

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 8705 of 2010 (K)

PETITIONER(S):

SMT.RASHEEDA.M,LPSA, VALLAKADAVU LPS,
VALLAKADAVU PO, THIRUVANANTHAPURAM.

BY ADV. SRL.G.SUDHEER

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION(H)
DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
THIRUVANANTHAPURAM.
4. DISTRICT EDUCATIONAL OFFICER,
THIRUVANANTHAPURAM.
5. ASSISTANT EDUCATIONAL OFFICER,
THIRUVANANTHAPURAM.
6. THE MANAGER, VALLAKADAVU LPS,
VALLAKADAVU, THIRUVANANTHAPURAM, PIN 695 008.

R1-R5 BY ADV. GOVERNMENT PLEADER SRI T R RAJESH
R6 BY ADV. SRL.S.K.VINOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPY OF THE APPOINTMENT ORDER DATED 6.11.1995 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER

EXT.P2: TRUE COPY OF THE ORDER G.O(MS) NO126/96/G.Edn.DATED 25.3.1996 ISSUED BY THE 1ST RESPONDENT

EXT.P3: TRUE COPY OF THE ORDER NO.F1-18556/95/K.DIS DATED 8.5.1996 ISSUED BY THE 2ND RESPONDENT

EXT.P4: TRUE COPY OF THE ORDER NO. A4-14094/97/DATED 27.5.1997 ISSUED BY THE 3RD RESPONDENT

EXT.P5: TRUE COPY OF THE LETTER NO.C/3495/96 DATED 1.10.1997 SENT BY THE 5TH RESPONDENT TO THE 3RD RESPONDENT

EXT.P6: TRUE COPY OF THE ORDER G.O (P) NO.175/1999G.EDN DT26.7.1999 ISSUED BY THE 1ST RESPONDENT

EXT.P7: TRUE COPY OF THE ORDER NO. G.O(RT) NO.2704/2000/G.EDN. DT 3.7.2000 ISSUED BY THE 1ST RESPONDENT

EXT.P8: TRUE COPY OF THE ORDER NO. C.5341/99/K.DIS DT 19.8.2000 ISSUED BY THE 5TH RESPONDENT

EXT.P9: TRUE ORDER NO. C.6537/2000/K.DIS DT 21.3.2001 ISSUED BY THE 5TH RESPONDENT

EXT.P10: TRUE COPY OF THE LETTER NO. 9422/H1/03/G,EDN DATED 1.4.2003 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P11; true copy of the letter no.16889/h1 /04/G.EDN DT 17.4.2004 SENT BY THE 1ST RESPONDENT TO THE PETITINER

EXT.P12: TRUE COPY OF THE ORDER IN G.O(RT) NO. 106/05/G.EDN DT 24.05.2005 ISSUED BY THE 1ST RESPONDENT

EXT.P13: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DT 4.1.2009

EXT.P14: TRUE COPY OF THE ORDER NO.7785/H1/09/G.EDN. DT 14.7.2009 ISSUED BY THE 1ST RESPONDENT

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

K. VINOD CHANDRAN, J

W.P(C) No. 8705 of 2010

Dated this the 07th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner was illegally thrown out of service and was kept out for more than two years between 13.01.1998 and 19.08.2000 by virtue of a cancellation made by the 3rd respondent, which according to the petitioner is without jurisdiction.

2. The brief facts to be noticed is that the petitioner was appointed in Vallakadavu LP School, by virtue of Ext.P1 on 06.11.1995. The appointment was a regular one and while the petitioner was continuing, the school itself had to be closed, due to to division fall. The same was occasioned due to acquisition proceedings having been taken for the purpose of constructing an airport in the area and there being no students to attend the school, for reason of the residents having moved out of the area.

3. The Government having taken into consideration the special circumstance, came out with Ext.P2 special order granting protection to 17 teachers of the said school one of whom was the petitioner herein. The petitioner was also re-deployed at Government School as per Ext.P4. While the petitioner was so continuing, the 5th respondent, on a mis-interpretation found that the petitioner's protection is not proper and sought for cancellation of the same. As sought for in Ext.P5 a cancellation is also said to have been effected by the 3rd respondent which order is not produced herein.

4. The cancellation is said to be on the reasoning in Ext.P5; which is that the petitioner herein was not in employment as on 14.07.1996; which alone would enable protection to the petitioner. The said date of 14.07.1996 is with respect to general protection granted as per a subsequent Government Order [G.O (Rt) 3860/1996 Gen. Edn. Dated 28.11.1996. Obviously it is not the

said G.O which granted protection to the petitioner and it was by a special order produced at Ext.P2 that the petitioner was granted protection.

5. The cancellation of the petitioner's protection and deployment was challenged in appeal pending which the petitioner was allowed to rejoin duty as per Ext.P8. The petitioner joined duty on 20.08.2000 and she continued thereafter. The petitioner was also found to have worked in Government High School, Vazhakkulam till the close of the academic year 1996-97 and was granted vacation salary on 01.04.1997 to 03.06.1997 as per Ext.P9. In such circumstance, petitioner was kept out of service from 04.06.1997 to 19.08.2000. The petitioner's appeal was considered and Ext.P10 order was passed regularizing the period kept out of service as eligible leave, however, without treating the service as regular service.

6. A representation was filed against Ext.P10 before the

Government in which the Government replied by Ext.P11 finding that the grant of protection was itself an act of grace and that there is no eligibility for such protection, hence refusing to treat the thrown out period as regular service. Yet another representation resulted in Ext.P11 in which it was directed that the period of non duty would not count for any service benefits including pension.

7. It is to be noticed that the petitioner was granted protection as per a special order and it cannot be said that the petitioner alone was shown grace by the Government. The Government had taken into consideration the special circumstances existing when bringing out a special order. The same has to be given full effect. The petitioner was kept out of service in violation of the special order of protection. The petitioner was kept out of service only on the misapprehension that the petitioner's protection was by way of the general order and not by a special order. In any event, the petitioner admittedly was kept

out of service from 04.06.1997 to 19.08.2000 during which period, petitioner has not worked. Government by Ext.P10 and P11 has treated the same as leave without allowance. However, the petitioner has to be considered to be in service without break and the period spend out of service should be treated as service for the purpose of benefits including pay fixation as also pension. Ext.P12 is modified to that extend. The petitioner definitely will not be entitled to any pay during the said period and would be entitled to notional fixation.

Writ petition would stand allowed. Respondent shall pass orders in accordance with the directions herein above within a period of three months from the date of receipt of copy of this judgment.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge