

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941

WP(C).No.31433 OF 2019(D)

PETITIONER/S:

SHINY GEORGE  
AGED 35 YEARS  
W/O ABHILASH K.A , UPSA, JAWAHAR UPPER PRIMARY SCHOOL  
EDAYAR, KOOTHATTUKULAM RESIDING AT  
KARAVETTATTINKARAYIL HOUSE, EDAYAR PO,  
KOOTHATTUKULAM - 686 662

BY ADVS.  
SRI.JAMES ABRAHAM (VILAYAKATTU)  
SRI.P.BALAN (VYTTILA)

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY , GENERAL EDUCATION  
DEPARTMENT , SECRETARIAT, THIRUVANANTHAPURAM- 695 001
- 2 THE DIRECTOR OF PUBLIC INSTRUCTION  
JAGATHY ,THIRUVANANTHAPURAM - 695 014
- 3 THE ASSISTANT EDUCATIONAL OFFICER  
KOOTHATTUKULAM , ERNAKULAM DISTRICT- 686 662
- 4 THE MANAGER JAWAHAR UPPER PRIMARY SCHOOL  
EDAYAR , KOOTHATTUKULAM- 686 662

R1-3 BY GOVERNMENT PLEADER  
R4 BY ADV. SRI.GEORGE SEBASTIAN  
GP G. RANJITA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
31.01.2020, ALONG WITH WP(C).31437/2019(D) , THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

**Dated this the 31st day of January 2020**

No representation for 4<sup>th</sup> respondent.

2. The petitioner prays for mandamus to direct the respondents to approve the appointment of petitioner as Upper Primary School Assistant from the academic year 2018 onwards on regular basis, without insisting upon fresh appointment order for the academic year 2018-19. The petitioner consequently prays for disbursement of salary and arrears from 2018 onwards.

3. The 3<sup>rd</sup> respondent filed statement. The operative portion reads thus:

4. The academic year 2018-19 the students in the School was, Standards V-21, VI-11, VII-13 and total 45 students, the average student strength was got above 15, Hence as per Circular No.58604/J2/12 GEdn the School has become a sufficient strength in the School. But the Manager has not submitted the appointment proposals in Form No.27 and enclosure as per KER Rule 8 Chapter XIV

A. Government has directed to consider the appointment up to 31.03.2018 on daily wage basis only as the School was not having sufficient strength of students (as per Lr.No.L3/32/19 GEdn dated 21.02.2019, L3/32/19 GEdn dated 07.03.2019).

5. The petitioner filed Writ Appeal No.68/19 against the The Judgment in W.P. (C) No.36248/17 of the High Court. The Hon'ble Division Bench confirmed the Learned single Bench Judgment with a direction to Director of General Education to review the student strength and if there is minimum strength to sanction regular scale of pay then that has to be disbursed to petitioner. In compliance to Judgment the Director of Public Instructions heard the petitioner and upheld the decision of the Assistant Educational Officer, and found that the School was having minimum strength to sanction regular scale of pay only from the academic year 2018-19. Hence petitioner can be sanctioned regular scale of pay only if the Manager resubmit the appointment proposal in the prescribed form as per Order No.F5/12316/19 DGE KDis dated 26.06.2019 of the Director of Public Instructions, Thiruvananthapuram.

6. The direction of the Director of Public instructions has been intimated to the Manager and has requested Manager to submit petition for condonation of delay in submitting proposal along with the appointment order 2018-19. But the Manager has not submitted the proposals. The Manager submitted a letter to the 3<sup>rd</sup> respondent's office. But the manager has not submitted the proposals till date.

The statement as noted above refers to Order  
No.F5/12316/19 DGE KDis dated 26.06.2019 of the 2<sup>nd</sup>

respondent.

4. Kept in perspective the case of 2<sup>nd</sup> respondent, this court is of the view that the respondents are under obligation to pay salary to petitioner commencing from the academic year 2018-19. However, the delay could not be attributed to respondents 1 to 3. The complete blame is fastened on 4<sup>th</sup> respondent, for the 4<sup>th</sup> respondent, inspite of receipt of communication dated 26.06.2019, has not moved in the matter by forwarding the salary proposal of petitioner. The short narration boils down to further examination of stand taken in Ext.P6 by the 3<sup>rd</sup> respondent. The statement filed by 3<sup>rd</sup> respondent does not insist upon submitting/re-submitting the salary proposal of petitioner accompanied by a fresh appointment order. In the case on hand the petitioner has been working in a regular vacancy, however, for want of strength, the department did not grant her regular scale of pay

but allowed her to work on daily wages.

5. By filing the present writ petition it is noted that the petitioner is not re-opening the issues already concluded and decided in earlier round of litigation. For convenience, the operative portion of W.A No.68/2019 in Ext.P4 reads thus:

The AEO shall submit the details of the strength for the academic year 2018-19, to the DPI, within a period of one month from the date of receipt of a certified copy of the judgment. The DPI shall consider the approval within two months from the receipt of the details, if necessary with notice to the Manager and the appellants herein.

Writ appeals are disposed of. No order as to costs.

It is in this background respondents 2 and 3 have issued Order No.F5/12316/2019DGE/KDis dated 26.06.2019 and communication from Director of General Education to AEO, Koothattukulam dated 23.10.2019. The petitioner therefore contends that upon re-submission of proposals without a fresh appointment order, the salary payable to petitioner commencing from the academic year 2018-19 is considered and paid by respondents.

6. The learned Government Pleader submits that the stand taken by respondents in the counter affidavit is followed, the proposals sent by the 4<sup>th</sup> respondent are examined and consequential steps are taken. There is no issue of fact or law presented for decision in this writ petition. The grievance of petitioner is now against 4<sup>th</sup> respondent. The 3<sup>rd</sup> respondent cannot also impose condition of fresh appointment order for processing the salary bills of petitioner. The fresh appointment order leads to fresh commencement of service loosing the past service and by referring to which directions are issued by this Court in earlier round of litigation. Adv. James Abraham for petitioner states that the petitioner is also not reopening the issues concluded by the Division Bench as well as the Director Public Instructions, Thiruvananthapuram.

7. Having regard to the above circumstances, writ

petition stands disposed of by this judgment:

- a) The 4<sup>th</sup> respondent re-submits the salary proposals of petitioner for the academic year 2018-19 within four weeks from the date of receipt of a copy of this judgment for approval and payment of salary to petitioner for the academic year 2018-19. The petitioner since has worked on daily wages basis in a regular vacancy the proposals now forwarded by 4<sup>th</sup> respondent need not be accompanied by fresh appointment from 2018-19 onwards.
- b) The 3<sup>rd</sup> respondent upon receipt of the proposals as noted above completes the process, issues necessary orders and pays arrears of salary etc., within eight weeks thereafter.

Sd/-  
S.V.BHATTI  
JUDGE

**APPENDIX OF WP(C) 31433/2019**

**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER DATED 1.6.2016.
EXHIBIT P2	TRUE COPY OF THE ORDER NO.C/1527/16/KDis DATED 31.08.2016.
EXHIBIT P3	A TRUE COPY OF THE COMMON JUDGMENT DATED 30.1.2018 IN W.P.NO.36248/2017.
EXHIBIT P4	TRUE COPY OF THE JUDGMENT DATED 12.3.2019 IN W.A NO.68/2019.
EXHIBIT P5	TRUE COPY OF THE LETTER NO.L.3/32/2019/G.EDN DATED 21.2.2019.
EXHIBIT P6	TRUE COPY OF THE ORDER NO. F5/12317/2019/DPI DATED 26.6.2019.
EXHIBIT P7	TRUE COPY OF THE COVERING LETTER DATED 19.7.2019 ISSUED BY THE 4TH RESPONDENT MANAGER AND AN ENDORSEMENT DATED 23.7.2019 BY THE 3RD RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE LETTER NO.F5/8357/19/DDI/KDIS DATED 23.10.2019.
EXHIBIT P9	TRUE COPY OF THE ORDER NO.C/246/2019/K.Dis. DATED 14.06.2019.