

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

OP(KAT).No. 345 of 2015 (Z)

AGAINST THE ORDER IN OA 1146/2013 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 02-12-2014.

PETITIONERS/RESPONDENTS 1 TO 4 IN OP :

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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
 2. DEPUTY DIRECTOR OF EDUCATION,
DOWN HILL, MALAPPURAM DISTRICT, KERALA-676519.
 3. THE DISTRICT EDUCATIONAL OFFICER,
TIRUR, MALAPPURAM DISTRICT, KERALA-676101.
 4. THE HEADMASTER,
GOVERNMENT HIGHER SECONDARY SCHOOL, MATTUMMAL
ATHAVANAD, MALAPPURAM, KERALA-676307.

BY GOVERNMENT PLEADER SRI.P.S. SAJEEV

RESPONDENT:

T.V.VASANTHI, W/O. BALAKRISHNAN, HIGH SCHOOL ASSISTANT,
URDU (FULL TIME) GOVERNMENT HIGHER SECONDARY SCHOOL
ATHAVANAD, MALAPPURAM DISTRICT - 676 301, RESIDING AT
VRINTHAVAN HOUSE, PANNIKOTTUR, KODUV ALLY, KOZHIKODE
KERALA - 673 572.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 345 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : A TRUE COPY OF THE ORDER,DATED 02.02.2014 OF KERAZLA ADMINISTRATIVE
TRIBUNAL

P2 : A TRUE COPY OF THE O.P.ALONG WITH ANNEXURES

P3 : A TRUE COPY OF THE REPLY STATEMENT

P4 : A TRUE COPY OF THE G.O.DATED 10/09/2012

P5 : A TRUE COPY OF THE G.O.DATED 26.02.2011.

RESPONDENT'S' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(KAT) No.345 of 2015

Dated this the 20th day of November, 2015

JUDGMENT

Surendra Mohan,J.

The State has filed this Original Petition challenging the order dated 02.12.2014 in Original Application No.1146 of 2013 of the Kerala Administrative Tribunal ("KAT" for short). As per the impugned order Ext.P1, the Tribunal has allowed the Original Application filed by the respondent.

2. The respondent a High School Assistant (Urdu) had joined the Government Service as a Part time Teacher on 28.11.1998. She became a Full time High School Assistant (Urdu) on 28.08.2005. Her pay was revised in the light of G.O. (P) No.145/2006/Fin. dated 25.03.2006. In fixing her pay, pursuant to the pay revision orders, her part-time service was also reckoned for the grant of weightage. The Deputy Director of Education objected to the same. Though the respondent had filed objections, the same was rejected. Later on, though the Government had issued a clarification on 11.10.2012 stating that

only full-time regular service could be counted for weightage, the said order provided that already settled cases need not be re-opened. The respondent contended before the KAT that in view of Annexure A10 judgment, her claim was liable to be allowed. It was further pointed out that Annexure A10 had been confirmed by the Division Bench in appeal. The KAT accepted the contentions of the respondent, allowed her application and quashed the proceedings raising objections against her fixation. The State is aggrieved by the said order.

3. According to the learned Government Pleader, Annexure A9 clarification has been misunderstood by the KAT. In Annexure A9, what is clarified is only that “already settled court cases will not be re-opened”. The case of the respondent, not being a “settled court case” it is contended that the authorities were at liberty to re-open the same. Reliance is also placed on Annexure A12 judgment to contend that the recovery proceedings were fully justified.

4. Heard. We notice that, in Ext.A10 judgment a similar issue has been considered by this Court and it has been found that the petitioner therein was entitled to reckon her part-time service for the benefit of weightage. The said judgment has been

confirmed in Ext.A11 judgment by the Division Bench. It was relying on the said judgments that, the KAT has allowed the Original Application filed by the respondent. We notice that, the dictum in Annexure A12 judgment is only that, where payment of money has been made to an employee consequent to a misrepresentation made by the said person himself, such excess payment should be recovered. No such situation arises in the present case.

5. For the above reasons, we do not find any ground to admit this Original Petition or to grant any of the reliefs sought for.

The Original Petition is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
20.11.2015

