



GOVERNMENT OF KERALA

Abstract

General Education Department- Judgment in SLP No.22332 of 2009 of the Hon'ble Supreme Court - Directions in compliance of the judgment - Orders issued.

GENERAL EDUCATION (J) DEPARTMENT

G.O.(P) No.144/2013/G.Edn

Dated, Thiruvananthapuram, 22.4.2013

Read:- 1.G.O.(P) No.104/2008/G.Edn dtd.10.6.2008.

2. Judgment dtd.6.4.2009 in WP(C)No.25167/08 and 25 similar cases

(Unninarayanan case) of the Hon'ble High Court of Kerala

3. Judgment dtd 22.2.2013 in SLP No.22332 of 2009 of the Hon'ble Supreme Court of India.

4.G.O(P)No.56/11/GEdn dated 26.2.2011.

ORDER

As per the Government Order read as Ist paper above, certain clarifications were issued regarding the nature of appointment and admissibility of vacation salary as per Rule 49 of Chapter XIV A KER to teachers appointed in leave/regular vacancies.

2. Several W.P(C)s were filed in the Hon'ble High Court challenging the conditions (i) &(ii) stipulated in the said Government Order. The Hon'ble High Court as per the common judgment read as 2nd paper above, quashed the orders passed approving the appointments of the petitioners on daily wage basis relying on the Government Order read as Ist paper above based on the contention that if appointments are made to vacancies, having duration of one academic year or more, they are liable to be approved since Rule 7A speaks of duration of vacancy and not duration of appointment.

3. Government have filed an SLP against the impugned judgment. The Hon'ble Supreme Court, as per the judgment read as 3rd paper above, set aside the judgment of the Hon'ble High Court with the following directions.

- (i) A teacher, who was relieved from service under Rules 49 and 53 of Chapter XIV A of the KER, is entitled to get preference for appointment under Rule 51 A only if the teacher has a minimum prescribed continuous service in an academic year as on the date of relief.
- (ii) The Manager of an aided school can, however, appoint teachers in vacancies occurred due to death, retirement, promotion, resignation, long-term leave etc. provided they are established vacancies and the approval can be granted subject to the conditions under Rule 49 of Chapter XIV A of the KER.
- (iii) Approval can also be granted to appointments made to the approved vacancies arising and continuing beyond 31st March due to sanctioning of additional divisions
- (iv) The Manager can make appointments in school even if the duration of which is less than one academic year but on daily wages basis and if the duration of vacancy exceeds one academic year that can be filled up on scale of pay basis
- (v) The Manager is free to appoint teachers on a regular basis from the re-opening date itself against regular established vacancies and need not wait

for the appointments till completion of the staff fixation as per the KER.

- vi) Teachers who have been appointed in the midst of the academic year and not completed the requisite minimum continuous service before vacation will not be entitled to get vacation salary

4. In this context, it is important to refer to the findings of Hon Supreme Court in its judgement which holds that one cannot read Sub rule 3 of Rule 7A in isolation, it has to be read as part of an integral whole and as being interdependent. The judgement defines that the expression 'vacancies' used in sub rule 3 to Rule 7 means 'posts which remain unoccupied'. Rule does not say that the duration of vacancy is to be determined from the time when the vacancy occurs to the time when it expires. Duration means the time during which something continues' i.e; the continuance of the incumbent. Sub rule 3 to Rule 7A uses the expression "academic year", Rule 2A of Chapter VII of the KER refers to the academic year as "Academic year shall be deemed to commence on the reopening day and terminate on the last day before the summer vacation". The Hon'ble Court holds that the expression "vacancy" used in Sub rule 3 to Rule 7A has to be read along with the expression "academic year" so as to achieve the object and purpose of the amended sub rule (3) to Rule 7A so as to derive a remedy. The Apex court clearly indicates that restriction is only with reference to the minimum period for a new appointee to become 51A claimant, that is the object and purpose of sub rule 3 to rule 7A read with proviso to Rule 51A of Chapter XIVA KER. The object and purpose is to curb the unhealthy practices adopted by certain managers of aided schools by creating short term vacancies or appointing several persons in relatively long leave vacancies itself thereby making several 51A claimants against one and the same vacancy. As such a purposive construction of Sub rule 3 of Rule 7A read with proviso to Rule 51A of chapter XIVA KER shall be adopted.

5. As per Rule 7A(3) of KER, the minimum prescribed continuous service is one academic year and this is complementary to the duration of 'vacancies' which is defined by the Apex court as 'continuance of the incumbent in an academic year' as indicated at para 19 of the judgement. Thus Hon'ble Court has set aside the judgment of Hon,ble High court thus upholding the Government Order dtd.10.6.2008 by reaffirming the object and purpose of sub rule (3) to Rule 7A read with proviso to Section 51A and Government Order dated 10.6.2008.

6. In the above circumstances, Government are pleased to reiterate the conditions stipulated in Government Order dated 10.6.2008 regarding approval of appointments of teachers. The clauses (vi) of para 26 of the Hon'ble Supreme Court judgment prescribes the conditions for vacation salary. i.e., teachers who have been appointed in the midst of the academic year and not completed the requisite minimum continuous service of one academic year before vacation will not be entitled to get vacation salary. Since clause (ii) and (vi) of the judgment is to be complementary to one another, in view of the judgment, Govt are also pleased to order that the admissibility of vacation salary as provided in Rule 49 Chapter XIV A KER will be applicable only to those appointments made on regular basis as per sub rule (3) to Rule 7A read with proviso to section 51A Chapter XIVA KER. Also the conditions for vacation salary will hereafter be applicable to those who are appointed both in permanent and non permanent vacancies. As such Government Order read as 4th paper above stands cancelled with immediate effect and has relevance only up to the date of this order.

7. In order to give effect to para 6 above, necessary amendments will be made forthwith to Rule 49 Chapter XIVA KER for which the Director of Public Instructions will forward proposals to Government urgently.

8. The salary already paid in excess to some teachers, consequent to and in compliance of the judgment read as 2nd paper above, either by obtaining bond from them or not, shall be recovered by the educational officers concerned immediately. Director of Public Instructions shall issue necessary directions to all educational officers concerned regarding approval of appointments in strict compliance of the judgment of the Hon'ble Supreme Court and GO(P)No.104/08/GE dn dated 10.6.2008.

(BY ORDER OF THE GOVERNOR)

Dr.K.ELLANGO VAN

Secretary to Government

To

The Advocate General, Ernakulam (with C/L)

The Director of Public Instruction, Thiruvananthapuram.

All Deputy Director of Educations, All District Education Officers,

All Assistant Education Officers

The Accountant General (A&E/Audit), Kerala, Thiruvananthapuram.

The Director, IT @ School, Thiruvananthapuram.

The Director, Information and Public Relations Department, Thiruvananthapuram.

Stock File/Office Copy.

Forwarded/By Order,



Section Officer

Copy to: PS to Minister (General Education),

PA to Secretary (General Education)

All Officers & Sections in General Education Department