

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WA.No. 249 of 2015 IN WP(C).8175/2014

AGAINST THE JUDGMENT IN WP(C) 8175/2014 DATED 15-10-2014

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APPELLANTS/RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR, INFORMATION & PUBLIC RELATION (E) DEPARTMENT,
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
3. THE DISTRICT INFORMATION OFFICER,
DISTRICT INFORMATION OFFICE, COLLECTORATE P.O.
KOTTAYAM.

BY SR. GOVERNMENT PLEADER, SRI.P.I. DAVIS.

RESPONDENT/PETITIONER :

E.JACOB VARGHESE,
S/O.CHACKO KOCHU CHACKO
ELANJICKAL HOUSE, PALLAM P.O., KOTTAYAM - 686 007.

R1 BY ADV.SRI.DINESH R. SHENOY
SRI.SANIL JOSE.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 249 OF 2015

Dated this the 14th day of July, 2015

JUDGMENT

Shaffique, J.

This appeal is filed against the judgment dated 15.10.2014 in W.P.(C) No. 8175 of 2014. The respondents in the writ petition are the appellants. The writ petitioner who is the respondent herein filed the above writ petition challenging Ext.P7 order passed by the Information and Public Relations Department rejecting the petitioner's application claiming pension under the Pension Scheme for Non-Journalist i.e., Kerala State Newspaper Employees (Non-Journalists) Pension Scheme, 2000.

2. The short facts involved in the writ petition would disclose that the petitioner worked as a non-journalist of Malayala Manorama Newspaper daily from 01.07.1997 to 30.06.2006 which is the date of his retirement. Thereafter he worked on contract basis in Malayala Manorama Newspaper daily for a period from 17.07.2006 to 16.01.2009. While the petitioner was in service, Ext.P2 Scheme came into force with

effect from 01.01.2000. However, in terms of the rules framed thereunder, the petitioner did not become a member. Petitioner submitted a letter dated 08.01.2014 to the Department requesting for taking steps to apply for pension. By Ext.P3 letter dated 27.03.2013 the Accounts Officer requested the petitioner to remit Rs.18,000/- into the account along with the application. It was mentioned that the application shall be considered if he is eligible. Pursuant to the same, the petitioner remitted the aforesaid amount in terms of Ext.P4 letter dated 14.05.2013. It seems that the matter was referred to the Committee to examine the eligibility of the petitioner. By Ext.P7 dated 19.03.2014, the petitioner was informed that as per the provisions of the Scheme and the Rules, he ought to have become a member with effect from six months from the coming into force of the Pension Scheme. Further at the time of his retirement he did not have 10 years continuous service. It is also stated that the contract appointment after the service is not applicable for being computed as service in terms of the Scheme.

3. According to the petitioner, the aforesaid decision of the appellants were unjustified and accordingly the writ petition was filed. Counter affidavit was filed supporting the stand taken by the Department. Learned Single Judge after considering the rival contentions observed that the Scheme being of a welfare nature, the authorities are liable to provide pension and accordingly Ext.P7 order was set aside and direction was issued to the second appellant to receive back the contribution from the petitioner and to grant non-journalist pension within two months from the date of receipt of a copy of the judgment. It is aggrieved by the aforesaid directions that the appeal has been filed.

4. Heard learned Senior Government Pleader and learned counsel appearing on behalf of the respondent.

5. The short issue involved in the above writ petition is regarding the eligibility of the petitioner for becoming a member of the Pension Scheme. Ext.P2 Scheme contains rules relating to the Pension Scheme and the eligibility condition under Clause 4

(1) clearly indicates that a person who retires from service as a non-journalist from a newspaper Company, after rendering service for a period of 10 years either continuously or in intervals and has become a member of the Scheme will be eligible for pension. Apparently the petitioner retired from service on 30.06.2006 on which date he becomes eligible to get the pension provided, he has become a member of the Scheme and had completed 10 years of service. In the case on hand, at the time of retirement petitioner did not complete the 10 years service and he had not become a member of the Scheme. Under such circumstances the very eligibility of the petitioner is questioned and the contention of the authorities that the contract employment can not be taken into consideration for calculating the total service is justifiable.

6. Going by the rules of the Scheme itself it is clear that the eligibility for pension regarding the continuous or interrupted service is to be computed as on the date of superannuation. Under such circumstances even if the pensioner

is employed on a contract basis after the date of superannuation, the same cannot be treated as "employment" in terms of the Scheme.

7. Further it is also an admitted fact that the petitioner during the relevant time did not become a member of the Scheme. Petitioner only relies upon Ext.P3 letter by which he was permitted to remit an amount of Rs.18,000/- which he has done. But, as rightly contended by learned Senior Government Pleader, Ext.P3 also contains a rider which says that the application shall be considered 'subject to its eligibility'. Under such circumstances, we do not find any error in the appellants issuing Ext.P7 order.

8. Now the question is as to whether any relaxation can be made with reference to the petitioner's case. Learned Single Judge had observed that being a welfare scheme for providing pension, the provisions have to be interpreted to advance the intention of the Scheme and a narrow interpretation can not be given. The question of interpretation of a Statute will

raise only if there is any ambiguity in the rules. If there is any power of giving relaxation, of course the authorities can consider the same. Though it is argued by learned counsel for the petitioner that under certain contingencies the authorities have power to relax the Rules, we do not find any such provision available under the rules which permit relaxation of the qualifying number of years of service. Therefore this is a case where the petitioner has not satisfied the eligibility condition for the grant of pension and under such circumstances merely for the reason that Pension Scheme is a welfare measure does not entitle the petitioner to seek relaxation of the eligibility criteria fixed under the rules. In the result, we are of the view that learned Single Judge was not justified in setting aside Ext.P7. Ext.P7 has been issued in terms of the Rules framed under the Scheme and there is no ambiguity in the said provisions.

Under such circumstance the judgment of learned Single Judge is liable to be set aside. Accordingly, the Writ

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Appeal is allowed. The judgment of learned Single Judge is set aside and the writ petition is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/15/07