

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 2291 of 2004 (W)

PETITIONER(S):

1. THE HEADMASTER, GOKHALE U.P.SCHOOL,
MOODADI, VIA.KOYLANDI, KOZHIKODE DISTRICT.
2. THE HEADMASTER, NAMBRATHUKARA U.P.SCHOOL
NAMBRATHUKARA, NADUVATHOOR P.O., VIA KOYLANDI
KOZHIKODE DISTRICT.
3. THE HEADMASTER, NADUVATHOOR EAST L.P.
SCHOOL, NADUVATHOOR P.O., VIA.KOYLANDI
KOZHIKODE DISTRICT.
4. THE HEADMASTER, KANNOTH U.P.SCHOOL,
KEEZHARIYUR P.O., VIA KOYLANDI, KOZHIKODE DISTRICT
5. THE HEADMISTRESS, KIZHARIYUR WEST
MLP SCHOOL, KEEZHARIYUR P.O., VIA.KOYLANDI
KOZHIKODE DISTRICT.
6. THE HEADMISTRESS, NADUVATHOOR U.P.
SCHOOL, NADUVATHOOR P.O., VIA.KOYLANDI
KOZHIKODE DISTRICT.
7. THE HEADMASTER, NADUVATHOOR SOUTH
L.P.SCHOOL, NADUVATHOOR P.O., VIA.KOYLANDI
KOZHIKODE DISTRICT.
8. THE HEADMASTER, KEEZHARIYUR MLP SCHOOL,
NADUVATHOOR P.O., VIA.KOYLANDI, KOZHIKODE DISTRICT
9. THE HEADMISTRESS, MUCHUKKUNNU U.P.SCHOOL
P.O.MUCHUKKUNNU, VIA.KOYLANDI, KOZHIKODE DISTRICT.
10. THE HEADMASTER, MOODADI SOUTH L.P.SCHOOL
P.O.MOODADI, VIA.KOYLANDI, KOZHIKODE DISTRICT.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENT(S):

1. STATE OF KERALA REP.BY SECRETARY TO
GOVERNMENT, FINANCE DEPARTMENT, GOVERNMENT
SECRETARIAT, TRIVANDRUM.
2. THE ACCOUNTANT GENERAL (AUDIT), KERALA,
INDIAN AUDIT AND ACCOUNTS DEPARTMENT, BRANCH, OFFICE
THRISSUR 680 020.
3. THE ASSISTANT EDUCATIONAL OFFICER,
MELADI, KOZHIKODE DISTRICT.

R, BY ADV. GOVERNMENT PLEADER T R RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015,ALONG WITH WPC NO.5067/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 : TRUE COPY OF THE PROCEEDINGS NO. G 3165/03 DT 11.11.2003 OF THE 3RD RESPONDENT
- EXT.P2 : TRUE COPY OF THE OFFICE MEMORANDUM DT 16.8.2000 OF GOVERNMENT OF INDIA, MINISTRY OF FINANCE, NEW DELHI
- EXT.P3 : TRUE COPY OF THE CERTIFICATE NO. E4/8904/89 DATED 26.6.1993 IN RESPECT OF THE 1ST PETITIONER SCHOOL ISSUED BY EXECUTIVE ENGINEER PWD, BUILDINGS DIVISION, KOZHIKODE
- EXT.P4 : TRUE COPY OF THE LETTER NO. DAG(W) TCR/IAU VKDE 2002-03/169 DT 12.3.2003 ISSUED BY THE 2ND RESPONDENT
- EXT.P5 : TRUE COPY OF THE PROCEEDINGS NO. OA(HC) 11/IV/12-474/00-01/984 OF THE 2ND RESPONDENT DT 28.1.2003

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 2291 of 2004 & 5067 of 2005

Dated this the 18th day of December, 2015

J U D G M E N T

The common issue agitated in both petitions is with respect to the House Rent Allowance payable to the teachers of aided schools. The petitioners are Headmasters/Headmistress of various schools, altogether 11 schools, and the issue raised is with respect to the HRA applicable to the teachers. All the petitioner schools are aided schools and the House Rent Allowance was paid considering them to be situated 1 km within the Municipality coming under C class cities.

2. The categorization for payment of HRA is (i) Unclassified places (ii) District Headquarters, municipal town, Taluk Headquarters etc., (iii) Municipalities coming under C class cities and (iv) B2 class cities; with the HRA eligible; being in the ascending order. The teachers under the petitioner schools, were paid HRA considering the school to be situated 1km within the

municipalities coming under C class cities.

3. GO(P) 3000 / FIN dated 25-11-1998, which entitled the aided school teachers to House Rent Allowance, after the rates prescribed, provided a "Note" which indicated that the classification is subject to the classification made of cities/places from time to time by Government of India and appropriate orders thereon by the State Government. By clause (a), it was also specified that employees working in offices situated within 5 km from B2 cities and 1 km from C class cities will be paid HRA at the rate admissible to the respective cities; subject however to two conditions. One, the distance shall be computed with reference to the nearest route between the limits of the municipalities and the place where the office is situated. Then, the same shall be certified by the Executive Engineer, in whose jurisdiction the office is situated, which certificate shall be issued to the Drawing and Disbursing Officer, indicating the distance between the place of office and

the last point of the city or municipal area.

4. The teachers under the petitioner schools were paid with HRA, considering them to be offices situated within 1km from a Municipality, coming under C class cities, herein the Koyilandi Municipality. However by Ext.P1 and P4 orders passed by the Assistant Educational Officer and the Deputy Accountant General (Audit), found that the benefit would be applicable only to offices situated within 1 km from the periphery of Municipalities classified as C class cities. Koyilandy according to Exts. P1 and P4 was not classified as a C class city and hence the payment made to the teachers, working under the petitioners, were bad. By the aforesaid impugned orders, Government sought to recover the HRA paid to the teachers after cancelling the benefit of classifying the said teachers to be working in Municipalities under C class Cities.

5. The learned Special Government Pleader

submits that Koyilandi was classified as a C class city by the State Government only in the year 2004. It is also contented relying on the judgment in W.P.(C) 6344/2009 dated 26.09.2014, that if at all any relief is to be granted, it should be confined to the recovery prior to 1998 and as from the date of objection, the petitioners are not entitled to be paid the higher rate of HRA. The learned Government Pleader refers to Ext.R1 (a) which indicates that Koyilandi was not included as a B class city or C class city even though it was a Municipal Town. The petitioner's schools are not entitled to HRA, of C class cities/places even though they are within 1km from the Koyilandi Municipality, is the argument.

6. A reading of WP (C) 6344/2009 would indicate that there, a school situated within the Municipality limit on re-alignment of the territorial limits, was conceded to a Panchayath. Without noticing this, the Drawing and Disbursing Officer continued paying the higher HRA

applicable to Municipalities, to the teachers in the school. When the defect was noticed, immediately orders were issued reducing the HRA and also seeking recovery of the excess amounts paid. This Court on equitable considerations, found that the recovery may not be possible since, the teachers were in no way responsible for the higher payment. The recovery of the amounts paid prior to the date on which the objection was raised was interdicted. However, the reduction applicable in future, was upheld.

7. This Court is of the opinion that the said decision has no application in the above case. Herein it is to be specifically noticed that there can be no dispute raised that the petitioners schools were situated within 1km of the Koyilandi Municipality. Admittedly all the petitioners' schools are situated within 1km radius of the Koyilandi Municipality. The issue to be resolved is whether the Koyilandi Municipality is a declared C class city/place. It is to be noticed that Ext.P2

produced in W.P.(C) No: 2291/2004 is an order issued by the Government of India, classifying Kolyindi on the basis of the population as a C class city for the purpose of HRA.

8. Ext.P2 dated 16.08.2000 classifies Koyilandi as a C class city for the purpose of grant of HRA to Central Government employees and the order is said to take effect from 01.04.1993. The learned Special Government Pleader would contend that it is only applicable to Central Government employees. However, it is to be noticed that GO(P) 3000/Fin dated 25.11.1998 by its 'Note' makes, even the classification by the Government of India applicable to the cities or places within the State. In such circumstances, Ext.P2 has to be necessarily taken as a classification of Koyilandi as a C Class city and the benefit of G.O dated 25.11.1998 has to be granted to the teachers of the petitioners' schools.

9. The Government of Kerala is also said to have classified Koyilandi as a C class city only later, but the delay is

of no legal import since the GO granting HRA recognises the classification made by the Central Government. The classification to be adopted for the purpose of payment of HRA. being either the classification of the Central Government or the State Government, the petitioners, whose schools are situated within the 1km from the Koyilandi Municipality would be entitled to the HRA at the rate applicable to Municipalities coming under C class cities.

In such circumstance, the writ petitions are allowed.

Exts.P-1 and P-4 in WPC2291/2004 and Ext.P-4 and P-5 in WPC 5067/2005 are set aside. No Costs

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge