

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 370 of 2012 (U)

PETITIONER(S):

**K.R.LEKHA AGED 31 YEARS
UPPER PRIMARY SCHOOL ASSISTANT
NATIONAL HIGHER SECONDARY SCHOOL, IRINJALAKUDA**

**BY ADVS.SRI.P.RAVINDRAN (SR.)
SMT.APARNA RAJAN**

RESPONDENT(S):

- 1. THE DISTRICT EDUCATIONAL OFFICER
IRINJALAKUDA -680531**
- 2. THE MANAGER,NATIONAL HIGHER SECONDARY SCHOOL,
IRINJALAKKUDA-680531**
- 3. GOVERNMENT OF KERALA
REP.BY ITS SECRETARY
DEPARTMENT OF GENERAL EDUCATION(B)GOVERNMENT OF KERALA
THIRUVANANTHAPURAM-695001**

**R2 BY ADV. SRI.V.A. MUHAMMED
R2 BY ADV. SRI.K.E. HAMZA
R1-R3 BY ADV. GOVERNMENT PLEADER, SRI. RINNY STEPHEN
CHAMAPARAMBIL**

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

APPENDIX

PETITIONER(S) EXHIBITS :

- EXT.P1:- TRUE COPY OF THE GOVERNMENT ORDER DTD 7/9/2002
- EXT.P2:- TRUE COPY OF THE ORDER OF THE AEO IRINJALAKUDA DTD 28/10/2002
- EXT.P3:- TRUE COPY OF THE ORDER OF THE AEO IRINJALAKUDA DTD 13/1/2003
- EXT.P4:- TRUE COPY OF THE GOVERNMENT ORDER DTD 29/12/2005
- EXT.P5:- TRUE COPY OF THE JUDGMENT IN WPC NO.4113/2006 DTD 5/6/2007
- EXT.P6:- TRUE COPY OF THE ORDER POSTING THE PETITIONER AS UPSA DTD 18/10/2007
- EXT.P7:- TRUE COPY OF THE ORDER OF THE DISTRICT EDUCATIONAL OFFICER DTD 9/1/2008
- EXT.P8:- TRUE COPY OF THE JUDGMENT IN WPC NO.4821/2008 DTD 16/6/2011
- EXT.P9:- TRUE COPY OF THE GOVERNMENT ORDER DTD 12/12/2011

RESPONDENTS' EXHIBITS :

- EXT.R2(a) TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER DATED 31.10.2011.
- EXT.R2(b) TRUE COPY OF THE RELEVANT PAGE OF THE ACQUITTANCE REGISTER.

// True copy //

PA to Judge

das

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 370 of 2012

Dated this the 7th day of July, 2015

JUDGMENT

The petitioner, who was working as UPSC at the National Higher Secondary School, Irinjalakuda, was appointed as an LPSA in a regular vacancy with effect from 14.06.2000. The approval to the appointment of the petitioner was initially denied by the educational authorities. In further proceedings, that were pursued by the petitioner, by Ext.P1 order dated 07.09.2002, the State Government allowed the revision petition preferred by the petitioner against the order denying approval, and the appointment of the petitioner was approved with effect from 14.06.2000. In the staff fixation order for the year 2002-2003 in the school, three divisions were abolished and three posts of teachers were reduced. As the petitioner was entitled to be retained by application of the 1:40 ratio, the Assistant Educational Officer directed the continuance of the petitioner in the UP Section. This was by Ext.P3 order dated 13.01.2003. The Manager of the school, however, did not comply with the directions of the AEO in Ext.P3 order, but chose to impugn the order of the AEO before the Government. The revision petition preferred by the Manager was, however, rejected by Ext.P4 order dated 29.12.2005. Although in a further revision preferred by the Manager, the Government modified its earlier

order (Ext.P4), in a writ petition that was preferred by the petitioner challenging the said order, Ext.P5 judgment dated 05.06.2007 was passed quashing the said order of the Government and upholding the stand of the Assistant Educational Officer in Ext.P3 order. Consequent to Ext.P5 judgment of this Court, the Manager posted the petitioner as UPSA in the school with effect from 14.07.2002 by Ext.P6 order dated 18.10.2007. It is stated that the petitioner joined duty on 06.08.2007. In the writ petition, the petitioner is concerned with the period between 15.07.2002 and 05.08.2007, when the petitioner was not permitted to work, notwithstanding the directions from the AEO to continue the petitioner in the UP Section pursuant to the staff fixation order for 2002-2003. When the petitioner approached the DEO, by exercising an option for revision of pay from 01.07.2004 onwards, pursuant to the Government Order dated 25.03.2006, his claim was found unacceptable by the DEO in Ext.P7 order dated 09.01.2008, wherein the petitioner was asked to re-submit the claim after getting the period from 15.07.2002 to 05.08.2007 regularised. The petitioner, therefore, approached this Court through WP(C) No.4821 of 2008, which was disposed by Ext.P8 judgment dated 15.06.2011, directing the educational authority to regularise the service of the petitioner during the said period. In

Ext.P9 order, that was thereafter passed by the Government, the period from 15.07.2002 to 05.08.2007 of the petitioner's service was regularised and it was also directed that the petitioner be paid notional benefits only for the said period, since she had not actually worked in the school during the said period. In the writ petition, Ext.P9 order of the Government is impugned to the extent it denies the petitioner the monetary benefits, i.e., salary for the period from 15.07.2002 to 05.08.2007, when she was kept out of service on account of the action of the Manager.

2. A counter affidavit has been filed on behalf of the 2nd respondent Manager, wherein it is stated that the petitioner did not work during the period from 15.07.2002 to 05.08.2007 and is therefore, not entitled to any monetary benefits. It is also stated that the petitioner has been paid arrears of salary with effect from 05.08.2007 after notionally calculating the benefits due to the petitioner for the period from 15.07.2002 to 05.08.2007. In the counter affidavit on behalf of the 1st respondent, the stand taken is that all benefits, that are due to the petitioner, have already been paid to her and that salary for the period not actually worked cannot be granted to the petitioner. To the same effect are the averments in the counter affidavit filed on behalf of the 3rd

respondent.

3. I have heard the learned counsel appearing for the petitioner, the learned Government Pleader for the official respondents, and also the learned counsel appearing for the 2nd respondent Manager.

4. The stand of the official respondents as also the 2nd respondent Manager, while contesting the claim of the petitioner for payment of monetary benefits during the period when she was kept out of service, on account of the reluctance by the 2nd respondent Manager to reinstate her pursuant to the directions of the AEO, is founded essentially on the judgment of the Full Bench of this Court in **State of Kerala v. E.C.Elsy & Others** [1987 (2) KLT 882]. In the said judgment, a Full Bench of this Court had gone into the issue of whether, a teacher, who admittedly did not render service in a school during a particular period, would be entitled to claim salary for the said period, consequent to a finding that she was illegally kept out of service during the said period. The Full Bench went into the issue of what the word 'salary' meant and whether a teacher, who was illegally kept out of service for any period would be entitled to claim salary for that period and

found as follows in Paragraph 7 of the decision:

“7. What then is salary? The word 'salary' has not been defined in the Act or the Rules. The appropriate meaning of the word 'salary', as commonly understood, can be gathered from the Black's Law Dictionary as: “A reward or recompense for services performed.” Rule 7 of Chapter XIV A of the Rules provides that on the issue by the manager of an order of appointment to a teacher, the appointment shall become effective from the date on which the teacher is admitted to duty, provided such appointment is duly approved. This provision makes it clear that the appointment of a teacher takes effect only from the date on which he reports for duty and not from any anterior date. What is relevant is not the date on which the teacher becomes entitled for appointment but the date on which he actually reports to duty. It is from that date the performance of his services commences. As salary is recompense for the service performed, he becomes entitled to receive salary with effect from the date on which he reports to duty. The claim for the anterior period is not, therefore, for salary. The claim for the period during which the teacher was deprived of the appointment on account of the wrongful action of the 5th respondent-Manager is not claim for salary. Though the first respondent describes her claim as one for salary, the legal character of the amount claimed by her is 'compensation' for the loss suffered on account of the wrongful conduct of the 5th respondent - Manager in depriving her legitimate claim to hold the post of High School Assistant from the date on which the vacancy actually accrued, viz., 15-7-1977. That the amount claimed by the first respondent is equivalent to the salary for the said period does not alter the essential character of the amount claimed by her which is 'compensation' and not 'salary'. The liability of the State Government under S.9(1) of the Act is limited to payment of salary and it does not authorise payment of compensation for the wrongful action of the Manager of an aided school in the matter of making appointments. We must, however, make it clear that the rights of a government servant stand on a different footing. There is no agreement to indemnify and such liability has not been imposed by the Statute. S.32 of the Act provides that no action shall lie against the government or any authority or any officer for anything done under the Act in good faith for any damage caused by any action taken in good faith in carrying out the provisions of the Act and the Rules made thereunder. We have, therefore, no hesitation in taking the view that a teacher whose claim for re-appointment

was overlooked by the Manager of an aided school by appointing somebody else in that vacancy, is not entitled to claim any amount from the State Government for the period during which he was deprived of re-appointment by the wrongful action of the Manager. The same view was taken in a judgment rendered by Justice V.Balakrishna Eradi (as he then was) on behalf of a Division Bench in Writ Appeal No. 209 of 1979 decided on 25th September, 1980. The Supreme Court had occasion to deal with a similar case in *Mary Oommen v. Manager, M.G.M. School, Kerala* (AIR 1987 SC 1163). That was also a case in which the teacher was deprived of her right to preferential appointment conferred by Rule 51 A of Chapter XIV A of the Rules. The Supreme court directed that the teacher shall be entitled to all the benefits as though she was appointed to the post when the vacancy in question arose. But, so far as the claim of the teacher for arrears of salary was concerned, the Supreme court made it clear that their directions will not enable the teacher to draw salary for the period she had not worked, but only other benefits such as seniority, increments, etc. It is obvious that such a direction was issued by the Supreme Court not because of any special facts of that case, but because the Supreme Court was satisfied that such a person cannot in law claim salary from the State government for the period during which she had not actually worked. Following the decision of the Supreme Court, it has to be held that the State Government was right in denying the first respondent salary for the period during which she had not actually worked, viz., from 15.08.1977 to 07.03.1979.”

5. In the instant case, the factual situation is slightly different from that in the case considered by the Full Bench. The petitioner, in the instant case, was directed to be retained as a UPSA in the school by Ext.P3 order of the AEO dated 13.01.2003. The 2nd respondent Manager, however, did not comply with the positive direction of the AEO in Ext.P3 order. Although, it is the case of the 2nd respondent Manager that Ext.P3 order of the AEO

was impugned before the Government through a revision petition filed by the Manager, it is not in dispute that, in the said revision petition or in subsequent proceedings, there was no stay of operation of Ext.P3 order of the AEO. It was therefore, a case, where the petitioner was denied employment during the period in question, but for which denial, the petitioner would have been able to continue service as UPSA under the 2nd respondent's school and earn salary for the services rendered by her. In my view, the said illegal denial of employment to the petitioner, especially when there was an express direction by the AEO to retain the petitioner in service, would put the petitioner's case on a different footing from the case that came up for consideration before the Full Bench of this Court. I also notice that a Division Bench of this Court, in the decision in **State of Kerala v. Joseph Ceasar** [1998 (2) KLT 194], where the facts were more or less similar to the facts of the instant case, distinguished the Full Bench decision of this Court in **1987 (2) KLT 882** and found that, in a case where a teacher should have worked in the post in question, had the post not been wrongly abolished by the authorities concerned, and the teacher was prevented from discharging his duty as a teacher in the post in question during the relevant period, the wrongful act on the part of the authorities concerned could not have the effect of

making a teacher suffer. It was, therefore, held that the directions issued by a single Judge to the educational authorities to disburse the salary of the petitioner during the period in question did not call for any interference. Taking cue from the said decision of the Division Bench of this Court, I find that in the instant case, but for the refusal on the part of the Manager, in complying with the directions of the AEO to retain the petitioner as UPSA in the school during the period in question, the petitioner would have been entitled to continue as UPSA in the school and discharge her duties as UPSA and earn salary for the said services rendered by her. The illegal act of the Manager in not complying with the direction of the AEO in Ext.P3 order, despite there having been no stay against the operation of the said order, cannot have the effect of depriving the petitioner of the salary that she would have earned, had she continued in service pursuant to the order of the AEO. It is also relevant to note that, the subsequent orders passed by the Government, regularising the services of the petitioner during the period from 15.07.2002 to 05.08.2007 would be rendered meaningless, if the petitioner is not paid the amount that she would have received as salary for the said period, had she been permitted to work by the 2nd respondent Manager. I am, therefore, of the view that the petitioner is entitled to get, by way

of compensation, if not by way of salary, an amount equal to the salary that she would have earned by rendering her services as UPSA in the school under the management of the 2nd respondent for the period from 15.07.2002 to 05.08.2007.

7. The issue that then arises for consideration is how the said amount, to which the petitioner is found entitled to, is to be recovered from the respondents. The learned Government Pleader would place reliance on a Division Bench judgment of this Court in **Manager M.M.H.S. v. Deputy Director** [1994 (1) KLT 321] to contend that, inasmuch as the loss caused to the petitioner was on account of the actions of the Manager in not complying with orders passed directing the retention of the petitioner in service, this Court should direct the educational authorities only to compute the loss caused to the petitioner on account of the actions of the Manager, and to realise the same from the Manager under the provisions of the Revenue Recovery Act. The contention of the learned Government Pleader, in other words, is that there should be no direction to the Government to first pay the petitioner the loss caused to him, which amount could then be realised by the Government from the 2nd respondent Manager. I find force in the contention of the learned Government Pleader which is based on

the Division Bench decision of this court. Therefore, following the said judgment, I direct respondents 1 and 3 to compute the loss caused to the petitioner, which in this case would be the salary payable to the petitioner for the period between 15.07.2002 and 05.08.2007, and then take immediate steps to recover the same from the 2nd respondent Manager, if need be through resort to the provisions of the Kerala Revenue Recovery Act, within a period of three months from the date of receipt of a copy of this judgment. On recovery of the said amount from the 2nd respondent Manager, respondents 1 and 3 shall promptly pay the amounts recovered to the petitioner.

The writ petition is allowed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE