

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 1829 of 2004 (P)

PETITIONER :

P.C.VARGHESE, HEADMASTER,
A.U.P.SCHOOL, KUTTIYAD, KARIMBA P.O.
PALAKKAD DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS :

1. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.
2. THE ASSISTANT EDUCATIONAL OFFICER,
MANNARKKAD.

R BY GOVERNMENT PLEADER SRI.T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1829 of 2004 (P)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE APPLICATION DATED 5.3.1999 SUBMITTED BY THE PETITIONER

EXT.P2 : COPY OF THE CHALLAN DATED 31.3.1999

EXT.P3 : COPY OF THE LETTER DATED 23.1.02 OF THE 1ST RESPONDENT

EXT.P4 : COPY OF THE GOVERNMENT ORDER DATED 22.6.1999

EXT.P5 : COPY OF THE ORDER DATED 13.11.2003 ISSUED BY THE 1ST RESPONDENT

EXT.P6 : COPY OF THE G.O(P)81/94(5)/FIN. DATED 2.2.1994

EXT.P7 : COPY OF THE GOVERNMENT ORDER DATED 20.12.1999

EXT.P8 : COPY OF THE GOVERNMENT ORDER DATED 1.1.1996

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.VINOD CHANDRAN, J.

W.P.(C) No.1829 of 2004

Dated this the 14th day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that he has been declined arrears as per Ext.P5, which he was entitled to be granted when he exercised an option, which is Ext.P1. As per G.O.(P).No.399/(178)/99/Fin. dated 05.02.1999, the option is seen exercised; as Ext.P1 on 05.03.1999. The issue raised herein relates to the re-option exercised by the petitioner as per the above referred Government Order of 1999.

2. The initial Government Order was of the year 1993 dated 25.09.1993 and re-option was first permitted by G.O.(P) No.615/(138)/97/Fin. dated 28.06.1999 and a further re-option by the Government Order of 1999 afore cited. There were cancellations and modifications made to the Government Order, which was the subject matter of a batch of writ petitions before this Court, in which a learned Single Judge by judgment dated 11.03.2002 in O.P.No.20280 of 2000 answered the issue, against the clarifications brought in by the State and directed the re-options exercised by the Government employees and the teachers as per the aforesaid Government Orders of 1997 and 1999 to be accepted and pay fixed accordingly.

3. Subsequently, another batch of writ petitions with respect to the very same issue, but however with certain other ramifications, also came up before this Court and the Government sought for a reconsideration of the afore cited judgment. In that batch of writ petitions one of the writ petitions was of the petitioner herein, being O.P.No.37160 of 2002. The said writ petitions were also disposed of by a common judgment dated 20.12.2002; rejecting the prayer of the Government for reconsideration of the earlier judgment.

4. The petitioner's case can be more clearly understood from the judgment in O.P.No.37160 of 2002. The petitioner jointed as an LPSA on 01.07.1971 and was promoted as Head Master on 15.09.1987. The petitioner normally would not have been entitled to the selection grade, since the petitioner was promoted before the 25 year period. If remaining in the cadre of LPSA, the petitioner would have got the selection grade on 01.07.1996. The Government took note of the difficulty of such teachers who were promoted to the post of Head Masters in the LP Section. The anomaly was insofar as juniors who remained in the post of LPSA being entitled to such selection grade, as a consequence of which, they would also draw higher pay than

the Head Masters'. The Government hence brought out G.O. (P).No.380/94/13/Fin. dated 09.08.1994 wherein such teachers, who were promoted could also be granted the facility for re-option. It is subsequent to that, the petitioner exercised such re-option as per the afore cited 1999 Government Order.

5. The petitioner's case specifically was found in favour by judgment in O.P.No.37160 of 2002 and connected cases. The question dealt with in the second batch was whether the prescription of 31.05.1996 as a cut-off date was proper or not. After the first judgment, on a clarification issued, the Principal Secretary had indicated that only entitlements before 31.05.1996 would be considered for re-option. The learned Single Judge who disposed of the second batch of writ petitions clearly found that, there is no such cut-off date provided in the Government Orders above referred. The Principal Secretary could not hence deviate from the specific benefit conferred under the Government Order, was the finding.

6. On a fresh consideration, the petitioner's claim was partially rejected by Ext.P5. Though the petitioners re-option was considered, it was held to be notional without any entitlement for arrears. The finding was that the judgment of

the High Court did not cover the position of Head Master. A reading of the judgment in O.P.No.37160 of 2002 would indicate that, the specific Government Order which entitled the teachers similarly situated as the petitioner to the exercise of option was considered, in which the promotion to the post of Head Master and the consequent loss of selection grade was specifically referred to.

7. In that context, it is also to be noticed that, a Division Bench of this Court also considered the issue in ***State of Kerala and others v. Lissy Joseph.M [2006(1) KLJ 566]*** in which the Division Bench clearly upheld the proposition that, the date of effect of re-option is the relevant date for granting benefit, subject only to the restriction that if there is excess amount after adjustment, it would be refunded only with effect from the date of filing re-option. The petitioner has filed the re-option on 05.03.1999 after remitting the excess pay drawn in the pre-revised scale. The judgment in O.P.No.20280/2000 itself has directed acceptance of the options made in accordance with the Government Orders of 1997 and 1999. The petitioner's re-option as Ext.P1 having been made in accordance with the 1999 Government Order, the same has to

be accepted and the arrears to be paid from the date opted. Ext.P5 shall stand modified to that extent. The petitioner shall be paid the arrears on re-fixation of pay within a period of three months from the date of receipt of a certified copy of this judgment.

This writ petition is allowed as above. No costs.

Sd/-
K.VINOD CHANDRAN, JUDGE

AV/16/10/