IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 5351 of 2009 (L)

PETITIONER :

PREMLAL A.S.,
RETIRED HEAD MASTER,
(ON DEPUTATION AS BLOCK PROGRAM OFICER, MATTANCHERY)
ARAKKAL HOUSE, ANDIKADAVU, COCHIN.

BY ADVS.SRI.T.P.SAJAN
SRI.M.MOHAMED NAVAZ
SRI.L.ALOYSIUS THOMAS

RESPONDENT(S):
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1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, O/O.THE DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM.

3. THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM.

4. DISTRICT PROJECT OFFICER, SARVA SIKSHA ABHAYAN, ERNAKULAM DISTRICT, O/O.THE DISTRICT PROJECT OFFICER, ERNAKULAM.

5. ASSISTANT EDUCATIONAL OFFICER, O/O.THE ASSISTANT EDUCATIONAL OFFICER, VYPEEN.

6. ACCOUNTANT GENERAL (A&E), KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SUNITHA VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED FOLLOWING:

sts

WP(C).NO.5351/2009

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ORDER NO.P-08/OY/G/47202611/252 DATED 2/6/2006 AND OTHER ORDERS SANCTIONING GRATUITY TO THE PETITIONER.

P2 COPY OF THE AUDIT REPORT

P3 COPY OF THE EXPLANATION TO AUDIT OBJECTIONS SUBMITTED BY THE PETITIONER.

P4 COPY OF THE LETTER DATED 23/9/2008 ISSUED BY 3RD RESPONDENT TO THE 4TH RESPONDENT CERTIFYING THE ELIGIBILITY FOR EARNED LEAVE SURRENDER.

P5 COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT SANCTIONING SURRENDER OF EARNED LEAVE

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 5351 of 2009

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Dated this the 28th day of May, 2015

JUDGMENT

The petitioner entered the service of the educational department as a primary department teacher on 06.03.1972. He was appointed on working arrangement as a BRC trainer and posted at Mattancherry BRC, where he joined on 29.12.2003. He continued in the said post till 31.05.2004. Thereafter he was reverted to the department and promoted as Head Master of Government UP School, Puthuvyppu. Later he was posted on deputation as Block Project Officer for a period of one year and joined the said post on 02.11.2004. He continued in the said post till his retirement on 31.03.2006.

2. It is the case of the petitioner in the writ petition that, although by Ext.P1 order dated 02.06.2006 his pensionary benefits including DCRG were admitted and sanctioned by the 6th respondent, on account of an audit objection with regard to payment of amounts received by way of earned leave surrender from the SSA fund, the DCRG amounts were not disbursed to him. Ext.P2 is the copy of the audit report, that was served on the petitioner, and to which the petitioner had submitted an explanation pointing out, inter alia, that while he had claimed the

earned leave surrender benefits in respect of the entire period of service from June, 2003 to 11.10.2005, which also included the period during which he was on deputation with the BRC, he was sanctioned the terminal surrender of earned leave benefit in respect of a total of 863 days covered by the aforesaid period and became eligible for surrender of earned leave for 78 days. This benefit was accorded to him by Ext.P5 order of the Assistant Educational Officer. It is the specific case of the petitioner, both in his reply to the audit objection as also before this Court, that the objection raised by the respondents, in seeking to recover the alleged excess amount paid to him by way of earned leave surrender, is purely a technical one in that, while the AEO sanctioned the benefit for the entire period of 863 days, the audit objection was only to the effect that the said period of 863 days also took in the period during which the petitioner was on deputation with the BRC, for which period, he was to get the corresponding benefit from the SSA Fund. The audit objection, in other words, was that the entire period of service of 863 days, which includes the service in the parent department, as also the service in the deputed department, was paid from the SSA fund which pertains to the deputed department. The petitioner would contend that, inasmuch as he was not separately paid any amount by the parent department towards earned leave surrender benefit, and the entire amount was paid from the SSA fund, there was no loss caused to the Government and it was only an issue relating to reconciliation of the amounts paid between different departments of the same Government. That apart, it is the specific case of the petitioner that, although the counter affidavit filed by the 3rd respondent indicates that the liability in respect of the petitioner was fixed on 31.3.2009, the date of completion of three years after retirement, there was no notice issued to him prior to the fixation of the liability and further, the order fixing the liability, stated to have been passed on 31.3.2009 was also not served on him. It is on these contentions that the petitioner seeks a direction to the respondents to disburse the DCRG amounts, that are due to him as evident from Ext.P1 order. It would appear that, pursuant to an interim order of this Court dated 18.02.2009, the petitioner has received the DCRG amount due to him, save for an amount of Rs.45,642/-, that was withheld on account of the aforementioned audit objection.

3. A counter affidavit has been filed on behalf of the 3rd

respondent, wherein, the sequence of events leading to the audit objection and the withholding of the amounts from the DCRG of the petitioner, are narrated. While it is seen mentioned that the liability certificate, fixing the liability on the petitioner was issued on 31.03.2009, there is no mention in the counter affidavit of whether this certificate was preceded by any notice and whether a hearing was accorded to the petitioner, and further whether the said certificate was communicated to the petitioner at all.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that this is a case where the DCRG amounts due to the petitioner have been withheld solely on account of a technical objection based on an audit query. The facts stated in the audit objection as well as the explanation given by the petitioner, would clearly indicate that there was no monetary loss occasioned to the Government consequent to the payment of the benefit of earned leave surrender to the petitioner. The computation on the basis of which the earned leave surrender benefits were given to the petitioner is not in dispute. The only objection raised in the audit report was with regard to the funds that were utilised for disbursing the

benefit to the petitioner. The respondents do not have a case that there were excess payments made to the petitioner in respect of the benefit, that was due to him. The objection was only with regard to the head of account, that was utilised for the payment of admitted benefit to the petitioner. In my view, such a technical objection cannot be the basis for withholding of a valuable pensionary right of the petitioner and in that view of the matter, this writ petition must necessarily succeed.

There is yet another aspect of the matter. While the counter affidavit of the 3rd respondent indicates that there was a liability that was fixed on the petitioner, and that the same was fixed on 31.3.2009, the date of culmination of the three year period prescribed for fixing a liability in respect of a retired Government servant under the KSR, there is no indication in the counter affidavit with regard to the issuance of any notice to the petitioner or hearing him prior to fixing the liability. That apart, there is no indication in the counter affidavit with regard to the service of any order fixing the liability in such a unilateral manner, on the petitioner. Under the said circumstances, I am of the view that the respondents could not have acted on the basis of the said fixation of liability to recover the same from the petitioner. Thus, in any view of the matter, respondents cannot be permitted to retain the amount of Rs.45,642/- from the DCRG amounts, that are payable to the petitioner. Resultantly, the writ petition is allowed by directing the respondents to effect payment of the withheld amount of Rs.45,642/- to the petitioner, within a period of two months from the date of receipt of a copy of this judgment. It is made clear that, if the respondents do not make the payment as directed within the time stipulated in the judgment, then the said payment shall carry interest at the rate of 12% per annum from the expiry of the said period of two months, till the date of actual payment to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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