

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

FRIDAY, THE 18TH DAY OF JANUARY 2013/28TH POUSHA 1934

WP(C).No. 7069 of 2012 (G)  
-----

PETITIONERS:

-----

1. ARUNKUMAR C.H., HIGHER SECONDARY SCHOOL,  
TEACHER (COMMERCE), KALYANAKRISHNAN MEMORIAL,  
HIGHER SECONDARY SCHOOL, VANDITHAVALAM, PALAKKAD
2. SAJISHKUMAR.M., HIGHER SECONDARY SCHOOL TEACHER,  
(JUNIOR) STATISTICS, M.N.KRISHNA IYER MEMORIAL  
HIGHER SECONDARY SCHOOL, CHITTILENCHERRY, PALAKKAD
3. DEVASSIA JOSEPH, HIGHER SECONDARY SCHOOL TEACHER,  
JUNIOR, SOCIAL WORK, ST. ANTONY'S HIGHER SECONDARY,  
SCHOOL, POONJAR.
4. ANTONY K.F, HIGHER SECONDARY SCHOOL TEACHER,  
JUNIOR, COMMERCE, ST.PAUL'S HIGHER SECONDARY SCHOOL,  
KOZHINJAMPARA.
5. USHAKUMARI.E.N., HIGHER SECONDARY SCHOOL TEACHER,  
JUNIOR PSYCHOLOGY, SRI.SARADA GIRLS HIGHER SECONDARY,  
SCHOOL, PURANATTUKARA, THRISSUR.
6. R.PADMADAS, HIGHER SECONDARY SCHOOL TEACHER,  
COMMERCE, CONCORDIA LUTHERN, HIGHER SECONDARY SCHOOL,  
PEROORKADA.

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

RESPONDENTS:

-----

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. 695 001.

VK

WP(C).No. 7069 of 2012 (G)  
-----

ADDL.R3 IMPEADED  
-----

ADDL.R3. REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY  
EDUCATION, ERNAKUAM, IS IMPEAED AS ER ORDER  
DT. 30.3.12 IN A 5102/12.

BY GOVERNMENT PLEADER SRI. T.R.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 18-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT  
-----

None appears for the Petitioner. There was also no representation  
on behalf of the learned Counsel for the petitioner when the case was  
called on for hearing today. Hence this Writ Petition is dismissed for  
default.

18.1.2013

Sd/- P.N.RAVINDRAN

/ TRUE COPY /

P.A. TO JUDGE

vk

K.HARILAL, J.

-----  
W.P.(C) No.7069 of 2012  
-----

Dated this the 12<sup>th</sup> day of November, 2015.

JUDGMENT

The petitioners are aided school teachers working in different Aided Schools. While continuing in service they were selected for B.Ed. Course. For attending the said course they were granted leave as per Exts.P1 to P6. As regards the petitioners, except 3 and 4 are concerned, their applications were allowed before the deletion of the proviso to Rule 33(b)(2) of Part I K.S.R., which enables the applicants who take leave for B.Ed. Training Course, to get the benefit that their leave period also would be considered for increment. But, as regards the petitioners 3 and 4 are concerned, their leave applications were sanctioned after the deletion of the said proviso to Rule 33(b)(2) of Part I K.S.R. with effect from 25.4.05. According to the petitioners all the petitioners are entitled to get the benefit of the proviso to Rule 33(b)(2) of Part I

K.S.R., which existed in the Rule before 24.5.2005. But, Exts.P1 to P6 applications were allowed with a condition that their leave period was not to be accounted for increment. Thus, the sum and substance of the grievance projected in this writ petition is that the benefit granted to them under the statute has been taken away by imposing a condition which is contrary to the proviso in the orders sanctioning leave. Hence the writ petition is filed with a prayer, inter alia, to call for records leading upto Ext.P9 and issue a writ in the nature of certiorari or any appropriate writ or direction or order quashing Exts.P1 to P6 to the extent it has imposed that the period of leave sanctioned in favour of the petitioners would not count any service benefits including the pension.

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. The sum and substance of the arguments advanced by the learned counsel for the petitioners is that all the petitioners have filed their respective applications before the deletion of the proviso

granting the benefit of counting the said period of leave for increment before 24.5.2005. Therefore, all the petitioners are entitled to get the benefit of the proviso to Rule 33(b)(2) of part I K.S.R.

4. Per contra, the learned Government Pleader submits that the date of passing the impugned order is relevant for considering the entitlement of benefit and not the date of application. Further, the learned Government Pleader advanced arguments to justify the imposition of condition in the order impugned sanctioning leave of the petitioners.

5. The short point that arises for consideration is, whether the imposition of condition that the leave period cannot be considered for increment and other benefits is justified in view of the proviso to Rule 33 (b)(2) of Part I K.S.R.

6. It stands undisputed that all the petitioners except 3 and 4, were granted leave by the respective orders passed before 24.5.2005. Put it differently, when Exts.P1,P2, P4 and P5 orders were passed, the proviso to Rule 33(b)(2) of Part I K.S.R. was in force.

Needless to say, the condition imposed in the impugned orders to the effect that they are not entitled to get the leave period counted for increment and other benefits stands against the proviso. The benefit which is given by the statute was taken away by imposing a condition contrary to the benefit granted under the statute. I am of the opinion that it is arbitrary and illegal and the respondents ought not to have imposed such a condition contrary to the Rule prevailing at that time. In the above view of the matter, I have no doubt in my mind that the petitioners 1, 2, 5 and 6 are entitled to get the benefit of the proviso which was granted to them by the said Rule. Consequently, the imposition of such condition is liable to be quashed as the same is arbitrary and illegal.

7. As regards the petitioners 3 and 4 are concerned, the 3<sup>rd</sup> petitioner filed application on 1.4.2005 and the 4<sup>th</sup> petitioner filed application on 7.1.2005. It shows that those petitioners also filed applications when the proviso granting benefit to

them was in force. But, the impugned orders sanctioning leave have been passed on 10.10.2005 and 24.8.2005 only and in the meantime, the deletion has come into force with effect from 24.5.2005. Had the respondents passed the orders on their applications within the reasonable time, they also would have got the benefit of the proviso. But, the respondents have taken more than four months to pass orders on their respective applications. Considering the above facts, I am of the opinion that it is not just and proper to deny the benefit of the proviso to them who have filed the applications at the time when the proviso was in force in the statute. They are deprived of the benefit to the proviso due to the inordinate delay from the part of the respondents in considering and passing orders on their applications. In this view, I am of the further opinion that they cannot be put in hardship and financial loss for the delay caused by the respondents in considering their applications.

8. In this view of the matter, I further find that the respondents 3 and 4 are also entitled to get the

benefit of the proviso to Rule 33(b)(2) of Part I K.S.R. In the above view, I am inclined to allow this writ petition granting the benefit of the proviso to Rule 33(b)(2) of Part I K.S.R. to all the petitioners. Consequently, the condition taking away the benefit of proviso, in Exts.P1 to P6, will stand quashed to that extent and it is declared that all the petitioners are entitled to get the benefit of the said proviso. The respondents shall consequently issue appropriate orders in the light of this judgment and cause the same to be recorded in the petitioners' Service Books. 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 petitioners shall be re-fixed and monetary benefits be disbursed.

This writ petition is disposed of as above.

Sd/—  
K. HARILAL, JUDGE

okb.