

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 3346 of 2015 (P)

PETITIONER(S):

**M.RADHAKRISHNAN NAIR AGED 69 YEARS
S/O.KRISHNANKUTTY NAIR, RESIDING AT MANNATHOOR HOUSE
NELLIKODE HOUSING COLONY, CHEVAYUR, CALICUT.**

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY
CULTURAL AFFAIRS DEPARTMENTS, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE KERALA STATE INSTITUTE OF LANGUAGE
REPRESENTED BY ITS DIRECTOR, NALANDA, NANDANCODE
THIRUVANANTHAPURAM.**

**R2 BY ADV. SRI.JAWAHAR JOSE, SC, STATE INSTITUTE OF LANGUAGE
R-R1 BY ADV. GOVERNMENT PLEADER, SMT. M.J. RAJASREE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1- A TRUE COPY OF THE SCHEME OF KERALA GOVERNMENT CULTURAL
INSTITUTION EMPLOYEES PENSION AND GRATUITY RULES 2000.**
- EXT.P2- A TRUE COPY OF THE REPRESENTATION OF THE PETITIONER TO THE
MINISTER OF CULTURAL AFFAIRS.**
- EXT.P3- A TRUE COPY OF THE REPRESENTATION OF THE PETITIONER TO THE
CHIEF MINISTER.**
- EXT.P4- A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
W.A.1238/13 DATED 27.8.2014.**
- EXT.P5- A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
W.P.[C] 999/06 DATED 14.11.2012.**
- EXT.P6- A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
R.P.769/13 DATED 3.1.2014.**

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 3346 of 2015

Dated this the 21st day of July, 2015

JUDGMENT

The petitioner retired as an Assistant Director from the 2nd respondent Organisation on attaining the age of superannuation of 58 years on 28.02.2002. Ext.P1 pension scheme was introduced in the 2nd respondent organisation with effect from 01.05.2000. As per the terms of the scheme, a person who opted for the benefits under the scheme had to retire from service on attaining the age of 55 years. Those, who opted out of the scheme, on the other hand, were permitted to continue in employment till the attainment of 58 years of age. The petitioner is a person, who chose to opt out of the scheme and continue in the service till he attained 58 years of age. Consequently, he retired with effect from 28.02.2002, on attaining 58 years of age. In the writ petition, the petitioner essentially seeks a direction to the respondents to pay the petitioner the benefits of pension and gratuity, that are contemplated in Ext.P1 scheme. Reliance is placed by the petitioner on Ext.P4 judgment for the same.

2. I have heard Sri.V.V.Surendran, the learned counsel appearing for the petitioner as also the Sri.Jawahar Jose, the learned Standing Counsel appearing for the respondents.

3. On a consideration of the facts and circumstances of the

case and the submissions made across the bar, I am of the view that the prayer sought for by the petitioner in the writ petition, for the benefits of Ext.P1 scheme cannot be granted. The petitioner is a person, who of his own volition, opted out of Ext.P1 scheme and chose to continue in service till the age of 58 years. As he had expressly opted out of the scheme, he cannot be permitted at a later stage to claim the benefit of the very scheme from which he had opted out. The reliance placed by the petitioner on Ext.P4 judgment is also misconceived inasmuch as that was a case where the petitioners were persons who opted for the scheme and retired at the age of 55 years instead of 58 years. It is apparent, therefore, that the said judgment can have no application to the case of the petitioner, who had opted out of the scheme. Accordingly, on the basis of the pleadings in the writ petition, I am unable to grant the relief sought for by the petitioner in the writ petition. The writ petition, therefore, fails and is accordingly dismissed.

Counsel for the petitioner would submit that, if the petitioner is not entitled to the benefit of DCRG as contemplated under Ext.P1 scheme, on account of his having opted out of the scheme, he would be entitled to the gratuity, that is payable in accordance with the provisions of the KSR, since that right of his was

recognised in Ext.P5 judgment of this Court, which directed the respondents to release the retirement benefits of the petitioner within one month from the date of receipt of a copy of that judgment. It is not in dispute that the petitioner was also paid an amount of Rs.25,000/- by way of gratuity pursuant to the said judgment. That apart, it is also the case of the petitioner that dehors the provisions of KSR, the petitioner could invoke the provisions of the Payment of Gratuity Act, for the purposes of getting gratuity. Taking note of the said contentions of the petitioner, I feel that this is a matter that the petitioner would have to agitate before the 2nd respondent. Accordingly, I make it clear that, if the petitioner prefers a representation before the 2nd respondent seeking disbursal of gratuity, within a period of three weeks from the date of receipt of a copy of this judgment, then the 2nd respondent shall consider and pass orders on the same within a period of one month thereafter, after hearing the petitioner. Save for this observation with regard to the right of the petitioner to claim DCRG from the 2nd respondent, the writ petition is, otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE