

Divya S. Kumar Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 4, 2025

Hon'ble Judges: N. Nagaresh, J

Bench: Single Bench

Advocate: Sajith Kumar V., Vivek A.V, Ammu M, Sreehari V.S., Tony Augustine, G.Biju

Final Decision: Disposed Of

Judgement

N. Nagaresh, J.

1. The petitioner, who is working as HST English under the 5th respondent-School, is aggrieved by denial of salary from the month of July, 2024

onwards in spite of the fact that the School is having three Divisions at High School justifying one post of HST English.

2. The petitioner was appointed as HST in Devaswom Board High School, Thrikkariyoor. The petitioner was transferred to the 5th respondent-

Devaswom Board Higher Secondary School, Parumala on 28.10.2009. The 5th respondent was having four Divisions at High School during the

academic year 2023-2024. As per Clause 8(8) of Ext.P1 order, there will be three Divisions for the academic year 2024-2025. Ext.P1 order of staff

fixation in respect of the 5th respondent-School would indicate that English was not reckoned as a language but only as a core subject. If English is

reckoned as language, three Divisions would justify the post of HST English.

3. By Ext.P1 order, the 4th respondent reduced the number of Divisions from four to three in the academic year 2024-2025. Though there are three

Divisions in High School, the respondents have not sanctioned a post of HST English. A Division Bench of this Court has held that the said provision is

unambiguous in the creation of posts of HST English having three Divisions or more. However, in the case of the 5th respondent-School, the

respondents have violated the directions of the Division Bench.

4. The petitioner states that Annexure-2 of Ext.P1 declares that HST English post cannot be allotted and as per GO dated 29.11.2023, it was directed

to create HST English post temporarily in Government / Aided Schools having three or four Divisions in High School Section. It is directed that they

have to be redeployed before considering appointment on daily wage basis.

5. Pursuant to Ext.p1 Staff Fixation Order, the 4th respondent has issued Ext.P2 order dated 14.07.2024 and sanctioned a temporary post of HST

English with a direction to fill up the same on daily wage basis if there is no protected Teacher available. The petitioner states that she belongs to

protected category. However, the petitioner has been denied salary from July, 2024 onwards.

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6. The petitioner states that Ext.P2 order was issued to give effect to GO dated 05.07.2024. But, paragraph 4 of the GO directs to retain

retrenched/protected English Teachers in the same School. As per Ext.P7 judgment dated 10.08.2021 in W.P.(C) No.23159/2018, a Division Bench of

this Court has directed the State Government and the Director of Public Instructions to do the necessary to create the cadre of HSA (English) from

the academic year 2021-2022 onwards. The petitioner therefore seeks to direct respondents 1 to 2 to retain the post of HST English in the 5th

respondent-School and permit the petitioner to continue as HST English with monthly salary and with all consequential benefits.

7. The 4th respondent contested the writ petition. One post of HST English was created temporarily in the School in terms of GO dated 29.03.2023

during the year 2023-'24, following the judgment in W.P.(C) No.23159/2018. The Government Order directed to fill up the vacancy by appointing daily

wage or contract basis. The petitioner is not eligible to claim the benefit of a protected Teacher. The petitioner got regular appointment only with

effect from 01.06.2009. The Manager is bound to shift the petitioner to another regular post available in any of the Schools under the corporate

management.

8. One HST English post was abolished in the School during the staff fixation 2023-2024. As per Appendix II of the Staff Fixation Order, there is a

direction to the Manager to rearrange the HST English. The Manager has retained the petitioner to the temporary post, which is totally defying the

rules. The petitioner has approved service as HST English since the year 2009. The temporary post of HST English that can be created in the School

can be filled up only by available juniormost Teacher or by daily wage basis. The writ petition is without any merit, contended the Government

Pleader.

9. The petitioner has been working as HST English in the 5th respondent-School. Ext.P1 is the Staff Fixation Order dated 03.07.2024 in respect of the

academic year 2024-2025. In the Staff Fixation Order of 2023-2024, four Divisions were allotted to the School and in the Staff Fixation Order of 2024-

2025, three Divisions were allotted. One temporary post of HST English was also allotted as per Ext.P1.

10. In W.P.(C) No.23159/2018, this Court directed that English should be reckoned as a language like any other regional languages and posts should

be created/allotted on the basis of total number of periods, in the same way posts are allotted to other languages. The Government as per Ext.R4(a)

GO dated 29.11.2023 directed the Director of General Education to consider the direction of this Court and submit a report. The Committee submitted

a report. The Committee recommended that in the case of English Teachers also, posts should be created on the basis of periods. Ext.R4(a) would

indicate that when there are HSA English who will render surplus, a situation should be avoided to appoint Teachers on daily wage basis in the same

School. Ext.R4(a) would indicate that in such cases, directions are given to retain the protected/retrrenched Teachers in the very same School and to

make appointment on daily wage basis only thereafter. The Government therefore created 639 temporary posts of HSA English for allocating to those

Schools having three or four Divisions, to be filled up on daily wages / contract basis.

11. It is evident from the facts that a post of HST English had to be reduced in the 5th respondent-School for the academic year 2024-2025. This is

because English was not reckoned as a language, but instead English was treated as a core subject. In Ext.P7 judgment, a Division Bench of this

Court disagreed with the proposition that number of Divisions has to be taken into account for sanctioning of post of HSA (English). The writ petition

was allowed directing the State Government and Director of Public Instructions to do the necessary at the earliest in order to create and formulate the

cadre of HSA English on and with effect from the academic year 2021-2022 onwards.

12. In Ext.R4(a) GO dated 29.11.2023, the Government has taken into consideration the eventuality of appointing HSA English on daily wage basis

when there are protected/retrrenched HST English who have become surplus consequent to reduction of posts. Paragraph 4 of Ext.R4(a) provides that

such surplus HST English should be retained in the respective Schools and vacancies can be filled up on daily wage basis in remaining Schools.

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13. Ext.R4(a) GO dated 29.11.2023 would indicate that the afore direction is still current. If that be so, the petitioner who is HST English should be

retained in the 5th

respondent-School and daily wage appointment of Teachers should be resorted to in the remaining Schools. In view of Ext.P7 judgment and Ext.R4(a)

Government Order, the petitioner has to be retained as HST English.

The writ petition is accordingly disposed of directing respondents 1 to 4 to retain the post of HST English in the 5th respondent-School and permit the

petitioner to continue as HST English with monthly salary and with all consequential benefits.