

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 3307 of 2005 (R)

PETITIONER:

**NIMALA KUMARI WILLIAM,
HIGH SCHOOL ASSISTANT, B.E.M.P. HIGH SCHOOL
THALASSERY, KANNUR DISTRICT.**

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENT(S):

- 1. THE SECRETARY FINANCE,
THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR-2.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY-1.**

R,R1 TO 4 BY ADV. GOVERNMENT PLEADER SRI P V LONACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

kkj

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF ORDER NO.B3/5476/93 DT 21.12.1993
- EXT.P2: TRUE COPY OF ORDER NO.K.DIS 578/97 DT 14.05.1997.
- EXT.P3: TRUE COPY OF ORDER G.O.RT.NO.6684/2000/FIN DT.1.12.2000
- EXT.P4: TTRUE COPY OF REPRESENTATION TO THE FIRST RESPONDENT
- EXT.P5: TRUE COPY OF LETTER NO.B4.59606/02/DPI/L.DIS DT 10.01.2003
- EXT.P6: TRUE COPY OF JUDGMENT IN W.P.36294/2003 DTD 8.7.2004
- EXT.P7: TRUE COPY OF ORDER NO.14122/PRU.1/04/FIN. DTD 06.12.2004

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.3307 of 2005

Dated this the 29th day of January, 2015

J U D G M E N T

The petitioner had joined an aided school as an Upper Primary School Assistant ('UPSA' for short) on 12.07.1978. On 04.09.1981, she was promoted as a High School Assistant ('HSA' for short). Since her promotion was not approved, the petitioner had approached this Court by filing W.P.(C) No.7649 of 1983. Pursuant to the direction of this Court, her promotion was also approved. While so, there was a fall in division in the school where she was working and she became an excess teacher. Therefore, on 05.10.1981, she was transferred to M.C.C.H.S. Kozhikode. However, the Corporate Manager, of that particular school shifted her to another school, C.M.S.H.S., Arapetta under the same management, with effect from 15.07.1981 to 04.10.1981. The said shifting was not approved by the educational authorities, pointing out that, there was no

vacancy in the school to which she was shifted. The matter remained pending. Finally, as per Exhibit P1 dated 21.12.1993, the period of the petitioner's service from 16.07.1981 to 04.10.1981 was approved. All this time, the petitioner was paid only a minimum salary and she had worked without receiving her full salary. As per Exhibit P2 proceedings dated 14.05.1997, the 4th respondent ordered payment of arrears of salary to the petitioner. Thereafter, she submitted a representation to the authorities seeking permission to submit an option in terms of the pay revision orders that had been implemented during 1983, 1988, 1992 and 1997. The petitioner had been prevented from exercising her option as stipulated by the Pay Revision Orders, for the reason that, her service has not been approved. The petitioner contended that since she was prevented from exercising her option by circumstances beyond her control, she should be granted a fresh chance to make her option.

3. The Government considered the request of the petitioner and by Exhibit P3 Government Order dated 01.12.2000 granted her a chance to make her re-option but subject to certain conditions which are the following:-

1. Arrears on account of re-option will be paid only from the date of exercise of re-option
2. Re-option will be exercised within two months from the date of this order.
3. Conditions laid down in Circular No.13/96/Fin dated 18.3.96 should be adhered to.

Since as per the above conditions, the arrears of salary due to the petitioner would be paid only from the date of exercise of re-option, the petitioner represented again to the authorities. It was pointed out that, it was necessary for the petitioner to be granted a right to exercise re-option with effect from the original dates in the pay revision orders. Exhibit P4 is her representation. The representation was considered by the second respondent and rejected as per Exhibit P5 order dated 10.01.2003. Aggrieved by Exhibit P5, the petitioner approached this Court by filing

W.P.(C) No.3307 of 2005

W.P.(C) No.36294 of 2003. The said writ petition was disposed of by Exhibit P6 judgment. This Court found that, the action of the second respondent in issuing Exhibit P5 order itself was not fair. Therefore, the second respondent was directed to forward Exhibit P4 to the Government and the Government was directed to pass appropriate orders thereon within a period of three months. Accordingly, Exhibit P7 order has been passed by the first respondent. As per Exhibit P7, it has been held that, the conditions stipulated for exercise of re-option by the petitioner in Exhibit P3 are proper and justified. The petitioner has filed this writ petition aggrieved by Exhibit P7.

4. According to Sri. M.Vijayakumar who appears for the petitioner, it was not due to any fault on the part of the petitioner that options had not been exercised by her as stipulated by the Pay Revision Orders at the appropriate time. Though she had been shifted to a school in Kozhikode, it was the action of the Corporate Manager in

shifting her to another school that did not have a lien that created the problem. As a result, the petitioner was denied her salary for a long period of time. She has also been denied a chance of exercising her option in accordance with the Pay Revision Orders, since her service had not been approved. As per Exhibit P3, though she has been granted a chance to exercise her option, it has been stipulated that, arrears of salary would be paid to her only from the date of exercise of her option. It is pointed out that, there was absolutely no reasons are stated in Exhibit P3 for imposing the conditions that are stipulated. Though the petitioner has been penalised for the wrongful acts of the manager, the above aspect of the matter has not been considered in Exhibit P6. According to the counsel, there is no justification for penalising the petitioner for no fault of hers.

5. A counter affidavit has been filed on behalf of the first respondent. According to the counter affidavit, the

case of the petitioner has been considered sympathetically in view of the circumstance that, the situation was not a creation of any act or omission on her part. The Government has accepted the request of the petitioner and has granted her substantial relief. It is also pointed out by the learned Special Government Pleader for Finance that, the situation was not created by an act or omission on the part of the Government also. In spite of the above, the matter has been considered sympathetically and substantial relief has been granted.

6. Heard. A perusal of Exhibit P3 shows that, the condition stipulated therein have been incorporated without stating any reasons. It is not in dispute that, the Government has considered the case of the petitioner sympathetically and found that she was entitled to be granted a chance to exercise her option in terms of the Pay Revision Orders that have been implemented periodically. However, the conditions imposed have the effect of denying

to the petitioner, the benefits of Pay Revision Orders, substantially for a long period of time. Such adverse consequences when imposed upon the petitioner should have the support of valid reasons, which are absent in Exhibit P3. As rightly contended by the counsel for the petitioner, the petitioner cannot be found fault with for the situation that has been created. Therefore, there is no justification for penalising her. The question as to whether the petitioner should be penalised for the wrongful act of the Corporate Manager is also a matter that should have engaged the attention of the first respondent while issuing Exhibit P6. The first respondent could also have considered the option of recovering the loss if any caused to the Government from the Corporate Manager who is responsible for the present situation. In view of the above, I am of the view that, the conditions stipulated in Exhibit P3 requires to be reconsidered in the light of the circumstances taken note of hereinabove. Exhibit P7 does

W.P.(C) No.3307 of 2005

not consider any of the above aspects. Therefore, the same is set aside.

This writ petition is disposed of directing the first respondent to consider Exhibit P4 representation submitted by the petitioner afresh, after affording an opportunity of being heard to her as well as any other interested persons and to pass appropriate orders in the matter, as expeditiously as possible and at any rate within a period of four months of the date of receipt of a copy of this judgment.

Sd/-
K.SURENDRA MOHAN,
JUDGE

kkj