

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

W.A.No. 1620 of 2009 ()

AGAINST THE JUDGMENT IN W.P.(C) 30685/2007 of HIGH COURT OF KERALA DATED 26-03-2008.

APPELLANT(S)/RESPONDENTS IN THE WRIT PETITION:

1. STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM DISTRICT.

BY SENIOR GOVERNMENT PLEADER, SRI. P. FAZIL

RESPONDENT/PETITIONER IN THE WRIT PETITION:

K.P. BALACHANDRAN,
PHYSICAL EDUCATION TEACHER (HIGH SCHOOL),
GOVERNMENT HIGHER SECONDARY SCHOOL,
SASTHAMCOTTA.

BY ADV. SRI. B. UNNIKRISHNA KAIMAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD AGAIN ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.No.1620 of 2009

Dated this the 30th day of July, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the Respondents in W.P.(C) No.30685 of 2007. The writ petition was filed by the Respondent herein seeking to challenge Ext.P4 Government Order dated 16.03.1987 to the extent Physical Training Instructors in military service were excluded from the benefit of fixation of initial pay by reckoning military service on their re-employment in the State Government. By the judgment rendered on 26th March, 2008, the learned Single Judge held that the denial of benefit to the Respondent to be unjustified and on that basis ordered that he will be entitled to the benefit of Ext.P4 Government Order for the purpose of fixing increments at the time of entry into service on re-employment. It is aggrieved by this judgment, the writ appeal is filed.

2. On an earlier occasion, by judgment dated 5th April, 2010, a Division Bench of this Court allowed the writ appeal and dismissed the writ petition. Respondent challenged the judgment by filing Civil Appeal No.7241 of 2011 before the Hon'ble Supreme Court and the Supreme Court disposed of the Civil Appeal by its order dated 23rd August, 2011. The relevant portion of the order reads thus:

"Learned counsel for the State invited our attention to the counter affidavit filed before this Court and argued that the conclusion recorded by the Division Bench of the High Court that the appellant has not been subject to discrimination is correct. However, she fairly conceded that the G.Os. and the rules referred to in the counter affidavit were not placed before the High Court.

In our view, the respondent should have placed the relevant G.Os. and rules before the Division Bench of the High Court so as to enable it to render a comprehensive judgment on the issue of discrimination.

In the premise aforesaid, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High Court for fresh disposal of the appeal filed by the respondents.

The parties may, if so advised, file additional affidavits and documents within eight weeks."

It is accordingly, this matter is re-considered by this Court.

3. We heard the learned Senior Government Pleader appearing for the Appellants and the learned counsel appearing for the Respondent.

4. At the outset, we may state that despite the opportunity granted by the Hon'ble Apex Court by its order dated 23.08.2011, so far the appellants have not chosen to produce any additional materials or file any additional pleadings in the writ appeal. In other words, this Court has to re-consider the writ appeal with the materials that were produced in the writ petition and which were considered by the learned Single Judge.

5. As we have already stated, the question before the learned Single Judge was whether there was any justification to confine the benefit of Ext.P4 only to re-employed Ex-Combatant Clerks/L.D. Clerks/Typists. It was this part of Ext.P4 order which was held to be discriminatory and hence unconstitutional by the learned Single Judge.

6. It is true that the respondent retired from the military service as a Physical Training Instructor/Signalman. After his discharge from military service, the respondent was

re-employed in the Government service as Physical Education Teacher from 02.07.1998. If the respondent was given the benefit of Ext.P4, he would have got additional increments on his re-employment, reckoning his military service also. It was for these reasons he filed the writ petition.

7. Having heard the submissions made by the learned Senior Government Pleader and also on going through the counter affidavit filed in the writ petition, we do not find that Government have stated any justification, much less, any justifiable reasoning, to confine the benefit of Ext.P4 only to the categories mentioned therein. Therefore, this is a case where the Government have not offered any justification in treating Ex-Combatants/L.D. Clerks and Typists as a separate class as compared to the re-employed military personnel who were working in other categories prior to their discharge from service. Even apart from this, the appellants have not established any rationale for such a classification. According to us, there cannot be any rationale in making such a classification among the discharged military pensioners in the matter of granting of additional increments on re-employment. In such circumstances, we are unable to find any vitiating

circumstances justifying interference with the judgment of the learned Single Judge.

Appeal fails and accordingly, it is dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-

