

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).NO. 6165 OF 2013 (U)

PETITIONER(S):

**ALICE M.A., AGED 45 YEARS
LOWER PRIMARY SCHOOL ASSISTANT
STATNONY'S HIGHER SECONDARY SCHOOL, KACHERIPADY
ERNAKULAM, RESIDING AT ANJATTUPARAMBIL HOUSE
PANAMBUKAD, VALLARPADAM P.O., PIN-682 504.**

**BY ADVS.SMT.M.R.SREELATHA
SRI.K.P.SUDHEER**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF GENERAL EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION
ERNAKULAM-682 011.**
- 3. THE DISTRICT EDUCATIONAL OFFICER
ERNAKULAM-682 011.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
THRISSUR-680 001.**
- 5. CORPORATE MANAGER
TERESIAN CARMELITE SISTERS OF ERNAKULAM
ST.TERESA'S CONVENT GIRLS HIGHER SECONDARY SCHOOL
KOCHI-682 011.**

R1-R4 BY GOVERNMENT PLEADER SRI. REFEEK P.K.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1. TRUE COPY OF THE APPOINTMENT ORDER DATED 21/1/2003 ISSUED TO THE PETITIONER.

EXHIBIT P2. TRUE COPY OF THE APPOINTMENT ORDER DATED 9/6/2003 ISSUED TO THE PETITIONER.

EXHIBIT P3. TRUE COPY OF THE APPOINTMENT ORDER DATED 16/09/2003 ISSUED TO THE PETITIONER.

EXHIBIT P4. TRUE COPY OF THE APPOINTMENT ORDER DATED 2/1/2004 ISSUED TO THE PETITIONER.

EXHIBIT P5. TRUE COPY OF THE APPOINTMENT ORDER DATED 2/6/2004 ISSUED TO THE PETITIONER.

EXHIBIT P6. TRUE COPY OF THE APPOINTMENT ORDER DATED 6/1/2005 ISSUED TO THE PETITIONER.

EXHIBIT P7. TRUE COPY OF THE CERTIFICATE SHOWING DECLARATION OF PROBATION OF THE PETITIONER.

EXHIBIT P8. TRUE COPY OF THE ORDER NO.C-3268/06 DATED 16/8/2006 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P9. TRUE COPY OF OPTION AND FIXATION STATEMENT SUBMITTED BY THE PETITIONER DATED 23/8/2006.

EXHIBIT P10. TRUE COPY OF THE REPRESENTATION DATED 14/7/2011 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT THROUGH THE HEADMISTRESS OF ST.ANTONY'S HSS, KACHERIPADY.

EXHIBIT P11. TRUE COPY OF THE REPRESENTATION DATED 2/7/2011 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT THROUGH THE HEADMISTRESS OF ST.ANTONY'S HSS, KACHERIPADY.

EXHIBIT P12. TRUE COPY OF THE REPRESENTATION DATED 25/11/2011 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT THROUGH THE HEADMISTRESS OF ST.ANTONY'S HSS, KACHERIPADY.

EXHIBIT P13. TRUE COPY OF THE LETTER NO.10711/L3/2012/G.END. DATED 2/8/2012 ISSUED 1ST RESPONDENT.

EXHIBIT P14. TRUE COPY OF THE JUDGMENT DATED 3/6/2011 IN WPC NO.10060/2008 AND 32966/2008 PASSED BY THIS HONOURABLE COURT.

EXHIBIT P15. TRUE COPY OF G.O.(P) NO.8/2012/FIN. DATED 5/1/2012 ISSUED BY GOVERNMENT OF KERALA, FINANCE (PRU) DEPARTMENT.

RESPONDENTS EXHIBITS:NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No.6165 OF 2013

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Dated this the 6th day of August, 2015

JUDGMENT

Petitioner has filed this writ petition, aggrieved by the refusal to reckon the broken spells of service rendered by the petitioner under the Corporate Educational Agency, as LPSA/UPSA for the purpose of increments and consequential fixation of her pay.

2. Petitioner was appointed as Lower Primary School Assistant ('LPSA' for short) under the Corporate Management of the Teresian Carmelite Sisters of Ernakulam as per Ext.P6 order dated 6.1.2005 and the same was approved by the Assistant Educational Officer as per endorsement dated 23.5.2005. Prior to the regular appointment, the petitioner has worked under the very same Corporate Educational Agency for the period from 21.1.2003 to 25.3.2003; 9.6.2003 to 2.9.2003; 16.9.2003 to 18.12.2003, 2.1.2004 to 5.3.2004 and from 2.6.2004

to 5.1.2005 as per Exts.P1 to P5 orders. All these appointees were approved from time to time. On her regular appointment, the Manager declared her probation with effect from 25.7.2004, as per Ext.P7 order, under the Rule 6(a) of Chapter XIV A of KER, reckoning her broken spells of service for the period from 21.1.2003 onwards. But when her pay was fixed, as per Ext.P8 order on 16.8.2006 in the scale of Rs.6,680 – 10,790, the Assistant Educational Officer reckoned her service from 2.6.2004 onwards only. The petitioner had submitted her option on 23.8.2006 as per Ext.P9, opting to continue in the pre-revised scale of Rs.4000-6090/- till 28.10.2004. In the statement of fixation of pay, submitted along with the option, petitioner indicated her date of commencement of service as 2.6.2004 and date of option to come over to the revised scale as 28.10.2004, based on which the pay was to be fixed at Rs.7,000/- as on 28.10.2004 with further increments from year to year. The Headmistress also had forwarded the proposal for fixation of pay. But no action was taken.

3. Aggrieved by the refusal to reckon the broken spells of service for the purpose of granting increments and consequent fixation of pay, petitioner submitted Ext.P10 representation, pointing out the senior junior anomaly also, which occurred in her case. It was pointed out that in the case of Smt. Rosy T.X, who was junior to petitioner, pay was fixed at a higher rate reckoning her broken spells of service. Petitioner, despite being senior to Smt. Rosy under the very same management, was drawing lesser pay. She therefore requested for granting increments reckoning all spells of her service and to rectify the anomaly. But the respondents did not consider her grievance. It was followed by Ext. P11 representation before the DEO. All these representations were duly forwarded by the Headmistress of the School with recommendation. As no action was taken, petitioner approached the Government in Ext.P12 representation, pointing out the denial of increment on account of non -reckoning of broken spells of service and requesting for re-option. But Government, without considering the real grievance of the petitioner, regarding

her eligibility for increments and consequent pay fixation, reckoning broken spells of service, rejected the representation, as per Ext. P13 order saying that re-option can be permitted only in cases involving retrospective promotion or change in the scale of pay, taking effect on a date prior to date of option i.e without considering any other requests. It is in the above circumstances, that petitioner has approached this court.

4. The Government filed a counter affidavit, in which also her claim regarding increments towards the broken spells of service is not seen dealt with. The only reason stated for rejection is with respect to eligibility for re-option. It is also stated that the petitioner did not point out the defects in the pay revision at the relevant time. It was further stated that Government had rejected her claim only after examining all materials including her service book.

5. I heard the learned counsel for the petitioner as well as the Learned Government Pleader.

6. The claim of the petitioner is for grant of increments reckoning the broken spells of her service for

the period from 21.1.2003 to 4.1.2005, which is not reckoned while fixing her pay as can be seen from Ext.P8 proceedings of the Assistant Educational Officer. The real grievance of the petitioner is not considered by the authorities, even though the petitioner had been pointing out the same before all the educational authorities even explaining the anomaly of junior drawing higher pay, based on fixation of her pay granting her increments towards broken spells of her service.

7. The petitioner who rendered service in the same post, even if in different scale of pay i.e in pre-revised and revised scale till her regular appointment is entitled to get her pay fixed reckoning the period of actual service by her on the basis of Exts.P1 to P5 orders.

8. The petitioner has relied on Ext.P14 judgment of this court in W. P. (c) No.10060/2008 and 32966/2008 wherein this court had considered the cases of teachers under identical circumstances and held that the petitioners therein are entitled to get increments reckoning the broken

spells of service rendered by them. In this case the Manager has declared the probation reckoning the broken spells of service as in the case of petitioners covered by Ext.P14 judgment. Moreover Rule 6(a) of chapter XIV A of KER provides for counting broken period of duty for the purpose of calculating one year duty for the purpose of probation. The learned Counsel for the petitioner submits that there is every chance for an objection being raised on the ground that she was drawing pay in the pre-revised scale, initially. It is pertinent to note that petitioner was working in the same post/a post in same scale of pay. Such objections were being raised, since the fact that the petitioner had been working during the period prior to her regular appointment in a different scale of pay (pre-revised scale) and cannot in any way affect the benefits due to her on the basis of service rendered by her. On that ground the petitioner cannot be denied the benefit of fixation of pay reckoning the broken spells of service. Since the respondents having considered the real reason for denying her increments is not available either in the order passed by

the Government or in the counter affidavit. Learned counsel for the petitioner furnished a Division Bench judgment of this court in 1996 (1) KLT 555 wherein this court held that on account of revision of pay scales the identity of scale of pay will not be lost on the entire service rendered by the petitioners therein, despite the fact that one was in pre-revised scale and the other was in the revised scale cannot be a factor to deny him regularisation and reckoning their service for the purpose of fixing pay and for the purpose of granting increments.

9. Under the above circumstances, it is declared that the petitioner will be entitled to get the broken spells of service reckoned for him for the purpose of increments and consequential fixation of pay. Since the petitioner was denied fixation of pay by granting her increments at the relevant time, it is the duty of the respondents to see that she is granted an opportunity to submit re-option based on such fixation of pay. Accordingly the writ petition is disposed of directing the respondents to re-fix the pay. Accordingly the writ petition is disposed of directing the

respondents to refix the pay in case the petitioner granting her increments for the reckoned broken spells of service for the period from 21.1.2002 covered by Exts.P1 to P4 orders and to grant her all the consequential benefits for the same. There will be a further direction to grant an opportunity to the petitioner to submit re-option, on the basis of re-fixation being ordered as above. This shall be done within a period of 3 months from the date of receipt of this judgment.

Accordingly this writ petition is allowed.

Sd/-
P.V.ASHA, JUDGE

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