

Jeeson Thomas vs the Manager

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Court : Kerala

Decided On : Jul-30-2020

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : WP(C)/13540/2020

Appellant : Jeeson Thomas

Respondent : The Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942 WP(C).No.13540 OF 2020(N) PETITIONER/S: JEESON THOMAS AGED 44 YEARS S/O.K.V.THOMAS, TEACHER, PHYSICAL EDUCATION, BETHANY ASRAM HIGH SCHOOL, CHERUKULANJI, RANNI, PATHANAMTHITTA, RESIDING AT KALLAMPPALLY HOUSE, AYTHALA P.O., RANNI, PATHANAMTHITTA-689673. BY ADVS. SRI.S.MUHAMMED HANEEF SRI.M.H.ASIF ALI RESPONDENT/S:

1 THE MANAGER BETHANY ASRAM HIGH SCHOOL, CHERUKULANJI, RANNI, PATHANAMTHITTA.689 6725 2 DISTRICT

EDUCATIONAL OFFICER, ATTINGAL, OFFICE OF THE DEO, PATHANAMTHITTA, PATHANAMTHITTA-689645. 3 THE DEPUTY DIRECTOR OF EDUCATION, OFFICE OF DDE, PATHANAMTHITTA AT THIRUVALLA, PATHANAMTHITTA. 4 DIRECTOR OF GENERAL EDUCATION, OFFICE OF THE DGE, VAZHUTHACAUD, THIRUVANANTHAPURAM-695014. 5 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.

OTHER PRESENT: SMT.NISHA BOSE - SENIOR GOVERNMENT PLEADER. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S.DIAS, J.

===== WP(C) No. 13540 of 2020
===== Dated this the 30th day of July, 2020.

JUDGMENT

The petitioner was appointed as Physical Education Teacher in a leave vacancy. The said appointment was approved and salary was disbursed. Thereafter, the petitioner was again appointed in the same vacancy between 8.9.2009 and 30.11.2010. The appointment of the petitioner in the leave vacancy for the said period and thereafter in the permanent vacancy is yet to be approved.

2. The petitioner contends that pursuant to the

direction of this Court, the fifth respondent has issued Ext P3 order confirming Ext P1 Government Order and directing approval of the appointment of the petitioner with effect from 12.12.12. Despite Ext P3 order being passed, the second respondent is not approving the appointment of the petitioner. Hence, the petitioner seeks for a direction to the second respondent to approve the

appointment of the petitioner.

3. The petitioner laments that proposal is kept pending indefinitely by the respective respondents, on the specious plea that the icon of the Samanwaya software, which is used for granting approval of appointments has become dysfunctional.

4. The petitioner has averred that, approval of appointments are governed by the Kerala Education Act and the Rules formulated thereunder. Rule 8(2) of Chapter XIVA

of the Kerala Education Rules make it obligatory on the part of the Educational Authority to consider an application for approval, not later than 30 days from the date receipt of the appointment order and the requisite documents.

5. The petitioner has contended that software was

introduced only for the purpose of expeditious disposal of cases for approval of appointments in aided school, but now the software is being used as tool to procrastinate approval of appointments within the mandatory statutory time period. Hence the petitioner, inter alia, seeks for a direction to the respondents to approve the appointment and grant him the arrears of salary forthwith.

6. Heard Sri.S.Muhammed Haneef, the learned counsel for the petitioner and Smt.Nisha Bose, the learned Senior Government Pleader.

7. The learned counsel for the petitioner argued that

the application for approval of appointment is pending consideration before the respondents from May, 2020 onwards. The sole intention of the respondents is to delay the approval of the appointment, which is unjust and arbitrary. The respondents are deliberately not taking steps to rectify the software. The respondents 2 to 5 can normally process the application. The inaction on the part of the respondents 2 to 5 is causing severe hardship and difficulties to the petitioner.

8. The learned Government Pleader, on the other hand, on instructions, argued that the software was

installed in all the Educational Offices in the State in order

to infuse uniformity and expedite appointments. Unfortunately, a technical snag has made the software dysfunctional, but earnest measures are being made to restore the software. This is the sole reason that appointment could not be approved. Nevertheless, the respondents 2 and 5 will take a decision on the application for approval of appointment within a period of one month from today. The writ petition can be disposed of on the above said undertaking.

9. Rule 8(2) of Chapter XIVA of the Kerala Education Rules reads thus:

The Educational Officer on receipt of the appointment order and other records mentioned in sub-rule(1) may approve the appointment if it is in accordance with the provisions of the Act, the Rules and orders issued by the Government or the Director from time to time. After approval one copy shall be forwarded by the Educational Officer to the teacher through the Manager and another copy forwarded to the Manager to be filled in the school records. The approval may be given as expeditiously as possible (at any rate not later than 30 days from the date of receipt of the appointment order and other documents mentioned in sub-rule (1).

10. The above Rule makes it mandatory for the respondents 2 to 5 to consider an application for approval of an appointment within a period of not less than 30 days from the date of the appointment order.

11. It is undisputed by the respondents 2 to 5, that

the application for approval of the petitioner was received by them as early as in May, 2020 and the fifth respondent by Ext P3 clarifying and confirming Ext P1. The plea of the respondents 2 to 5 that the software got dysfunctional, which precluded them from processing the appointment does not appeal to this Court or inspires confidence.

Whether the software is functional or not, is an internal arrangement of the respondents 2 to 5. The software which was developed for the expeditious consideration of appointments, cannot be used as a defence to bye-pass the statutory mandate under Rule 8(2) of Chapter XIV of KER. The respondents 2 to 5 are strictly bound to adhere to time frame fixed in the statute, in view of the language used in the Rule.

12. In the result, I allow this writ petition, in view of

the mandate under Rule 8(2) of Chapter XIV of the Rules and by recording the undertaking of the learned Senior Government Pleader, on the basis of the undertaking made by the respondents 2 to 5, that they shall approve the appointment of the petitioner within a period of one month from today. The respondents 2 to 5 are also directed to pay the entire arrears of salary due to the petitioner in three equated installments within a period of three months from today. This writ petition is ordered accordingly. Sd/- C.S.DIAS SKS/30.7.2020 JUDGE

APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE ORDER BEARING G.O.(P) NO.2168/2017/G.EDN. DATED 3.7.2017 ISSUED BY THE 5TH RESPONDENT. EXHIBIT P2 A TRUE COPY OF THE JUDGMENT DATED 18.2.2020 IN WP(C)NO.33444/2019 ON THE FILE OF THIS HON'BLE COURT. EXHIBIT P3 A TRUE COPY OF THE ORDER BEARING G.O.(P) NO.1699/2020/G.EDN. DATED 25.5.2020 ISSUED BY THE 5TH RESPONDENT.

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