed.

8. I have carefully examined Ext.P6, which is impugned in this writ petition and it is limpid

therefrom that the petitioners approval

School Teachers awaiting absorption in the Wayanad District. The order then goes to say that the Government have, by their letter No.59115/E3/03/GE dated 04.07.2012, directed to cancel the approval -7- granted to the petitioner with effect from 18.06.2001 till 31.05.2004.

9. The above being so recorded, it does not

require a great amount of elaboration to hold that when a statutory duty is vested in an Authority, it was up to him to take an independent decision on the matters within his jurisdiction; but what I

see from Ext.P6 is that the DGE had cancelled approval to the petitioner based on the Government Letter above referred. This is crucial because, it is admitted before me that any such cancellation could have been ordered by the DGE only under the provisions of Rule 8A of Chapter XIVA of the KER; and I, therefore, fail to understand how the said Authority has merely followed a Government Order,

which appears to dictate to him to act in a particular manner. This is impermissible in law and cannot, therefore, find my favour.

10. That said, the petitioners specific case -8-

is that she is entitled to vacation salary for the months of April and May 2004, and also for the salary from June 2004 to 31.01.2006. These issues, of course, will depend upon the validity of the approval granted to her from 18.06.2001 to 31.05.2004.

11. As regards the contents of Ext.P6 on its merits, it is now well settled, through various judgments of this Court in *Nadeera v. State of Kerala* [2011(3) KLT 790] and *Moosakutty v. DEO, Wandoor* [2009 (3) KLT 863] that unless it is demonstrated that a list of the Protected Teachers had been forwarded to the Manager of the School by the educational Authorities concerned at the relevant time, the appointments made by him cannot be denied approval.

12. In the case at hand, as is manifest from Ext.P6, the approval to the appointment of the petitioner from 18.06.2001 has been cancelled -9- citing the reason that there were two 'Protected

Teachers' awaiting absorption in the Wayanad District. However, there is nothing on record or even in the said order to even indicate that the competent educational Authorities had notified the Manager appropriately about this at the relevant time.

13. I am, therefore, of the firm view that the entire matter will require to be reconsidered by the DGE. Resultantly, this writ petition is allowed and

Ext.P6 is set aside; with a consequential direction to the DGE to reconsider the claim of the petitioner with respect to her approval from 18.06.2001 and for payment of vacation salary for the months of April and May, 2004, as also for the salary from June 2004 to 31.01.2006, after affording her and the Manager of School an opportunity of being heard - either physically or -10- through video conferencing - thus culminating in an appropriate order thereon, within a period of three months from the date of receipt a copy of this judgment. Needless to say, if, after the afore exercise, the petitioner is found entitled to relief, then all resultant benefits shall be released to her without any avoidable delay, but not later than two months thereafter.

Sd/- DEVAN RAMACHANDRAN JUDGE akv/RR -11- APPENDIX OF WP(C) 25373/2013 PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 21.01.1997 AND APPROVAL THEREOF. EXHIBIT P2. TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 31.12.1997 AND APPROVAL THEREOF. EXHIBIT P3. TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 18.06.2001 AND APPROVAL THEREOF. EXHIBIT P4. TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 02.06.2004 AND APPROVAL THEREOF. EXHIBIT P5. TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER DATED 10.04.2007 BEFORE THE GOVERNMENT. EXHIBIT P6. TRUE COPY OF THE ORDER OF THE ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTIONS DATED 04.07.2013. EXHIBIT P7. TRUE COPY OF THE G.O. (RT)NO.3867/2000/G.END. DATED 20.09.2000 OF THE GOVERNMENT. EXHIBIT P8. TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DATED 22.09.2006. RESPONDENT'S/S EXHIBITS : NIL. //TRUE COPY// P.A. TO JUDGE

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