

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 30<sup>TH</sup> DAY OF JANUARY 2024 / 10TH MAGHA, 1945

WA NO. 103 OF 2024

AGAINST THE ORDER/JUDGMENT WP(C) 36165/2023 OF HIGH COURT  
OF KERALA

**APPELLANT/S:**

- 1 YELDHO MATHOOSE C.C., AGED 43 YEARS  
SON OF CHERU LAB ASSISTANT, SEETHI SAHIB MEMORIAL  
VOCATIONAL HIGHER SECONDARY SCHOOL, EDAKKAZHIYUR  
CHAVAKKAD, THRISSUR DISTRICT-680 515 RESIDING AT  
CHERUVATHUR HOUSE, ANJOOR ROAD, KUNNAMKULAM,  
THRISSUR DISTRICT, PIN - 680503
- 2 JOMON T.J., AGED 45 YEARS  
LAB ASSISTANT, SEETHI SAHIB MEMORIAL VOCATIONAL  
HIGHER SECONDARY SCHOOL, EDAKKAZHIYUR CHAVAKKAD,  
THRISSUR DISTRICT, PIN - 680515
- 3 JOBY C.V., AGED 43 YEARS  
LAB ASSISTANT, SEETHI SAHIB MEMORIAL VOCATIONAL  
HIGHER SECONDARY SCHOOL, EDAKKAZHIYUR CHAVAKKAD,  
THRISSUR DISTRICT, PIN - 680515
- 4 VINCENT C.L., AGED 47 YEARS  
LAB ASSISTANT, SEETHI SAHIB MEMORIAL VOCATIONAL  
HIGHER SECONDARY SCHOOL, EDAKKAZHIYUR CHAVAKKAD,  
THRISSUR DISTRICT, PIN - 680515  
BY ADVS.  
V.A.MUHAMMED  
M.SAJJAD

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXE  
II, THIRUVANANTHAPURAM, PIN - 695001

- 2 THE DIRECTOR OF GENERAL EDUCATION  
(HIGHER SECONDARY WING) HOUSING BOARD BUILDINGS,  
SANTHI NAGAR THIRUVANANTHAPURAM, PIN - 695001
- 3 THE REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY  
EDUCATION, S.R.V. SCHOOL BUILDINGS, ERNAKULAM,  
PIN - 682016
- 4 THE PRINCIPAL  
SEETHI SAHIB MEMORIAL VOCATIONAL HIGHER SECONDARY  
SCHOOL, EDAKKAZHIYUR, CHAVAKKAD, THRISSUR  
DISTRICT, PIN - 680515
- 5 THE HEADMASTER/VICE PRINCIPAL  
SEETHI SAHIB MEMORIAL VOCATIONAL HIGHER SECONDARY  
SCHOOL, EDAKKAZHIYUR, CHAVAKKAD, THRISSUR  
DISTRICT, PIN - 680515

**OTHER PRESENT:**

SRI A J VARGHESE - SR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
30.01.2024, ALONG WITH WA.128/2024, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**&**

**THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN**

**TUESDAY, THE 30<sup>TH</sup> DAY OF JANUARY 2024 / 10<sup>TH</sup> MAGHA, 1945**

**WA NO. 128 OF 2024**

**AGAINST THE ORDER/JUDGMENT WP(C) 1149/2024 OF HIGH COURT OF  
KERALA**

**APPELLANT/S:**

GIREESH T.  
AGED 34 YEARS  
S/O. GOPALAN NAIR, WORKING AS LAB ASSISTANT [HG],  
V.V.M. HIGHER SECONDARY SCHOOL, MARAKKARA,  
MARAKKARA P.O., KADAMPUZHA, MALAPPURAM-676 553,  
RESIDING AT TAVILI [H], THUVVAKKODE P.O.,  
CHAMANCHERRY, KOZHIKODE, PIN - 673304  
BY ADV K.SANDESH RAJA

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY THE PRINCIPAL SECRETARY, GENERAL  
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DIRECTOR GENERAL OF EDUCATION  
OFFICE OF THE DIRECTORATE OF HIGHER SECONDARY  
EDUCATION, HOUSING BOARD BUILDING, SHANTHI NAGAR,  
THIRUVANANTHAPURAM, PIN - 695001

**OTHER PRESENT:**

SRI VINEETHA B - SR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
30.01.2024, ALONG WITH WA.103/2024, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

A. Muhamed Mustaque, J.

These intra-court appeals are filed by the petitioners in the writ petitions. Petitioners in the writ petitions are working as Lab Assistants in various schools in the State. In the State of Kerala, there are 1718 Higher Secondary Schools along with high school sections. As seen from the impugned order, there are around 2876 Lab Assistants in the State. The Government faced a problem in regard to the security of storing question papers and answer sheets in the school during night. There are around 4163 examination centres and Government requires at least 8326 employees for the purpose of securing the question papers and answer sheets. Lab Assistants were recruited in the schools for practical evaluation. The Government, noting that sufficient manpower is not available for securing the question papers and answer sheets in examination manual, redefined the role of Lab Assistants. Apart from practical evaluation, they have also been directed to discharge duties of Clerks/Office Assistants/ Night Watchmen in connection with examination. The new role was defined in the year

2022. They approached this Court as their representation was not considered. The Office Assistants in UP School were also engaged for the purpose of securing question papers as well as answer sheets. They also appears to have been filed a writ petition. This Court directed the Government to consider the matter afresh. Accordingly, the Government considered and passed order on 04.10.2023. This order has been questioned by the Lab Assistants. Interestingly it has been noted that the Government exempted all Office Assistants/Clerical Staff/FTMs of the High schools from the duty during the examination period.

2. The learned Single Judge, who heard the matter, dismissed the challenge holding that if a person is drawing a salary and has been allotted a work relating to the institution where he is functioning, which needs to be performed in the exigencies, is normally expected to do that job and Rule 14 of Chapter III, Part I KSR gives a statutory recognition to the above obligation of an employee.

3. We note that the learned Single Judge without advertng to the Kerala Education Rules or any other Act or Government Order decided the matter. The question in this

case is that the Government has any power to depute the Lab Assistants to do any other function other than to which they are recruited. It is to be noted that this additional duty has been directed to be discharged as an additional duty to secure the interest of the educational institution as well as to ensure the credibility of examination to be conducted by the Government. The Government, being the employer and the salary is being paid out from the exchequer, can direct an employee to perform such functions as the Government deem fit not in derogation of the substantial work which normally discharged under the statutory rule or based on the Government order. But problem in this case will have to be seen differently. The Government passed this order on assumed fact that Office Assistants/FTMs and Clerks are otherwise burdened with heavy work and therefore, they should be exempted from being deputed as night watchmen. It seems Government proceeded Lab Assistants do not have any other work during examination period and therefore, they should be engaged. This approach, according to us, is legally untenable unless there is any study is conducted in this regard by the Government. The executive orders are amenable to challenge if there is no

application of mind. We are not against engaging Lab Assistants for night duties if exigencies arise. The institutional requirement of each institution will have to be adverted after looking into the functions and duties discharged by FTMs/Office Assistants/Clerks and other ministerial staff of the high school section. While adverting to the requirement, the workload of each person will have to be taken into account by the competent authority and find out whether there is any requirement to engage Lab Assistants or not. Without adverting to the factual scenario of such institution, the Government could not have passed such an order exempting the entire ministerial staff and class IV from night watchmen duty. That means, the Government has not applied its mind while passing the order. In such circumstances, we are of the view that the impugned order has to be set aside. It is possible for the Government to relegate this matter to the DEO to assess the requirement of individual institutions within the area and to engage such persons which may be required to meet the situation. However, it is to be made clear before engaging Lab Assistants that workload of ministerial staff and Class IV staff will have to be ascertained. The Government or any authority to whom the

Government delegate will have to reckon the workload of such ministerial staff and Class IV and it is only in the event a conclusion is drawn that they will be overburdened, engagement Lab Assistants need to be considered. Further, we note the prescription in the manual in regard to engagement of Lab Assistants for examination duty. That prescription in the manual that the Lab Assistants can be engaged for examination duty, has to be understood based on the directions in the judgment.

The writ appeals stand allowed as above.

sd/-

**A. MUHAMED MUSTAQUE  
JUDGE**

sd/-

**SHOBA ANNAMMA EAPEN  
JUDGE**

das



**APPENDIX OF WA 128/2024**

**PETITIONER ANNEXURES**

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| Annexure 1 | TRUE COPY OF THE JUDGMENT OF THE<br>HON'BLE HIGH COURT IN W.P.<br>[C]NO.35950/2023 DATED 14/1/2023 AND<br>CONNECTED CASES |
| Annexure 2 | TRUE COPY OF THE COUNTER AFFIDAVIT<br>FILED BY THE 2ND RESPONDENT DATED<br>13/11/2023 W.P. [C]NO.36165/2023               |