

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WA.No. 26 of 2013 () IN WP(C).26360/2009

AGAINST THE JUDGMENT IN WP(C) 26360/2009 of HIGH COURT OF KERALA
DATED 13-09-2010

APPELLANTS/RESPONDENT NOS.1 TO 3:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL (T)
EDUCATION DEPARTMENT (HSE), GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM
 2. DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTHAPURAM
 3. REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION, EDAPPALLY P.O, ERNAKULAM
- SHYSON P. MANGUZHA, SR. GOVERNMENT PLEADER

RESPONDENTS/ PETITIONER & RESPONDENT NO.4:

1. K.A.RAJEENA,
HSST JUNIOR (COMMERCE), TARBIYATH TRUST, HSS KAVAMKARA
MARKET P.O, MUVATTUPUZHA, ERNAKULAM DISTRICT 686673
 2. THE MANAGER,
TARBIYATH TRUST HSS, KUVAMKARA, MARKET P.O
MUVATTUPUZHA, ERNAKULAM DISTRICT 686673
- R1 BY ADV. SRI.M.N.MANOJ
R BY SRI.T.R.RAJESH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

.....
W.A. No.26 of 2013
.....

Dated this the 29th day of September, 2015

JUDGMENT

Asha, J.

This writ appeal is filed by the Government against the declaration and direction of the learned single Judge that the first respondent herein will be entitled to increments for the period of leave without allowance availed by her for undergoing B.Ed Degree Course.

2. The petitioner, had been working as HSST Junior (Commerce) in an aided Higher Secondary School from 1.2.2001 onwards. She did not have B.Ed Degree since B.Ed Degree in Commerce was not offered from any of the Universities. Her appointment was approved as per Ext.P1 order dated 29.4.2003, with effect from 30.12.2002, on condition that she should acquire B.Ed Degree within 5 years. Therefore when B.Ed Degree course in Commerce was introduced in 2004, she applied for the same and submitted application for leave for the period from 3.6.2004 to 31.5.2005 for undergoing the same. Thereupon Government, as per Ext.P2 dated 26.9.2005 sanctioned the same under the provisions contained in Appendix XII B of Part I K.S.R. It was stipulated therein that leave period will not be counted for any service benefits or

pension and the same shall be recorded in the service book of the incumbent.

3. Much after re-joining the School after acquiring B.Ed Degree, the Regional Deputy Director of Higher Secondary Education issued Ext.P3 letter to the Manager pointing out irregular grant of increments, declaration of probation etc. in the case of petitioner and directing rectification and recovery of excess amount, saying that appellant was not entitled to the same alleging that she was granted increments in the pre-revised scales during the period from 27.12.2005 onwards. The writ petition was filed thereupon challenging the conditions stipulated in Ext.P2 order and proceedings initiated in Ext.P3 based on the same seeking a declaration that she is entitled to service benefits during the period on leave without allowance.

4. The learned single Judge relying on Ext.P9, the judgment of a Division Bench of this Court, allowed the writ petition, directing grant of benefits reckoning the period of leave. In the judgment -Ext.P9- in Writ Appeal No.1917 of 2008 -a Division Bench of this Court has already held that the teachers who availed leave without allowance for acquiring B.Ed Degree, before the deletion of the 3rd proviso to Rule 33(b)(2) of Part I KSR will be entitled to grant of increments during the said period of leave.

5. In this case, the petitioner has undergone B.Ed degree

course after availing leave for the period from 3.6.2004 to 31.5.2005. 3rd Proviso to Rule 33(b)(2) of Part I, KSR was deleted only on 11.5.2005. At the time when the appellant applied for leave and almost till the end of the period of her leave, the 3rd proviso to rule 33(b)(2) was in force. As per the 3rd proviso the leave without allowance taken by teachers for completion of training course such as B.Ed shall count for increment.

6. Following Ext.P9 judgment, this Court has directed grant of benefits to several teachers who availed leave without allowance for acquiring training qualification such as B.Ed.

7. The Writ Appeal was filed stating that Government have preferred SLP against Ext.P9 judgment in Writ Appeal No.1917 of 2008.

8. When the writ Appeal came up for hearing, the learned counsel on either side submitted that SLP Nos.21778 to 21781 of 2009 filed against a batch of cases including Ext.P9 judgment have already been dismissed by the Apex Court and Government have issued orders in implementation of Ext.P9 judgment. The learned Government Pleader made available to us a copy of G.O.(MS) No.9/2014/G.Edn dated 8.1.2014. It is seen that Government have ordered that the period of leave without allowance granted to Higher Secondary School Teachers for undergoing B.Ed course under rule 91 or 88 of Part I KSR shall be reckoned for the benefits

stipulated in the 3rd proviso under Rule 33 (b) (2) of Part I KSR, if the period of leave availed is before 24.5.2005 but extended beyond 24.5.2005. At the same time in clause 5, it is stated that the above rule is not applicable in the case of leave without allowance sanctioned under Appendix XIIB of Part I KSR.

9. The learned counsel for the first respondent pointed out that the petitioner is entitled to the benefit of increments for the period during which she underwent B.Ed course availing leave for study purpose notwithstanding the fact that Ext.P2 order was passed under Appendix XIIB and in case the Writ Appeal is closed in the light of the Government order issued on 8.1.2014, she may not get the benefit of the judgment impugned.

10. We find that the petitioner had been working in the school from 2001 onwards. A teacher who had completed more than 2 years service is eligible for study leave under Rule 91. Therefore the grant of leave to her under Appendix XII B was not correct. Even otherwise she cannot be deprived of the benefit of the 3rd proviso to Rule 33 (b)(2), which reads as follows:

" Provided also that leave without allowance taken by teachers for completion of training courses such as B.Ed, Hindi Teachers' Training, Language Teachers' Training and Teachers' Training certificate shall count for increment."

11. It was not subject to the nature of leave availed or the

rule under which the leave was sanctioned. Therefore 1st respondent is entitled to the benefit of the 3rd proviso to Rule 33(b)(2) and hence for the service benefits including increments for the period of leave. The fact that Ext.P2 was stated to be issued under Appendix XII B shall not stand in the way of granting increments and other benefits as directed by the learned single Judge.

In the above circumstances we do not find any merit in the Writ Appeal and hence the same is dismissed.

Sd/-

**ANTONY DOMINIC,
JUDGE.**

Sd/-

**P.V.ASHA,
JUDGE.**

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PA to Judge