

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

OP(KAT).No. 229 of 2015 (Z)

**AGAINST THE JUDGMENT IN OA 335/2015 of KERALA ADMINISTRATIVETRIBUNAL,
THIRUVANANTHAPURAM DATED**

PETITIONER(S)/APPELLANT:-:

**DR.SARALA SREEDHAR, 8E, TRANQUIT TOWERS,
SEAPORT-AIRPORT ROAD, AGED 62 YEARS
KAKKANAD, COCHIN-682 030.**

**BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.N.K.KARNIS
SRI.SAJI VARGHESE KAKKATTUMATTATHIL**

RESPONDENT(S)/RESPONDENTS:-:

- 1. STATE OF KERALA, REPRESENTED BY SECRETARY
TO HEALTH AND FAMILY WELFARE,
WELFARE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM-695 001.**

R BY GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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OP(KAT).No. 229 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE KEARALA ADMINISTRATIVE TRIBUNAL AS O.A.(EKM)
335/2015 WITH THE ANNEXURES A1 TO A4 THERETO.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

**P.R.RAMACHANDRA MENON
&
ANU SIVARAMAN, JJ**

O.P.(KAT)No.229 of 2015

Dated this the 10th day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON,J

Grievance of the petitioner is with regard to the denial of pension benefits, in spite of satisfaction of minimum qualifying service, having rendered for nearly 21 years in the Department,merely with reference to Rule 29 (A) of Part III KSR and the finality arrived at the earlier instance, by way of judgment in W.P.(C).No.11348/2007.

2. The factual position revealed from the original petition is that, the petitioner while serving as an Assistant Professor under the second respondent, in the Medical College,Kottayam, resigned from service on 20.6.2002, for her own reasons. The petitioner was denied the pension benefits with reference to Rule 29 (A) of Part III KSR which stipulated that the resignation as in the case of removal/dismissal also would attract forfeiture of the past service. This was sought to be challenged by filing

W.P.(C).No.11348/2007 wherein, interference was declined and the writ petition was dismissed by virtue of the categorical rule position. It appears that the petitioner also got convinced over the position and the matter was left there, having not chosen to challenge it by filing any further proceedings, either by a review or appeal.

3. The heartburn of the petitioner started much later, when the petitioner came to know that in a similar circumstance, a challenge was raised by the aggrieved party before this Court by filing a writ petition, also challenging the virus of the rules. After considering the facts and circumstances and also the relevant provisions of law, a learned Judge of this Court as per Annexure A2 judgment reported in **2014 (1) KHC Page 814 (Varghese E.K. Vs. State of Kerala and others)** held that the rule was ultravires to the Constitution of India and the same was struck down, except to the extent such a course is pursued in respect of disciplinary proceedings. By virtue of the declaration of law as above, it is contended that the petitioner is entitled to have the relief.

4. Seeking to grant necessary reliefs, the petitioner moved the Tribunal by filing O.A.No.335/2015. After considering the pleadings set forth, the Tribunal observed that the issue sought to be projected by the petitioner was already covered against her by virtue of the judgment already rendered in W.P.(C).No.11348/2007 and the same would act as 'res judicata'. Accordingly,interference was declined and the O.A. was dismissed as per Ext.P2 order dated 19.5.2015, which is sought to be challenged in this writ petition.

5. Heard Sri.N.Sukumaran, learned Senior Counsel appearing on behalf of petitioner as well as Sri.M.Mohammed Shafi, learned Government Pleader appearing for the respondents.

6. In the course of hearing, it was brought before the notice of this Court by the Government Pleader that an appeal has already been preferred by the Government, being aggrieved of Annexure A2 verdict and that the same is pending. We find that it is not necessary to go into those aspects in so far as there is a categoric admission

on the part of the petitioner to the effect that she had already moved this Court by filing W.P.(C).No.33341/2010 seeking for the benefit of pension, where interference was declined and writ petition was dismissed as per judgment dated 7.3.2014, which has become final. In the said circumstance, we find that there is no tenable ground to call for interference with the verdict passed by the Tribunal. Accordingly, interference is declined and the original petition is dismissed.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
ANU SIVARAMAN
JUDGE**

//TRUE COPY//

PA TO JUDGE

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O.P.(KAT)No.229 of 2015

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