

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 7178 of 2004 (D)

PETITIONER(S):

**Y.DANIEL, S/O. LATE K.YOHANNAN,
AGED 63 YEARS, RETD. H.M., A.M.L.P.S.OMACHAPUZHA
VALLIYATHU PADINJATTETHIL VEEDU, PARAKKODU P.O., ADOOR
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF
GENERAL EDUCATION, SECRETARIAT, TRIVANDRUM.**
- 2. THE ASSISTANT EDUCATIONAL OFFICER,
TANUR, MALAPPURAM.**

BY ADV.P.V.ELIAS, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

WPC NO.7178/2004

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE JUDGMENT DATED 02.08.2001 IN OP NO.14949/98 OF THIS HON'BLE COURT
- P2 : COPY OF THE COVERING LETTER DATED 16.08.2001 FORWARDING EXT.P1 JUDGMENT SENT BY THE COUNSEL FOR THE PETITIONER BEFORE THE 2ND RESPONDENT
- P3 : COPY OF THE ACKNOWLEDGMENT CARD CONTAINING THE DATE OF RECEIPT AS 18.08.2001
- P4 : COPY OF THE ORDER NO.E/3694/01 DATED 20.11.2001 ISSUED BY THE 2ND RESPONDENT
- P5 : COPY OF THE LAWYER NOTICE DATED 05.03.2003 ISSUED TO THE 1ST RESPONDENT AT THE INSTANCE OF THE PETITIONER THROUGH REGISTERED POST
- P6 : COPY OF THE ACKNOWLEDGEMENT CARD CONTAINING THE DATE OF RECEIPT AS 17.03.2003.

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.7178 of 2004

Dated this the 21st day of July, 2015

JUDGMENT

The petitioner retired from service while working as Headmaster from A.M.L.P.S., Omachapuzha, Malappuram on 31.05.1997. He had earlier approached this Court in O.P. No.14949/1998 since disbursement of his terminal benefits were delayed on the ground of some disputes in counting his untrained service as LPSA. The said original petition was disposed of by Ext.P1 judgment. The operative portion of the judgment reads thus:

"In the circumstances the original petition is disposed of with a direction to the third respondent to consider the question of regularising the periods of service from 04.06.1963 to 24.06.1963 and from 24.08.1965 to 18.11.1965 and to pass necessary speaking orders within a period of one month from the date on which a copy of this judgment is produced before him. He has also to consider the question whether Ext.P1 Government order can be applied to the petitioner's case in the light of his prospective order regarding regularisation and also bearing in mind that the period from 25.08.1962 to 30.04.1963, which has been referred to in para 2 of the

counter as also the period from 01.05.1963 to 03.06.1963, which is the vacation period, has to be excluded the ineligible period. He will also take urgent steps for release of the retirement benefits within a further period of six weeks. It is made clear that in case there is delay in passing of order as above, the petitioner will be entitled to get interest at 12% on the eligible amount for the period from the date of filing the original petition viz. 31.07.1998 onwards."

2. On receipt of a copy of Ext.P1 judgment, the same was forwarded to the 2nd respondent alongwith Ext.P2 letter dated 16.08.2001. As evident from Ext.P3, the 2nd respondent acknowledged receipt of the aforesaid letter on 18.08.2001. Later, the 2nd respondent passed Ext.P4 order dated 20.11.2001 by which the service of the petitioner for the period from 04.06.1963 to 24.06.1963 and from 24.08.1965 to 18.11.1965 was ordered to be regularised. Now the grievance of the petitioner is that, since the 2nd respondent has not passed Ext.P4 order within the time limit prescribed by this Court in Ext.P1 judgment, he is entitled for payment of interest on the amount found eligible, for the period from the date of filing the original petition; i.e., from 31.07.1998 onwards. The petitioner has caused to issue Ext.P5 lawyer notice to the 1st respondent and

thereafter, he has approached this Court in this writ petition seeking a writ of mandamus commanding the respondents to disburse interest at the rate of 12% per annum from 31.07.1998 till 22.07.2002 on an amount of Rs.4,08,520/-, with future interest.

3. A counter affidavit has been filed on behalf of the 2nd respondent, in which it has been stated that, though a copy of Ext.P1 judgment was received in the Office of the 2nd respondent on 18.08.2001, he was not in a position to act upon it due to want of service book of the petitioner. Later, certified copy of the judgment and the case file in O.P.No.14949/1998 alongwith the service book of the petitioner were received in the Office of the 2nd respondent only on 12.11.2001. Immediately thereafter, the 2nd respondent has issued Ext.P4 order dated 20.11.2001 regularising the period of service of the petitioner for the period from 04.06.1963 to 24.06.1963 and also the period from 24.08.1965 to 18.11.1965. Therefore, the 2nd respondent would contend that there was no willful negligence on his part in releasing the final pensionary benefits payable to the petitioner within the time limit prescribed by this Court in Ext.P1 judgment.

4. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

5. The sole issue that arises for consideration in this writ petition is as to whether the petitioner is entitled for payment of interest, as claimed in this writ petition, for the delay on the part of the 2nd respondent in issuing Ext.P4 order and the consequential delay in disbursement of his revised monetary benefits.

6. As I have already noticed, in Ext.P1 judgment, this Court has specifically directed the 2nd respondent to pass necessary orders on the request made by the petitioner within a period of one month from the date on which a copy of Ext.P1 judgment is produced before the 2nd respondent. The 2nd respondent was directed to pass consequential orders and disburse the monetary benefits within a further period of six weeks. It was also made clear in Ext.P1 judgment that in case there is any delay in passing the order as aforesaid, the petitioner will be entitled to get interest at the rate of 12% on the eligible amount for the period from the date of filing the original petition, i.e., 31.07.1998 onwards.

7. It is not in dispute that the 2nd respondent received copy of Ext.P1 judgment of this Court on 18.08.2001. Going by the averments in the counter affidavit, the stand taken by the 2nd respondent is that, since the service book of the petitioner was in the case file entrusted to the Office of the Advocate General, he was not in a position to pass orders pursuant to Ext.P1 judgment. The case file alongwith certified copy of the judgment and the original service book of the petitioner were received in the office of the 2nd respondent only on 12.11.2001. Immediately thereafter, he has passed Ext.P4 order dated 20.11.2001 and subsequently the revised monetary benefits payable to the petitioner were also disbursed to him.

8. When this Court in Ext.P1 judgment prescribed the time limit for the 2nd respondent to take a decision on the request made by the petitioner and for disbursement of the consequential monetary benefits, it is for the 2nd respondent to pass appropriate orders and disburse the consequential monetary benefits within the time limit prescribed therein. If for any reason, the 2nd respondent was not in a position to comply with the directions on Ext.P1 judgment, within the time limit prescribed therein, he should have approached this Court at that

point of time, by filing application for extension of time.

9. When Ext.P1 judgment categorically provides for payment of interest in case of any delay on the part of the 2nd respondent herein in taking a decision on the request made by the petitioner and in disbursing the consequential monetary benefits, the petitioner is legally entitled for the payment of the interest for the amount paid in terms of Ext.P4 order dated 20.11.2011 for the period from 31.07.1998 till 24.12.2002, the date on which an amount of Rs.4,08,520/- was actually paid to him.

In the result, this writ petition is disposed of directing the respondents to pay interest at the rate of 12% per annum for the period from 31.07.1998 till 24.12.2002 on the amount of Rs.4,08,520/- disbursed to the petitioner in terms of Ext.P4 order. This shall be done within a period of three months from the date of receipt of a certified copy of this judgment.

No order as to costs.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV