

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C) .No. 1543 of 2013 (P)

PETITIONER:

VINOD KUMARA U. ,
HIGHER SECONDARY SCHOOL TEACHER (COMMERCE) ,
SUBRAHMANYESHWARA HIGHER SECONDARY SCHOOL,
KATTUKUKKE, KASARAGOD.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
(GENERAL EDUCATION DEPARTMENT)
DIRECTORATE OF HIGHER SECONDARY EDUCATION,
TRIVANDRUM-695001.

2. THE DIRECTOR,
HIGHER SECONDARY EDUCATION DEPARTMENT,
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
TRIVANDRUM-695001.

3. THE REGIONAL DEPUTY DIRECTOR OF HIGHER
SECONDARY EDUCATION,
REGIONAL OFFICE, KOZHIKODE-673001.

R1-3 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 1543 of 2013 (P)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 11.7.2005 SANCTIONING
LEAVE TO THE PETITIONER

EXHIBIT P2: TRUE COPY OF THE JUDGMENT DATED 29.3.2007 IN WP(C)
NO.10522 OF 2007

EXHIBIT P3: TRUE COPY OF THE JUDGMENT DT,7.3.13 IN WPC.29132/12

EXHIBIT P4: TRUE COPY OF THE GOVERNMENT ORDER NO.G.O (MS) .
9/2014/GEDN. DT.8.1.14

RESPONDENTS' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.1543 of 2013

Dated this the 18th day of November, 2015.

JUDGMENT

The petitioner is a teacher working in Subrahmanyeshwara Higher Secondary School, Kattukukke, Kasaragod. While continuing in service he was selected for B.Ed. Degree course and he had availed study leave from 10.12.2003 to 31.10.2004. When he applied for leave to attend B.Ed. Course, which is a training course within the meaning of Rule 33(2) of Part I KSR, the 3rd proviso to the said Rule was in force. But, when leave was sanctioned by Ext.Pl, it was stipulated that the period of leave will not be counted for any service benefits including pension and will be recorded in the Service Book of the incumbent. According to the petitioner, since the proviso was deleted from 24.4.2005 and it was in existence when he had availed of the leave the said

stipulated denying the service benefits during the leave period is illegal, arbitrary and liable to be quashed invoking the jurisdiction under Article 226 of the Constitution of India. The petitioner also seeks for issuance of a writ in the nature of mandamus commanding the 1st respondent to reckon the period of leave sanctioned as per Ext.P1 for the purpose of granting increment and pension.

2. Heard the The learned counsel for the petitioner and the learned Government Pleader.

3. The learned counsel for the petitioner submits that the issue involved in this writ petition is covered in his favour by the decision of this Court in Deepika v. State of Kerala [2007 (1) KLT 71] and the unreported decision of this Court in W.P(C) No.75 of 2012. According to the learned counsel, at the time when he had availed of the leave, the proviso to Rule 33 (2) of Part I KSR was in existence and he has completed the training course also before the deletion of the said proviso from the relevant Rule. Therefore, he is not liable for the delay caused in sanctioning the

leave and his entitlement of leave is liable to be considered in view of the Rule existed as on the date of application.

4. Per contra, the learned Government Pleader advanced arguments justifying the denial of benefits, under the 2nd proviso, in view of the deletion of the said proviso to Rule 33(b)(2) of Part I KSR with effect from 24.4.2005. According to the learned Government Pleader, the date of sanctioning is material and the entitlement of the benefits is a matter to be considered in the light of the Rule as on the date of sanctioning the leave.

5. In the instant case, Ext.Pl order shows that the petitioner had applied for leave for study purpose for the period from 10.12.2003 to 31.10.2004 and Ext.Pl order sanctioning the leave was passed on 11.7.2005 only. Needless to say, Ext.Pl was passed more than one year after the completion of the course. If any delay was caused in sanctioning the leave by the Authority, the applicant cannot be allowed to suffer due to change in the Rule, during that period of delay. At the

time when the petitioner had applied for leave and availed of the same, the proviso granting benefit was existing under the Rule. Therefore, the petitioner is entitled to get benefit of the Rule. The denial of benefit is arbitrary and illegal, particularly, when the delay in sanctioning the leave was caused by the respondents.

6. In the above view of the matter, Ext.Pl Government Order to the extent it stipulates in paragraph 2 thereof that the period of leave sanctioned thereunder will not count for service benefits including pension will stand quashed. The respondents shall consequently issue appropriate orders in the light of this judgment and cause the same to be recorded in the petitioner's Service Book. Needful in this regard shall be done expeditiously and in any event within an outer limit of three months from the date of receipt of a copy of this judgment by the respondents. Within one month thereafter the pay of the petitioner shall be re-fixed and monetary

benefits be disbursed.

This writ petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.