

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

W.P.(C).No.2675 of 2009 (R)

PETITIONER(S):-

A.O.KOCHUTHRESSIA ,
DRAWING TEACHER, ST ANN'S GIRLS HIGH SCHOOL,
EDATHURUTHY, THRISSUR DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR.

RESPONDENT(S):-

1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVT.,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
TRIVANDRUM.
3. THE HEAD MASTER,
ST.ANN'S GIRLS HIGH SCHOOL, EDATHURUTHY,
THRISSUR DISTRICT.

R1 & R2 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.2675 OF 2009-R

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 PHOTOCOPY OF THE G.O.(Rt).NO.2685/96/G.EDN.
 DATED 16.08.1996.

EXT.P2 PHOTOCOPY OF THE G.O.(Rt).NO.3301/2008/G.EDN.
 DATED 19.07.2008.

RESPONDENT'S EXHIBITS:-

NIL.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.2675 of 2009-R

Dated this the 15th day of September, 2015

JUDGMENT

The petitioner is concerned with the refund of salary ordered for the period 15.07.1992 to 31.07.1992 as also disbursement of the salary and other service benefits for the period 01.08.1992 to 15.08.1996, which has been denied by Exhibit P2 Government Order. The petitioner relies on Exhibit P1 to contend that she is entitled to protection and on Exhibit P2, to contend that her services having been regularised between 15.07.1992 to 15.08.1996, the petitioner is also entitled to be paid her salary and other benefits for the said period.

2. The facts to be noticed are that, the petitioner was appointed as a Drawing Teacher on 07.06.1982 in a school under a Corporate Management, which Corporate Management has not been impleaded herein. The petitioner was transferred to another school under the very same Corporate Management on 16.01.1986. The petitioner was thrown out from service, with effect from 15.07.1992, to accommodate a senior. There was a division fall in another school under the very same Corporate Management,

wherein a Drawing Teacher, senior to the petitioner was thrown out and the said teacher was accommodated in the vacancy of the petitioner in the 3rd respondent-school. The petitioner claimed protection under Rule 6(4) of Chapter XXIII of the Kerala Education Rules, 1959 [for brevity "KER"] and Government Order G.O.(MS) No.60/96/G.Edn. dated 15.02.1996.

3. The petitioner admittedly was taken back in service on 16.08.1996. When the petitioner was out of service, the petitioner filed O.P.No.8549 of 1996 before this Court, in which there was a direction to consider her representation, which was considered as per Exhibit P1. On 16.08.1996 Exhibit P1 order was passed, finding that the petitioner is entitled to protection, since she has continuous service of seven years from 16.01.1993, which is before 15.07.1995. This is by virtue of G.O.(MS).No.60/96/G.Edn. dated 15.02.1996. It has to be noticed that the said G.O. was brought out only on 15.02.1996, long after the petitioner had been thrown out from service.

4. The protection granted as per Exhibit P1 was only in mitigation of the teachers, similar to the petitioner, who were thrown out and was not afforded any protection. The petitioner sought for regularisation of the period spent out of service, which was again considered under Exhibit P2. In Exhibit P2, the period from

15.07.1992 to 15.08.1996 was directed to be treated as 'non duty' without forfeiture of past service. The said directions were issued based on G.O.(MS) No.412/97/G.Edn. dated 16.10.1997. It was specifically stated therein that, for persons who are entitled to the benefit of G.O.(MS).No.60/96/G.Edn. dated 15.02.1996, the period during which the incumbent was out of job will be treated as 'eligible leave' or 'leave without allowances' as contemplated in G.O.(MS) No.104/69/G.Edn. Dated 06.03.1969. The protection and regularisation are benefits flowing from the above Government Orders and it has to be on the terms specified therein and not at all beyond that.

5. The petitioner's contentions based on Rule 6(4) of Chapter XXIII with respect to a complete High School being mandated to have a post of the Drawing Teacher cannot be considered, especially since the Drawing Teacher who was transferred and posted in the post from which the petitioner was thrown out was admittedly senior to her. The petitioner's contention is that there was a Music Teacher in the other school who ought to have been terminated and not the Drawing Teacher. However, to understand the veracity of the said contentions, the Corporate Management is not in the party array. Further, the petitioner was thrown out and in the year 1992 and the petitioner did not challenge

the same then. The petitioner was thrown out due to the division fall in one of the schools of the Corporate Management and the admitted senior of the petitioner had been continuing. The protection granted in Exhibit P1 was on the strength of G.O.(MS) No.60/96/G.Edn. The regularisation for past period was as per G.O. (MS).No.412/97/G.Edn. and qualified insofar as granting regularisation, without any monetary benefits.

6. In the above circumstances, Exhibit P2 has to be sustained. The petitioner's claim cannot be allowed. However, the refund ordered for salary drawn between 15.07.1992 to 31.07.1992 need not be enforced, since the petitioner has already retired from service. The petitioner's pay and allowances shall be fixed in accordance with Exhibit P2 and the petitioner shall also be disbursed pension in accordance with Exhibit P2.

The writ petition is dismissed; however with the above observations, directing the 3rd respondent to transmit the papers for pension in accordance with Exhibit P2. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]