

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 14482 of 2006 (Y)

PETITIONER(S):

**SMT.P.R.LUCY, S.M.U.P.SCHOOL,
NEEDLE WORK TEACHER, VADANAPPALLY, THRISSUR.**

**BY ADVS.SRI.GOVIND K.BHARATHAN (SR.)
SRI.R.V.SUJIT KUMAR
SRI.MANU MOHAN**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. THE MANAGER, S.M.U.P.SCHOOL,
VADANAPPALLY, THRISSUR.**

**R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
R3 BY ADVS. SRI.K.B.GANGESH
SRI.ANIL GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 14482 of 2006 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: PHOTOCOPY OF APPOINTMENT ORDER DTD. 2.6.1986 UNDER RULE 7
CHAPTER 14A OF THE K.E.R.

EXT.P2: PHOTO OF ORDER NO.K.DIS.C-2911/86 DTD. 2.9.1986.

EXT.P3: PHOTOCOPY OF THE ORDER NO.K.DIS.53233/87/RA(2)/DPI DTD.9.7.1987.

EXT.P4: PHOTOCOPY OF THE REVISION PETITION DTD.21.5.1992 FILED BY THE
PETITIONER.

EXT.P5: PHOTOCOPY OF THE JUDGMENT IN OP.4846 OF 1993 DTD.5.4.1993.

EXT.P6: PHOTOCOPY OF THE JUDGMENT IN OP.19051 OF 1995 DTD.17.10.2003.

EXT.P7: PHOTOCOPY OF THE G.O.(MS) 108/2001/G.EDN. DTD.23.3.2001.

EXT.P8: PHOTOCOPY OF G.O.RT. NO.2496/04/G.EDN DTD.17.6.2004.

EXT.P9: PHOTOCOPY OF THE COMMUNICATION NO.G.O.(RT) 5079/05/G.EDN.
DTD.26.10.2005.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14482 of 2006

Dated this the 22nd day of September, 2015

J U D G M E N T

Under challenge in this writ petition are Ext.P8 order and Ext.P9 consequential order in so far as they treat the period spent out of service by the petitioner as leave without allowances and deny her service benefits including pension for the said period.

2. The petitioner was appointed as Needle Work Teacher by the 3rd respondent as per Ext.P1. The Assistant Educational Officer concerned refused to approve the appointment on the ground that there is no sanctioned post. Thereafter, the 3rd respondent approached the higher authorities by way of appeal. As it could not evoke any positive response, a revision was filed before the 2nd respondent, which was rejected as per Ext.P3. Consequently, the 3rd respondent terminated the service of the petitioner with effect from 16.01.1992. The petitioner filed Ext.P4 revision under Section 92 of Chapter XIV A of

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the KER before the 1st respondent. As there was inaction on the part of the 1st respondent in considering the same, the petitioner approached this Court with OP No.4846/1993, which was disposed of, as per Ext.P5 judgment, with a direction to consider the revision petition within a time frame. As no action was taken by the 1st respondent, it resulted in CCC No.274/1994, in which, the 1st respondent filed a counter affidavit producing a document as annexure, wherein it was stated that there is no scope for restoration of the post during 1996-97. The petitioner approached this Court with OP No.19051/1995, which was disposed of, as per Ext.P6, directing the 1st respondent to consider the question of approval of appointment of the petitioner under the 3rd respondent school with notice to the petitioner. There was a clear direction that the petitioner be given a similar treatment as given to 29 other teachers, who were similarly placed. In Ext.P6, there was a reference to Ext.P7 order dated 23.03.2001, by which the Government approved the appointment of 29 Needle Work Teachers. Pursuant to Ext.P6, the 1st respondent approved the appointment of the

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petitioner in the 3rd respondent school with effect from 02.06.1986 (Ext.P8). However, it was stated that the period she spent out of service would be treated as leave without allowances, which would not be counted for any service benefits including pension. At the time of filing this writ petition, the petitioner was working in the SMUP School, Vadanappally. She received Ext.P9 consequential communication in the light of Ext.P8. The definite case of the petitioner is that she is entitled for parity of treatment, which was given to the 29 Needle Work Teachers made mention of in Ext.P7. It is with this background, the petitioner has come up before this Court.

3. In the counter affidavit filed by the 1st respondent, it is contended that the appointment of the petitioner has been approved with effect from 02.06.1986 as per Government Order dated 17.06.2004 and it has been ordered to release her arrears of salary for the period she had actually worked in the school. They point out that the petitioner was retrenched from service with effect from 16.01.1992 as there was no post to accommodate her as per

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the staff fixation order. The period of absence in respect of the petitioner has been regularized from 16.01.1992 to 24.06.2004. The stand taken by them is that Ext.P8 was passed on humanitarian grounds, which would not entitle her to claim any service benefit for the broken service.

4. Arguments have been heard.

5. The question is whether the period of service from 16.01.1992 to 24.06.2004 could be reckoned for pension under the provisions of Part III KSR. The learned counsel for the petitioner submitted that going by Rule 3 of Chapter XXVII B of KER, all the provisions of Part III KSR are made applicable to the aided school service. Rule 31 Part III KSR allows interruptions in service to be counted for pension. It was also submitted that the Government Decision No.8 under Rule 14E of Part III KSR allows reckoning of the period if break occurred is due to reduction of staff strength. According to the learned counsel for the petitioner, the rejection of the claim of the petitioner for pension during the aforesaid period is quite untenable.

6. The learned Government Pleader would submit

that the petitioner was thrown out from service for want of vacancy. It was further pointed out that she was not qualified at the time of initial appointment and therefore, she was not similarly placed as that of the 29 Needle Work Teachers as made mention of in Ext.P7. The said argument would stand terribly watered down for the reason that the Government has approved the appointment of the petitioner for the period, during which she was out of service, reckoning it as leave without allowance.

7. Rule 3 of Chapter XXVII B of KER reads as follows;

The rules on retirement benefits including family pension and death-cum-retirement benefits and all the conditions for the grant of these benefits applicable to Government Servants as laid down in Part III, Kerala Service Rules as amended from time to time shall mutatis-mutandis apply to the teachers governed by the rules in this Chapter.

Rule 31 of Part III KSR reads as follows;

Interruptions - Interruptions in the service of an employee will count for pension provided it is not

specifically laid down in these rules or otherwise ordered by competent authority and recorded accordingly in the Service Book.

Government Decision No.8 under Rule 14E of Part III KSR reads as follows;

- (i) The benefit of counting periods of break as per Note 3 below Rule 31, Part III, Kerala Service Rules will be allowed in cases where the appointment before the break was not provisional or for limited period and the break was due to reduction of staff strength of the institution.
- (ii) In cases not covered by (i) above the actual period of service excluding the periods of break will be reckoned for qualifying service.
- (iii) In cases covered by (i) above the certificate that termination of appointment was due to reduction of staff strength of the institution should be countersigned by the pension sanctioning authority, or Head of the Departments.

8. As rightly pointed out by the learned counsel for the petitioner, the rules under Part III KSR would squarely apply to aided school teachers in the light of Rule 3 of

Chapter XXVII B of KER. Therefore, there need not be any hesitation to hold that the condition in Government Decision No.8 referred to above is squarely applicable to the case of the petitioner. Viewed in that profile, Ext.P8 order and Ext.P9 consequential order cannot be supported.

Therefore, Ext.P8 and Ext.P9 are quashed so far as those orders treat the period spent out of service by the petitioner as leave without allowances. It is hereby declared that the petitioner is entitled to receive the pension, which has been sanctioned to the 29 other Needle Work Teachers, whose appointments have been approved as per Ext.P7. Formal orders to this effect shall be passed within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-