

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 10TH DAY OF JUNE 2022 / 20TH JYAISHTA, 1944

WP(C) NO. 2889 OF 2022

PETITIONER/S:

LIJU V.,
AGED 39 YEARS, S/O. N. VIJAYAN,
RESIDING AT VADAKE MANNARAZHIKAM,
EZHIKONE P.O., KOLLAM-691505.

BY ADVS.
N.ANIL KUMAR
K.R.RAJAGOPALAN NAIR (PERUMBAVOOR)
T.P.SINDHUMOL
SINU.G.NATH
ROSEMOL ABRAHAM

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
NORTH BLOCK, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR GENERAL OF EDUCATION,
JAGATHY, THIRUVANANTHAPURAM-695014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION,
GOVERNMENT BHSS CAMPUS, THEVALLY P.O.,
KOLLAM-691009.
- 4 THE DISTRICT EDUCATIONAL OFFICER,
VIDYA NAGAR, KOLLAM, KERALA-691013.
- 5 ASSISTANT EDUCATIONAL OFFICER,
KARUNAGAPPALLY P.O., KARUNAGAPALLY,
PIN-690518.

6 THE MANAGER,
THODIYOOR UP SCHOOL, KALLELIBHAGAM P.O.,
KARUNAGAPALLY, PIN-690519.
BY ADV ADVOCATE GENERAL OFFICE KERALA

SMT NISHA BOSE SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The Thodiyoor Upper Primary School, Kallelibhagam is an aided school managed by the 6th respondent and governed by the provisions of the Kerala Education Act and Rules. The petitioner herein was appointed in the said school as a part-time Sanskrit teacher in anticipation of a vacancy in the year 2019-2020. This writ petition is filed challenging the order passed by the AEO, rejecting the approval of his appointment on the ground that there is no sanctioned post of Part Time Junior Language Sanskrit teacher in the said school as per the Staff Fixation order of the school during the academic year 2019-2020.

2. The facts relevant for disposal of the matter is as under:

The Thodiyoor UPS was having a Full Time Sanskrit Teacher till she retired on 31.03.2018. Since for the academic year 2018-2019, there were only 3 students in the school pursuing the Sanskrit language, the sanctioned post of Sanskrit teacher was abolished. The petitioner, by referring to Ext.P1, points out that as per the Staff Fixation order of the AEO, Karunagappally, for the academic year 2019-2020, the total number of students studying Sanskrit in the Upper Primary School is 21. It is contended that in standard-V there were 14 students, nil students in standard-VI

and 7 students in standard-VII. The petitioner asserts that though there were a total of 21 students and 14 students as such in standard V, the AEO refused to sanction a post or to approve the appointment. This action of the AEO, according to the petitioner, is clearly against the provisions of Rule 6C Chapter XXIII of the KER. The petitioner asserts that based on Ext.P1 Staff Fixation order, the request was made by the Manager before the AEO, Karunagapally, for approval of the appointment. However, by Ext.P2 order, the same was rejected on the sole ground that there was no sanctioned post. The appeal preferred before the DEO and the revision preferred therefrom were all rejected by Ext.P4 and P8 orders respectively. Though the matter was taken up before the Government, the same was rejected by Ext.P9 order.

3. The petitioner asserts that the common reason given by the respondents for rejection is that as per Chapter XXIII Rule 6C, there must be a total number of 30 students in standards V to VII. However, in the Thodiyoor school, for the academic year 2019-2020 there were zero students in Standard VI. The petitioner asserts that after the abolishment of the post in the year 2018-2019, the subject was reintroduced in 2019-2020, and therefore, the only requirement under the law is that there should be more than 12 students in Standard V. Relying on Ext.P12 information downloaded from the website of the Government of Kerala, it is stated

that for the academic year 2021-2022, there are 21 students in Class V, 18 students in Class VI and 14 students in class VII pursuing Sanskrit. In other words, the total number of students pursuing Sanskrit in the school is 53. The petitioner has also placed on record Ext.P18(a) and (b) which shows the student strength on the 6th working day for the academic year 2020-2021 and 2021-2022. The said record would show that the student strength was 32 and 49 respectively. It is in the above backdrop that this writ petition is filed seeking the following reliefs:

1. Issue a writ of Mandamus or any other writ, order or direction of appropriate nature, quashing Ext.P1, Ext.P2, Ext.P4, Ext.P6, Ext.P8 and Ext.P9 orders finding that the same is illegal.
2. Issue a writ of mandamus or any other writ, order or direction of appropriate nature, directing the respondents 1-5 to approve the appointment of petitioner by sanctioning the post from 2019-2020 onwards, direct the respondents to approve the appointment of the petitioner as Sanskrit teacher in Thodiyoor UP.
3. Issue a writ of mandamus or any other writ, order or direction of appropriate nature, directing the respondents 1-5 to disburse salary and benefits to the petitioner accrued from being appointed as Sanskrit teacher to the petitioner.
4. Issue a writ of mandamus or any other writ, order or direction of appropriate nature, directing the respondents to disburse arrears of salary and benefits calculated from the date of his appointment till date.

4. A counter affidavit has been filed by the 2nd respondent wherein it is stated that the post of Junior Language Sanskrit Teacher which existed in UPS

Thodiyoor during the previous years was abolished in the Staff Fixation order of the school during 2018-19 for want of strength of Pupils learning Sanskrit language. As per the Staff Fixation order of the school for the year 2019-20, the strength of pupils learning Sanskrit in standard V is 14, standard VI is 0 and standard VII is 7. According to the respondents, the effective strength of pupils learning Sanskrit in the school during the year 2019-20 is not sufficient to sanction the additional post of Part-Time Junior Language Teacher as proposed by the Manager. It is further stated as per Rule 6C of Chapter XXIII of the KER, the effective strength of pupils studying Sanskrit shall not be less than 30 pupils, that is, there should be 12 students in Standard V, 6 students in Standard VI and 3 students in Standard VII and the same has to be maintained for the continuance of Junior Language teachers under Arabic/Sanskrit in Upper Primary Schools.

5. I have considered the submissions advanced and have gone through the records.

6. Rule 6C of Chapter XXIII of the KER reads as follows:

In an Upper Primary School or Upper Primary Section of High School, where any of the languages other than regional languages or mother tongue is first introduced in Standard V, there shall be not less than 12 pupils learning the language in that Standard. Once it is

introduced in Standard V there shall be at least half the number of pupils to learn that language in Standard VI or the total number shall not be less than 30. But nothing in these rules will apply to posts already sanctioned against which qualified teachers are working.

7. Rule 6C speaks about the introduction of a language other than the regional language or mother tongue in an Upper Primary School or Upper Primary Section of High School. A plain reading of the Rule says that, at the time of first introduction, there shall be not less than 12 students in Standard V. Once it is introduced, there shall be at least six pupils to learn that language in Standard VI or the total number shall not be less than 30. In other words, if Sanskrit is introduced in the Upper Primary section during the academic year 2020-2021 there shall be not less than 12 students in Standard V. Once it has been introduced, during the next academic year there shall be not less than 6 students in Class VI. Or in the alternative, the total number of students in the school shall not be less than 30.

8. The very same question came up for consideration in **Sarojini Amma v. Director of Public Instructions** (1983 KLT 273). In the said case, a learned Single Judge of this Court had occasion to consider the scope and ambit of Rule 6C and it was held as follows in paragraph No.4 of the judgment.

It appears that the wording of R.6C Chap.23 is not free from

ambiguity. On a plain reading of the rule without reading into it the ideas put forward by the Government Pleader, it is difficult to subscribe to the stand taken by the respondents that the reference to half the number of pupils to learn that language is to the position as it obtained immediately after the year of introduction of the language in Standard V. On a proper construction of the rule as it stands it could reasonably be held that where the Manager or the affected teacher is able to show that the number of pupils in Standard VI learning the particular language is not less than half the minimum number of pupils who were learning that language in Standard V when first introduced, or when the total number of pupils to learn that language in Standards V, VI and VII is not less than 30, he would be entitled to claim for the retention of the post of the language teacher sanctioned. Assuming that the expression "there shall be at least half the number of pupils to learn that language in Standard VI" used in the rule would admit also of a construction to restrict its applicability to the position as it obtained in the year immediately next to that of the year during which that language was first introduced in Standard V, the interpretation which would advance the object of the rule has to be preferred, and in that view it should be held that the requirements of the rule would be satisfied if the number of pupils to study that language in Standard VI would not be less than that of the pupils who studied that language in Standard V when it was first introduced or the aggregate number of pupils to study that language in Standards V, VI and VII came to not less than 30.

The learned Single Judge went on to hold that the requirements of the Rule would be satisfied if the number of pupils to study that language in Standard VI would not be less than that of the pupils who studied that language in Standard V when it was first introduced or the aggregate number of pupils to study that language in Standards V, VI and VII taken together is not less than 30.

9. In the case on hand, the records before this Court would reveal that the Thodiyoor UP School was having the service of a Full-Time Sanskrit Teacher who retired on 31.03.2018. Admittedly during the academic year 2018-2019, there were only 3 students in the school pursuing Sanskrit. The post was thus abolished. However, from Ext.P1 Staff Fixation order of the year 2019-2020, it is evident that there were about 14 students in class V. The subject was reintroduced and the petitioner herein was appointed as a part-time Sanskrit teacher in anticipation of a vacancy in the year 2019-2020. In that view of the matter, it has to be regarded that the subject was reintroduced in the said school. Only those students after completing the academic year 2019-2020 would pass over to the 6th standard and thereafter to the 7th standard and there was no justification on the part of the respondents in concluding that on the date of introduction itself, there should have been 12 students in Class V, not less than 6 students in Class VI and also that there shall be not less than 30 students pursuing the subject in the school. A perusal of

Exts.P18 and P19 Staff Fixation orders for the subsequent years would reveal that there are above 32 students who pursued Sanskrit during the academic year 2020-2021 and 49 students pursued the subject in the year 2021-2022. Instead of encouraging the learning of Sanskrit in the School, the respondents have tried to discourage the School from imparting instructions in the ancient language.

In view of the discussion above, the petitioner is entitled to succeed. Exts.P1, P2, P4, P6, P8, and P9 orders will stand quashed. There will be a direction to the respondents 1 to 5 to approve the appointment of the petitioner by sanctioning the post from 2019-2020 onwards and grant approval to the appointment of the petitioner as Sanskrit teacher of the Thodiyoor UP School. As a consequence, the respondents shall disburse the salary and other benefits to which the petitioner is entitled to, including the arrears. The needful shall be done expeditiously, in any event, within a period of three months from the date of receipt of a copy of this judgment.

This writ petition will stand allowed.

Sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

APPENDIX OF WP(C) 2889/2022

PETITIONER(S) EXHIBITS :

- Exhibit P1 TRUE COPY OF PROCEEDINGS OF AEO SHOWING THE STUDENTS STRENGTH DATED 16/07/2019.
- Exhibit P2 TRUE COPY OF THE ORDER OF AEO DATED 26/08/2019.
- Exhibit P3 TRUE COPY OF THE APPEAL PETITION FILED BEFORE DEO DATED 06/09/2019.
- Exhibit P4 TRUE COPY OF THE ORDER DATED 08/01/2020 BY DEO, KOLLAM.
- Exhibit P5 TRUE COPY OF THE APPEAL DATED 22/07/2019 BEFORE DDE, KOLLAM.
- Exhibit P6 TRUE COPY OF THE ORDER OF THE DDE, KOLLAM DATED 23/09/2019.
- Exhibit P7 TRUE COPY OF THE REVISION PETITION DATED 02/12/2019 FILED BEFORE THE DIRECTOR OF GENERAL EDUCATION, THIRUVANANTHAPURAM.
- Exhibit P8 TRUE COPY OF THE ORDER OF JOINT DIRECTOR OF EDUCATION DATED 24/09/2021.
- Exhibit P9 TRUE COPY OF THE ORDER DATED 06/12/2021.
- Exhibit P10 TRUE COPY OF THE RTI APPLICATION DATED 06/11/2021.
- Exhibit P11 TRUE COPY OF THE REPLY DATED 20/11/2021 GIVEN FOR RTI APPLICATION.
- Exhibit P12 TRUE COPY OF THE TABLES DEPICTING NUMBER OF STUDENTS STUDYING SANSKRIT IN THODIYOOR UP SCHOOL.
- Exhibit P13 TRUE COPY OF THE CIRCULAR DATED 22/01/2021.
- Exhibit P14 TRUE COPY OF THE QUESTION RAISED UNDER RTI ACT ON 20.06.2019
- Exhibit P15 TRUE COPY OF THE REPLY IS GIVEN ON 28.06.2019

Exhibit P16	TRUE COPY OF THE QUESTION RAISED ON 02.02.2022
Exhibit P17	TRUE COPY OF THE ANSWER RECEIVED ON 16.02.2022
Exhibit P18(a)	THE STUDENTS STRENGTH FOR 2020-2021 RECEIVED FROM WEBSTIE
Exhibit P19(b)	THE STUDENTS STRENGTH FOR 2021-2022 RECEIVED FROM WEBSITE.

RESPONDENT(S) EXHIBITS : NIL