

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

W.P.(C).No.408 of 2012 (A)

PETITIONER(S):-

1. SMITHA S.MANI, AGED 47 YEARS,
(EMPLOYEE CODE NO.5321)
SMITHALAYAM, KOMALAPURAM,
AVALOOKUNNU P.O, ALAPPUZHA DISTRICT.
2. SHINY. F
(EMPLOYEE CODE NO.4108),
SHILA MANDIRAM, THEKKEMURI, EAST KALLADA, KOLLAM DISTRICT.
3. DAMODARA SHARMA. E.,
(EMPLOYEE CODE NO.5329)
EDAVALLIYATH ILLAM, MELOOR P.O., KOZHIKODE 673 319.
4. RENJUSHA. V.,
(EMPLOYEE CODE NO.5286),
MADATHINMELE VEEDU,
MANGATTUKONAM, KATTAIKONAM P.O, THIRUVANANTHAPURAM.
5. APARNA. B.,
(EMPLOYEE CODE NO.5339)
ARAKKAL, VALADY, KUMARANKARI P.O, ALAPPUZHA DISTRICT.
6. SUNITHA. P.K,
(EMPLOYEE CODE NO.5249)
POLAKKAL HOUSE, PADUVAP.O., KOTTAYAM DISTRICT.
7. KAVITHA. P
(EMPLOYEE CODE NO.5281),
PERUMPUZHYTHODI HOUSE,
PAPPINIPARA P.O, MALAPPURAM DISTRICT
8. SWAPNA. V.,
(EMPLOYEE CODE NO.5224),
VARAKAIL HOUSE, MALAYINCHI P.O., IDUKKI DISTRICT.

9. SHEEJA BALAN,
(EMPLOYEE CODE NO.5248),
KOTTARATHIL HOUSE, GANDHI NAGAR P.O, KOTTAYAM DISTRICT.
10. SREESHA. C.K.,
(EMPLOYEE CODE NO.5289),
SREYAS, MAYANAD P.O., KOZHIKODE DISTRICT.
11. BINDU. T.,
(EMPLOYEE CODE NO.5292),
VYSHNAY, KUTHIRAPANTHY P.O., KOLLAM DISTRICT.
12. RIJINA PATINHARA KUNNUMMAL,
(EMPLOYEE CODE NO.5254),
ONIVAYAL KUNIYIL HOUSE, MUTTUNGAL P.O., KOZHIKODE.
13. BINDUMOL. K.,
(EMPLOYEE CODE NO.5261),
BINDU BHAVAN, THONIKUZHAY PADINJATTINKARA,
PATHANAPURAM P.O., KOLLAM DISTRICT.
14. BEENA. P.K,
(EMPLOYEE CODE NO.5225)
THAMARACHALIL HOUSE,
ALAMTHURUTHY P.O., PATHANAMTHITTA DISTRICT.
15. JINCY. K.J.,
(EMPLOYEE CODE NO.5314),
KEETTIKKAL HOUSE, MADAKKATHARA P.O, THRISSUR DISTRICT.
16. LINCY JOSE,
(EMPLOYEE CODE NO.5243),
CHENATHUPARAMBIL HOUSE , POTTA P.O., CHALAKUDY,
THRISSUR DISTRICT.
17. SUMITHRA. A.B.,
(EMPLOYEE CODE NO.5266),
AMMATH HOUSE, PUZHAKKAL P.O., THRISSUR DISTRICT.
18. LATHA. S
(EMPLOYEE CODE NO.5291)
MANTHIL VEEDU, MUKUNDAPURAM P.O., KOLLAM DISTRICT
19. SINDHUKUMARI. L.,
(EMPLOYEE CODE NO.5317)
KANIYANAZHIKAM, 12-MURI NAGAR,
THATTAMALA P.O, KOLLAM DISTRICT.

20. SANDHYA. K.P.,
(EMPLOYEE CODE NO.5227),
ARAKKAL HOUSE, S.N PARK, POOKODU P.O., THRISSUR DISTRICT.
21. SMITHABAI. P
(EMPLOYEE CODE NO.5223),
THEVARMANNIL HOUSE, CHATHAMANGALAM P.O,
KOZHIKODE DISTRICT.

BY ADVS.DR.K.P.SATHEESAN [SENIOR ADVOCATE]
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR.

RESPONDENT(S):-

1. THE DIRECTOR, REGIONAL CANCER CENTRE,
P.O.BOX NO.2417, MEDICAL COLLEGE CAMPUS,
THIRUVANANTHAPURAM - 695 011.
2. THE ACCOUNTS OFFICER, REGIONAL CANCER CENTRE,
P.O.BOX NO.2417, MEDICAL COLLEGE CAMPUS,
THIRUVANANTHAPURAM - 695 011.

R1 & R2 BY STANDING COUNSEL SRI.M.SREEKUMAR.
GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT.P1 THE COPY OF THE RELEVANT PAGES OF THE REGIONAL
 CANCER CENTRE SOCIETY SERVICE RULES.
- EXT.P2 THE COPY OF THE OFFICE MEMORANDUM ISSUED BY THE
 MINISTER OF FINANCE, DEPARTMENT OF EXPENDITURE,
 GOVERNMENT OF INDIA DQTED 30.09.2008.
- EXT.P3 THE COPY OF THE OFFICE MEMORANDUM ISSUED BY THE
 MINISTGRY OF FINANCE, DEPARTMENT OF EXPENDITURE,
 GOVERNMENT OF INDIA DATED 7.10.2008.
- EXT.P4 TRUE COPY OF THE REPRESENTATION FILED BY THE
 FIRST PETITIONER BEFORE THE FIRST RESPONDENT
 DATED 4.7.2011.
- EXT.P5 TRUE COPY OF THE REPLY GIVEN BY THE 2ND RESPONDENT
 DATED 14.7.2011.
- EXT.P6 TRUE COPY OF THE REPLY GIVEN TO THE FIRST PETITIONER
 UNDER RIGHT TO INFORMATION ACT DATED 10.02.2012.
- EXT.P7 TRUE COPY OF THE LIST OF PERSONS TO WHOM THE
 ARREARS OF 5TH PAY REVISION ARE GIVEN BY THE
 FIRST RESPONDENT AFTER THEY RELIEVED/RESIGNED.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.408 of 2012-A

Dated this the 13th day of November, 2015

JUDGMENT

The petitioners are persons who were working as Staff Nurses in the Regional Cancer Centre [for brevity "RCC"] and who resigned on account of fresh appointments in Sree Chithra Tirunal Medical Centre. The claim of the petitioners is that, the 6th Pay Commission recommendation were implemented in the 1st respondent-RCC even when the petitioners were in employment. The petitioners are said to have resigned in the year 2008. The recommendations of the 6th Pay Commission was implemented with effect from 01.01.2006 and the same was sanctioned with retrospective effect, as per Exhibit P2 dated 30.09.2008. Relying on Exhibit P4 representation, the petitioners claim arrears of salary for the period they continued in the RCC with fresh fixation as per the 6th Pay Commission recommendation from 01.01.2006 onwards.

2. At the outset it is to be noticed that the exact date of resignation of none of the petitioners have been stated in the writ petition. It is also to be specifically noticed that except the

1st petitioner, no representation made by any of the other petitioners are produced herein. The rejection order is also only with respect to the 1st petitioner, which is produced as Exhibit P5. But for a bland statement that similar replies were issued to all the other petitioners, nothing is produced herein.

3. Further, it is to be noticed that the rejection has been made specifically on the strength of the rule in the Service Rules, by which an employee who resigns or is dismissed from service shall forfeit the past service. The rule has not been challenged; but the learned counsel would contend that the rule would only indicate that the benefit of such service cannot be sought for any subsequent employment and it cannot lead to a denial of arrears of pay which the petitioners were entitled to when continuing in the 1st respondent.

4. The interpretation placed by the learned counsel is specious insofar as it would depend upon the subsequent employees as to how the earlier service of an employee could be treated. Forfeiture of service on resignation or termination would only mean that there could be no lien retained nor could any benefits of such service could be claimed from the employer/the 1st

respondent after such severance from service. There is definite relevance to the two specific instances of resignation and retirement alone having been employed in the rule; as distinguished from, say, retirement. The petitioners were at the time of their resignation aware of the rule. They were also aware of the 6th Pay Commission recommendations. With open eyes they opted to retire giving up their claim for pay revision as per the Pay Commission recommendations, obviously for better prospects under a different organisation. Long thereafter they raise the claim for such monetary benefits.

5. It is to be noticed that the implementation of the 6th Pay Commission recommendation itself was by Exhibit P2 on 30.09.2008 and it is not clear as to when the petitioners resigned from the first respondent, which they claim to be in 2008. In any event, the application given by the 1st petitioner is also grossly delayed, as indicated in Exhibit P4, which is dated 04.07.2011. The rejection made at Exhibit P5 was also immediately thereafter, on 14.07.2011 and the writ petition definitely is filed three years after their resignations in 2008. The learned counsel for the petitioners would point out that the 1st petitioner, in Exhibit P4,

refers to a representation submitted by her of 10.05.2010; which, however, is not substantiated in the writ petition. Considering also the fact that there was considerable delay of three years in approaching this Court and the fact that none of the petitioners except the 1st petitioner, have even produced their respective applications or the rejection orders in the writ petition, this Court is of the opinion that the claim raised is rendered further untenable.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]