

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

W.No. 1767 of 2015 IN WP(C).370/2012

AGAINST THE JUDGMENT IN WP(C) 370/2012 of HIGH COURT OF KERALA DATED 07-07-2015

APPELLANT/2ND RESPONDENT:

THE MANAGER, NATIONAL HIGHER SECONDARY SCHOOL,
IRINJALAKUDA 680 121.

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD
SRI.V.RAJASEKHARAN NAIR

RESPONDENTS/PETITIONER AND RESPONDENTS 1 AND 3:

1. SMT.KR.LEKHA, AGED 31 YEARS
UPPER PRIMARY SCHOOL ASSISTANT
NATIONAL HIGHER SECONDARY SCHOOL
IRINJALAKUDA 680 121.
2. THE DISTRICT EDUCATIONAL OFFICER
IRINJALAKUDA 680 121.
3. THE GOVERNMENT OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF GENERAL EDUCATION (B)
GOVERNMENT OF KERALA
THIRUVANANTHAPURAM 695 001.

R BY SR. GOVERNMENT PLEADER SRI.M.A.FAYAZ
R BY SRI.P.RAVINDRAN (SR.)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.1767 of 2015

Dated this the 10th day of August, 2015

JUDGMENT

Antony Dominic, J.

Heard the counsel for the appellant, Senior Counsel appearing for the first respondent and the Government Pleader appearing for respondents 2 and 3.

2. Second respondent in W.P.(C)No.370/12 is the appellant. The said writ petition was filed by the first respondent herein, raising her claim for salary during the period 15.7.2002 to 5.8.2007 when she was kept out of service, despite Ext.P3 order passed by the Assistant Education Officer. By the judgment under appeal, learned Single Judge upheld the claim and ordered that the amount due be quantified, recovered from the Manager and be paid to the first respondent. It is this judgment, which is under challenge before us.

3. Contention raised by learned counsel for the appellant is that the first respondent joined service as L.P.S.A.on 14.6.2000. It is stated that the post was abolished in the staff fixation order issued for the academic year 2002-2003. On 13.1.2003, the Assistant Education Officer vide Ext.P3 order directed to transfer the first respondent in the available vacancies, if

any, in the U.P. Section of the school. Contention raised by the appellant is that such a claim of the first respondent could have been entertained only based on the amendment to Kerala Education Rule effected in 2005 and that, therefore, the Manager could not have been faulted if the teacher was not accommodated as directed in Ext.P3.

4. In our view, this contention raised by the Manager cannot be entertained. We find that on the issuance of Ext.P3, the Manager took up the matter in revision before the Director of Public Instruction and then before the Government. The Government modified this order and that order was quashed by this Court in Ext.P5 judgment in W.P.(C) No.4113/06 and the order passed by the Assistant Educational Officer was restored. It was thereafter the teacher could join service on 6.8.2007 following Ext.P6 order issued by the Manager. In other words, despite Ext.P3 she was kept out of service till 6.8.2007. This led to the claim made by the teacher for monetary benefit for the period from 15.7.2002 to 5.8.2007.

5. From the above, it is obvious that the contention raised by the Manager regarding the invalidity of Ext.P3, if at all was available to the

Manager only when Writ Petition No.4113/2006 mentioned above was considered and this contention cannot now be raised by the Manager to resist the claim of the teacher for monetary benefits for the period while she was kept out of service.

We, therefore, find no merit in the writ appeal. Appeal fails and it is accordingly dismissed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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