

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WA.No. 2150 of 2006 (E)

(AGAINST THE JUDGMENT IN OP.NO. 16923/1997 DATED 06-09-2005)

APPELLANT(S)/RESPONDENTS 1 TO 4:

1. STATE OF KERALA,
REP.BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT,THIRUVANANTHAPURAM.
2. COMMANDANT GENERAL,KERALA FIRE FORCE,
SASTHAMANGALAM, THIRUVANANTHAPURAM.
3. DIVISIONAL OFFICER, KERALA FIRE FORCE,
NORTHERN DIVISION, KOZHIKODE.
4. ASSISTANT DIVISIONAL OFFICER,
FIRE STATION, KOZHIKODE.

BY ADV. GOVERNMENT PLEADER

RESPONDENT(S)/PETITIONER:

*M.RAVINDRAN,
FIREMAN, DRIVER-CUM-PUMP OPERATOR, NO.43,
FIRE STATION, KOZHIKODE BEACH, KOZHIKODE. (DIED)

*ADDL.R2 TO R5 IMPLEADED

*ADDL.R2: SMT. K.RUGMINI (TEACHER),
W/O.M.RAVINDRAN(LATE), MARUNNU VEEDU,
KOLAKKATTU CHALI.P.O., CHELAMBRA VIA,
MALAPPURAM-673 634, PHONE NO.04832891650

*ADDL.R3: REMANI, D/O.M.RAVINDRAN (LATE) MARUNNU VEEDU,
KOLAKKATTU CHALI.P.O., CHELAMBRA VIA,
MALAPPURAM-673 634.

*ADDL.R4: RESMI, D/O.M.RAVINDRAN (LATE) MARUNNU VEEDU,
KOLAKKATTU CHALI.P.O., CHELAMBRA VIA,
MALAPPURAM-673 634.

W.A.NO.2150/2006

***ADDL.R5: REMYA, D/O.M.RAVINDRAN (LATE) MARUNNU VEEDU,
KOLAKKATTU CHALI.P.O., CHELAMBRA VIA,
MALAPPURAM-673 634**

***LEGAL REPRESENTATIVES OF THE DECEASED RESPONDENT IMPEADED
AS ADDL.RESPONDENTS 2 TO 5 AS PER ORDER DATED 9/7/2015 IN
IA.NO.544/2012**

ADDL.R2 TO R5 BY ADV. SRI.K.PRAVEEN KUMAR

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

ASHOK BHUSHAN, C.J.

&

A.M.SHAFFIQUE, J.

.....

W.A.No.2150 of 2006

.....

Dated this the 13th day of July, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned Special Government Pleader for the appellants and learned counsel for the respondents.

2. This writ appeal has been filed against the judgment dated 06.09.2005 in O.P.No.16923 of 1997. The respondent/petitioner has filed the original petition praying for quashing Ext.P1 order dated 03.06.1997, by which order, period of suspension of the respondent/petitioner to the extent of 503 days was regularised treating it to be without pay. It was found that only two days eligible earned leave were there in the credit of the respondent/petitioner. An order was passed in accordance with Note 3 of 56B of the Kerala Service Rules, which reads as follows:

[Note 3.- When a period of suspension is ordered to be converted into leave, the amount of subsistence allowance and compensatory allowances already received in excess of the leave salary and allowances admissible on such conversion, shall be refunded.]

3. The learned single Judge by judgment, set aside Ext.P1 with the observation that subsistence allowance already paid can be

recovered only if there is any duplication, that is only to the extent of leave available to the credit of the petitioner as on the date of order of regularisation and for the rest of the period the amount already paid cannot be recovered.

4. The learned counsel for the appellants submits that as per Note 3 of Rule 56B of KSR since the leave was regularised as leave without pay for the period of 503 days, the salary for the said period could have been recovered and there was no error in Ext.P1 order. The learned counsel for the appellants has also fairly submitted that Note 3 was amended subsequently by notification published on 25.11.2010; but the amendment was deemed to have come into force on 24th August 2007.

5. Ext.P1 order was passed before the amendment was made in Rule 3. Rule 3 now amended is as follows :

[Note 3.- When a period of suspension is ordered to be converted into leave, the amount of subsistence allowance and compensatory allowances already received in excess of the leave salary and allowances admissible on such conversion, shall be refunded.]

²[However, no refund of subsistence allowance shall be necessary where the suspension ordered on or after 24th August, 2007, is converted into leave without allowances for want of sufficient number of leave with allowances to the credit of the Officer concerned.]

6. The petitioner was working in the Fire Service Department as a Fireman. We have been informed that the respondent/petitioner has already passed away. From the facts and submissions as noted above, it is clear that the rule as amended with effect from 24.08.2007 protects refund of subsistence allowance where suspension was ordered after 24.08.2007. Technically, the said benefit cannot be made available to respondent/petitioner since he was under suspension earlier.

The learned counsel for the appellants submits that there was an interim order in the original petition on 19.08.1997. Due to it, the recovery could not be made. In view of the above, we are of the opinion that no recovery be effected in the present case, if not already recovered.

The writ appeal is disposed of accordingly.

Sd/-
ASHOK BHUSHAN, Chief Justice.

Sd/-
A.M.SHAFFIQUE, Judge.