

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT.JUSTICE P.VASHA

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 1812 of 2014 (Y) IN WP(C).12593/2008

AGAINST THE JUDGMENT IN WP(C) 12593/2008 of HIGH COURT OF KERALA DATED 04-11-2013

APPELLANTS/RESPONDENTS 1-3 IN THE WPC:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM
2. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR P.O, KANNUR
3. THE ASSISTANT EDUCATIONAL OFFICER,
PAYYANUR, KANNUR DISTRICT

BY ADV. GOVERNMENT PLEADER SRI.ROSE MICHAEL

RESPONDENTS/PETITIONER AND 4TH RESPONDENT:

1. N.RAVEENDRAN,
S/O K. NANU, SANSKRIT TEACHER, CENTRAL UP SCHOOL
KELOTH P.O, PAYYANNUR (RESIDING AT OLAVARA P.O,)
UDUMBUMTHARA, THRIKARIPUR (VIA), KASARGOD DISTRICT 607 307
2. THE MANAGER,
CENTRAL UP SCHOOL, KELOTH P.O, PAYYANNUR
KANNUR DISTRICT 607 307

R BY SRI.V.A.MUHAMMED

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-12-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.VASHA, JJ.

Writ Appeal No.1812 of 2014

Dated this the 21st day of December, 2015

JUDGMENT

Asha, J.

The respondents 1 to 3, the educational authorities have filed this writ appeal, challenging the judgment of the learned Single Judge by which it is directed to reckon the period during which the petitioner was kept under suspension till his re-instatement, for pension. Writ petition was filed by the petitioner/respondent No.1 challenging Ext.P9 order passed by the Government by which his request for treating the period during which he was kept out of service, on account of disciplinary proceedings, as service for the purpose of pension and all other service benefits was rejected. He had also challenged Ext P2 order to the extent it directed that the period from the date of his suspension till re-instatement would not be counted for service benefits.

2. Brief facts of the case are as follows: The petitioner was a Sanskrit Teacher in the Central U.P. School, Payyannur, which is an aided School. He was placed under suspension, on 24.1.1994 on certain allegations of misconduct. The charges leveled against him includes the following:

- 1. Misbehaviour towards lady teacher, character assassination of lady teachers by sending anonymous petition, causing loss of discipline in the school.*
- 2. Not keeping punctuality in attending at the school.*
- 3. Dereliction of duty.*
- 4. Conduct is that of unbecoming of a teacher.*
- 5. indiscipline*
- 6. behaving like a criminal etc.*

3. After conducting enquiry as per rules, the petitioner was found guilty of the charges levelled against him. The manager proposed the punishment of removal from service to the petitioner. Accordingly, the DEO granted permission to remove him from service. The Manager removed him from service on 23.7.1994 with effect from the date of suspension. His appeal against it was rejected by the Deputy Director of Education. Thus, the petitioner was removed from service with effect from 25.1.1994. Petitioner approached the Government in revision and thereupon Govt issued Ext.P2 order on 13.12.2001, by which the Government ordered to reinstate him in service, without forfeiting of his past service. However, Government had observed that it was a case where the petitioner deserved a penalty. But the penalty of removal from service imposed by the manager and which was upheld by the Deputy Director of Education was found to be very severe, when compared to the nature and gravity of offence. It was

further found that it was not fair to impose a separate reduced penalty on him at this distance of time, as he was kept out of service for the past 7 years. It was also stated in that order that the petitioner had regretted and confessed. It was found that he had already completed 20 years of service and a few more years alone were left for his superannuation. As he was not fully exonerated from the charges, it was ordered that the period during which he was kept out of service from 25.1.1994 to the date of rejoining duty would not be counted for any service benefits.

4. Thereafter, by Ext.P3 order dated 22.8.2005 Govt regularised the service break in respect of petitioner for the period from 25.1.94 to 4.2.2002 as leave without allowance under Rule 88 Part I KSR, with a rider that the said period would not count for any service benefits including pension. Petitioner took up the matter again before the Government requesting for service benefits for the period during which he was kept out of service. Government rejected his application by Ext.P9 order stating that he was not fully exonerated from the charges and, therefore, he was not entitled to full pay and allowances for the period during which he was kept out of service. Government rejected his application by Ext.P9 order saying

that he was not entitled to full pay and allowances for the period during which he was kept out of service. Writ petition was filed challenging the Ext.P2 order to the extent it was against him and Ext.P9 order. Petitioner also pointed out that in the case of similarly situated persons, Government granted service benefits, even after imposing punishment.

5. The learned Single Judge held that since Government had already regularised the period from 25.1.94 to 4.2.2002 as leave without allowance under Rule 88 Part I Kerala Service Rule, there was no justification in not counting the said period for pensionary benefits. Accordingly, it was directed that the period from 25.1.94 to the date of rejoining duty shall be considered for pensionary benefits. It is as against this judgment, respondents 1 to 3 in the writ petition filed this writ appeal.

6. We heard learned Government Pleader as well as the learned counsel appearing for the writ petitioner.

7. On a perusal of Ext.P2 order, by which the Government interfered with the punishment proposed by the manager and upheld by the Director of Public Instruction, it is clear that the Government, ordered reinstatement of the petitioner, only after taking a lenient view, finding that he deserved a

punishment and that he was already kept out of service and a few more years alone were left for his retirement. While ordering his re-instatement, it was also ordered that he would not be entitled to service benefits during the period from 25.1.94 till the date of rejoining duty. By Ext.P3 order, dated 23.8.2005, Government had regularised the period during which he was kept out of service. While regularising this period as leave without allowance under Rule 88 Part I KSR, Government had ordered that the same would not count for service benefits including pension. In that view of the matter, the finding of the learned Single Judge that on account of Ext.P3 order of regularisation of the period as leave without allowance, the petitioner was entitled to pay and allowance, was not correct.

8. According to us, the Government was too liberal in the case of the petitioner, who was found guilty of serious misconducts including misbehaviour towards a lady teacher, in ordering reinstatement. At any rate, the period from the date of suspension till the date of reinstatement was not to be reckoned for any service benefits. While regularising the period of suspension upto the date of re-instatement, in respect of a person who has already been found guilty of the charges, the delinquent employee does not

have any right to claim the service benefits. It is upto the govt to decide how the period should be treated, depending upon the facts, circumstances, gravity of proved misconduct, etc, of the case. There is no provision which provides that the period of ouster on account of suspension and disciplinary proceedings shall be counted for the purpose of service benefits including pension, as long as he is not fully exonerated from the charges and suspension is not found wholly unjustified. It appears that the learned Single Judge failed to notice of the rider attached to Ext P3 regularisation of the period of ouster.

In that view of the matter, we are of the view that the order impugned in the writ petition did not require any interference. Hence we set aside the judgment of the learned Single Judge and allow the writ appeal.

**ANTONY DOMINIC
JUDGE**

**P.V.ASHA
JUDGE**

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