

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 9714 of 2013 (L)

PETITIONER:

**JACQUILINE JOSEPH, AGED 44 YEARS,
LOWER PRIMARY SCHOOL ASSISTANT, C.M.E.P. SCHOOL,
OCHANTHURUTHU.**

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

RESPONDENTS:

- 1. THE STATE OF KEARLA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM-695001.**
- 2. ASSISTANT EDUCATIONAL OFFICER,
VYPIN-683594, ERNAKULAM DISTRICT.**
- 3. CORPORATE MANAGER,
CENTRAL BOARD OF ANGLO INDIAN EDUCATION, PERUMANOOR,
KOCHI-682015.**

R1,2 BY GOVERNMENT PLEADER SRI. V.K. RAFEEQ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015,
ALONG WITH WPC. 6165/2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

AK

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: TRUE EXTRACT OF SERVICE BOOK OF THE PETITIONER SHOWING THE DETAILS OF SERVICE WITH EFFECT FROM 2-7-1992.
- EXT.P2: TRUE COPY OF ORDER NO. 1900/CB/2006 DATED 31-8-2006 DECLARING PROBATION OF THE PETITIONER WITH EFFECT FROM 20-9-1995.
- EXT.P3: TRUE COPY OF THE PROCEEDING DATED 17-6-2004 GRANTING 10 YEARS GRADE TO THE PETITIONER.
- EXT.P4: TRUE COPY OF THE PROCEEDING DATED 5-12-2009 GRANTING 16 YEARS GRADE TO THE PETITIONER.
- EXT.P5: TRUE COPY OF OPTION SUBMITTED BY THE PETITIONER DATED 12-8-11
- EXT.P6: TRUE COPY OF STATEMENT SHWONG PAY FIXATION OF THE PETITIONER.
- EXT.P7: TRUE COPY OF REPRESENTATION DATED 5-11-11 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P8: TRUE COPY OF THE ORDER NO. 59417/L3/2012/G.EDN. DATED 15-2-13 ISSUED BY THE 1ST RESPONDENT.
- EXT.P9: TRUE COPY OF JUDGMENT DATED 3-6-2011 IN WPC NO. 32966/2008 PASSED BY THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

AK

ANIL K. NARENDRA, J

=====

W.P.(C).No. 9714 of 2013

=====

Dated this the 19th day of October, 2015

JUDGMENT

The petitioner who is working as LPSA in an aided school under the Corporate Management of the 3rd respondent has filed this writ petition seeking a writ of certiorari to quash Exhibit P8 order and seeking a declaration that her broken spells of service commencing from 2.7.1992, as shown in Exhibit P1, are liable to be reckoned along with continuous service for the grant of increments and for pay revision benefits under the pay revision order 2009.

2. Going by the averments in the writ petition, the petitioner commenced her regular service as LPSA under the Corporate Management of the 3rd respondent on 5.6.1995 and her probation was declared with effect from 20.9.1995. Prior to that, the petitioner had broken service commencing from 2.7.1992, the details of which are mentioned in Exhibit P1 extract of her service book. Exhibit P2 is the order declaring her

probation with effect from 20.9.1995. The petitioner's broken service for one year in two continuous years was reckoned for the purpose of declaring probation. From time to time her broken period of service was reckoned for granting increments, and also for sanctioning 10 years and 16 years grades, which is evident from Exhibits P3 and P4 statement of fixation of pay.

3. The petitioner submitted her option for pay revision in the year 2009, with effect from 3.10.2009, vide Exhibit P5 statement of fixation of pay. As on the date of option, she has completed 16 years of service including the broken periods of service. However, the 2nd respondent has taken the stand that her 15 years of service alone can be reckoned for service weightage. Thus the petitioner's pay was fixed ignoring the entire broken service, vide Exhibit P6 statement showing fixation of pay.

4. When the option was objected by the 3rd respondent, the petitioner submitted Exhibit P7 representation dated 5.11.2011 before the Government and the same was rejected by Exhibit P8 order dated 15.2.2013 stating that as per the G.O.(P) No. 145/2006/Fin. dated 25.03.2006, service for the purpose of service weightage means services including broken periods of services qualifying for normal increments in the scale of pay. It is aggrieved by Exhibit P8 order, the petitioner is before this Court in this writ

petition seeking various reliefs. The petitioner has also relied on Exhibit P9 judgment of this Court dated 3.6.2011 in W.P.C.No. 32966/2008 and connected cases in which similar contentions raised by the petitioners therein that the broken service of Aided School Teachers is liable to be reckoned for increments has been accepted by this Court.

5. A counter affidavit has been filed by the 2nd respondent, supporting the reasoning in Exhibit P8.

6. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

7. During the course of hearing, the learned counsel for the petitioner and also the learned Government Pleader has pointed out a judgment of this Court dated 6.8.2015 in W.P.C. No.6165/2013, in which it was declared that the broken spells of services shall be reckoned for the purpose of increments and consequential fixation of pay. In the said judgment, it was also held that, since the petitioner therein was denied fixation of pay by granting increments at the relevant time, it is the duty of the respondents therein to see that she is granted an opportunity to submit re-option based on such fixation of pay. Accordingly, the said writ petition was disposed of directing the respondents therein to fix the pay of the petitioner

therein granting her increments for the broken spells of service for the period from 21.1.2002 covered by Exhibits P1 to P4 orders produced therein and to grant all consequential benefits. It was further directed to grant her an opportunity to submit re-option on the basis of the re-fixation ordered as above. A reading of the aforesaid judgment shows that, it is relying on Exhibit P9 judgment produced in this writ petition, the learned Single Judge disposed of W.P.C.No. 6165/2013 by judgment dated 6.8.2015.

8. Since the issue is covered in favour of the petitioner in the light of the principle laid down in Exhibit P9 judgment and also in the judgment dated 6.8.2015 in W.P.C.No. 6165/2013, I deem it appropriate to dispose of this writ petition declaring that the petitioner shall be entitled to get the broken spells of her service for the period from 2.7.1992, the details of which are shown in Exhibit P1 extract of her service book, reckoned for the purpose of granting increments and consequential fixation of pay. Since the petitioner was denied fixation of pay by granting increments at the relevant time, the respondents shall ensure that she is granted an opportunity to submit re-option based on such fixation of pay. Accordingly, the respondents are directed to refix the pay of the petitioner granting increments after reckoning the broken spells of her service for the period from 2.7.1992 and all consequential

benefits shall be disposed within a period of three months from the date of receipt of a copy of this judgment. There will be a further direction to the respondents to grant the petitioner an opportunity to submit re-option on the basis of re-fixation being ordered as above.

Sd/-
ANIL K. NARENDRAN,
JUDGE.

//True copy//

P.A. to Judge

AK