

IN THE HIGH COURT OF KERALA AT ERNAKULAM**PRESENT****THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN****TUESDAY, THE 7TH DAY OF FEBRUARY 2023 / 18TH MAGHA, 1944****WP (C) NO. 21858 OF 2022****PETITIONER/S:**

HARIKRISHNAN P.V
AGED 34 YEARS
S/O K.R.UNNIKRISHNAN, AGED 34 YEARS CLERK, SBHS,
KURUMPILAVU THRISSUR-680564 (RESIDING AT SREEHARI
VARIYAM AMBALAPPADI, WANDOOOR.P.O MALAPPURAM-679328).

BY ADVS.
T.T.MUHAMOOD
A.RENJIT
V.E.ABDUL GAFOOR
A.MOHAMMED SAVAD
NAZEER HUZAIN.H
T.R.VISHNU

RESPONDENT/S:

- 1 STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT GENERAL
EDUCATION DEPARTMENT, SECRETARIAT ANNEX
THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM-695 014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION,
OFFICE OF THE DDE, THRISSUR PIN-680 003.
- 4 THE DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DEO, THRISSUR-680 001.
- 5 THE SUB TREASURY OFFICER

CHERPU, THRISSUR KERALA -680561.

6 THE MANAGER
SBHS, KURUMPILAVU THRISSUR-680564.

7 THE HEADMASTER
SBHS, KURUMPILAVU, THRISSUR-680564.

BY ADVS.
GOVERNMENT PLEADER
ADVOCATE GENERAL OFFICE KERALA

OTHER PRESENT:

SRI.K.M.FAISAL, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P.(C) No. 21858 of 2022

Dated this the 7th day of February, 2023

JUDGMENT

The above writ petition is filed with following prayers :

- "i. Issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P2.*
- ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent not to recover any amount from the petitioner based on Ext.P2, P3 and P4." [SIC]*

2. The petitioner is working as a Clerk in SBHS, Kurumpilavu. He was appointed as Clerk on 14.11.2018, against an established vacancy. The approval was granted as per Ext.P1 dated 30.09.2020 and his salary was also released. But, as per Ext.P2, the 5th respondent directed the 7th respondent to recover the amount of arrears of salary drawn by the petitioner for the period from 14.11.2018 to 30.09.2020 and remit the same in his PF account stating that the amount ought to have been remitted in the PF account in accordance with Ext.P3, P4 and P5 orders. The contention of the petitioner

is that Exts.P3, P4 and P5 orders are not applicable in the case of the petitioner. It is also the case of the petitioner that the approval of the petitioner's appointment was not based on Ext.P5 and therefore, the direction to recover the amount from the petitioner is absolutely unsustainable. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. The counsel for the petitioner takes me through Clause II(6) of Ext.P5 and submitted that the same is not applicable to the petitioner and it is applicable only to teachers. Moreover, it is also submitted that in the judgment dated 05.01.2023 in W.P.(C.) No.17115 of 2022, this Court already found that the direction to credit the salary in the PF account is not correct. Moreover, it is also submitted by the counsel that as per Clause II(6) of Ext.P5, the period is expired in the financial year 2020-21. In such circumstances, the direction to recover the amount which has already been paid to the petitioner in cash is unsustainable. The Government

Pleader on the other hand takes me through the counter affidavit filed by the 5th respondent.

5. This Court considered the contentions of the petitioner and the learned Government Pleader. Ext.P2 is impugned in this writ petition. Ext.P2 is a proceedings of the Sub-Treasury Officer, Cherppu to the Headmaster of the petitioner's school. As per Ext.P3 circular, arrears of salary is to be deposited in the PF account and the amount disbursed to the petitioner directly is not correct. Hence, it is ordered to be recovered. Ext.P3 is based on Ext.P5. As per Ext.P5, the arrears of salary is to be credited in the Provident Fund account. That period is already over in the year 2020-21. Moreover, as per judgment dated 05.01.2023 in W.P.(C.) No. 17115 of 2022, this Court considered the matter in detail and observed like this :

“24. I fail to understand the reasoning behind the contention in the counter affidavit filed by the respondents that the arrears are not withheld or deferred but are being credited to their own PF Account and that the teachers would obtain interest for the same and therefore, the grievances projected by them have no basis. The specific case of the petitioner in the instant case is that being qualified to be appointed as HSST (Political Science), the petitioner had been taking classes from

the academic year 2011-2012. The post was sanctioned by the Government by Exhibit P2 order dated 15.07.2013. Finally, it was by Exhibit P8 that approval was finally granted with effect from 30.08.2013. The sanctioning order issued by the Principal of the School would reveal that the petitioner had actually rendered service from 01.09.2013 onwards, and approval was only granted on 04.08.2021. It would seem that the respondents have not contemplated how difficult and tough it would have been for the petitioner to work almost eight years without pay. The learned counsel for the petitioner has stated that the petitioner is 44 years old and has a family to provide for. For teachers like the petitioner, who have families to support and other fixed costs like rent, loan, or mortgage, going without pay can be extremely difficult. If teachers are made to work for many years without pay, it would be, without any doubt, quite disheartening for them. The teachers' morale and drive would plummet, and this would reflect in his/her classroom performance. He or she will be under a lot of pressure, worrying about where and when they will get the money to take care of their family. It will be an uphill battle for the teacher to provide for his/her family throughout his/her life, and he/she won't be able to afford medical treatment or insurance during his/her prime earning years. Such a stressful life can also lead to mental and physical health issues. The respondents appear to have been oblivious to all these considerations when they came up with the impugned order."

6. The same principle is applicable to the petitioner

also. Moreover, the petitioner is not a teacher and he is working as a clerk. Hence, it is doubtful whether the circular relied in Ext.P2 is applicable to the case of the petitioner. Hence, the writ petition is to be allowed.

Therefore, this writ petition is allowed in the following manner:

- 1) Ext.P2 is set aside.
- 2) The 1st respondent is directed not to recover any amount from the petitioner based on Exts.P2, P3 and P4.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS

APPENDIX OF WP (C) 21858/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF ORDER NO B3/18523/2020 DATED 30.09.2020 ISSUED BY THE 4TH RESPONDENT.
- Exhibit P2 TRUE COPY OF ORDER NO. A3/B1/2022-23 DATED 04.06.2022 ISSUED BY THE 5TH RESPONDENT TO THE 7TH) RESPONDENT.
- Exhibit P3 TRUE COPY OF CIRCULAR NO. 7/21/FIN. DATED 27.01.2021.
- Exhibit P4 TRUE COPY OF LETTER NO. TRY/4422/2021/E1 DATED 13.04.2022 ISSUED BY THE DIRECTOR OF TREASURIES TO THE TREASURY OFFICERS.
- Exhibit P5 TRUE COPY OF G.O (P) NO. 29/2016/GEDN. DATED 29.01.2016.

RESPONDENT EXHIBITS

- Exhibit R5(b) True copy of the Government Letter No.PF-1/42/2021-FIN(1855183) Finance(PF) Department dated 8.10.2021
- Exhibit R5(c) True copy of the Government Letter No.PF-1/37/2022-FIN(2124126) Finance(PF) Department dated 4.08.2022
- Exhibit R5(a) True copy of the Government Letter No.E 1997226/SL3/17/2022/Fin dated 26.03.2022