

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 11229 of 2010 (C)

PETITIONER :

**LAKSHMIKUTTY K.,
HIGHER GRADE TYPIST, INSTITUTE OF MANAGEMENT IN
GOVERNMENT, IMG REGIONAL CENTRE, KOZHIKODE.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA**

RESPONDENTS :

- 1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, PERSONNEL AND
ADMINISTRATION REFORMS (AR13) DEPARTMENT
THIRUVANANTHAPURAM.**
- 2. THE REGIONAL DIRECTOR,
INSTITUTE OF MANAGEMENT IN GOVERNMENT
REGIONAL CENTRE, IMG CAMPUS, KOZHIKODE.**
- 3. THE DIRECTOR,
INSTITUTE OF MANAGEMENT IN GOVERNMENT
THIRUVANANTHAPURAM.**

**R1 BY SENIOR GOVERNMENT PLEADER SRI. SOJAN JAMES
R2 TO R3 BY ADV. SRI.P.C.CHACKO, SC,**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY F THE PROCEEDINGS OF THE KERALA PUBLIC SERVICE COMMISSION DT 3/8/1978.
- P2: COPY OF THE ORDER DT 27/9/1978 ISSUED BY THE GOVERNMENT.
- P3: COPY OF THE ORDER DT 2/12/1978 ISSUED BY THE GOVERNMENT.
- P4: COPY OF THE ORDER DT 13/12/1978 ISSUED BY THE GOVERNMENT.
- P5: COPY OF THE ORDER DT 15/10/2005 ISSUED BY THE GOVERNMENT.
- P6: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE R1 ON 22/3/2010.
- P7: COPY OF THE LETTER DT 22/3/2010 SENT BY THE R2 TO THE SECRETARY TO GOVERNMENT.
- P8: COPY OF THE LETTER DT 22/3/2010 SENT BY THE R2 TO THE R3.
- P9: COPY OF THE ORDER DT 29/11/2010.

RESPONDENT'S EXHIBITS :

- EXT.R3(a): COPY OF THE ORDER DT 19/4/1986 ISSUED BY THE R3.
- EXT.R3(b): COPY OF THE ORDER DT 20/5/2006 VIDE NO. 453/2006/IMG BY INSTITUTE OF MANAGEMENT IN GOVERNMENT, TRIVANDRUM.

//TRUE COPY//

P.A. TO JUDGE

bp

C.K. ABDUL REHIM, J.

W.P.(C)No.11229 of 2010

Dated this the 3rd day of March, 2015

JUDGMENT

The petitioner was appointed as LD Typist (English) in the Administrative Secretariat of the State Government, based on advice made by the Kerala Public Service Commission as per Ext.P2 Memorandum, dated 27/09/1978. While in service she was transferred to the Kerala Institute of Public Administration Kozhikode (KIPA) by virtue of Ext.P3 Memorandum, dated 02/12/1978. As per Ext.P4, she was relieved from the Government Secretariat with effect from 13/12/1978, pursuant to the order of transfer. During the year 1981 KIPA was reconstituted as an autonomous body under the Government and re-named as Institute of Management in Government. Pursuant to the re-constitution of KIPA the employees working there were transferred from the

Government service and treated as employees under Foreign Service of the Government. The 2nd respondent continued to deduct pension contributions of such employees and to deposit the same in the Government treasury. Most of the employees working in the erstwhile KIPA had opted to return to the Government Service, before expiry of the maximum period allowable to continue under the foreign service. But the petitioner had submitted option on 05/11/1985 to continue in the service of the Institute of Management in Government, the autonomous body. The 2nd respondent by virtue of Ext.R3(a) proceedings dated 19/04/1986 had accorded sanction for absorption of the petitioner in the regular service of the Institute of Management in Government, by fixing her pay scale and other benefits. As per Ext.P5 the Government have informed the 2nd respondent that service rendered by the petitioner in the Secretariat can be reckoned for the purpose of time bound grade promotions and for granting of increment etc. subject to

satisfaction of the requisite conditions. In the said letter it was clarified that, service of the petitioner can be treated as re-employment and pension equivalent to gratuity has to be deducted from the salary of the petitioner, if the employee absorbed in the Institute of Management in Government are in receipt of pension for their Government Service. Pursuant to Ext.P5 letter of the Government the 2nd respondent had issued Ext.R3(b) proceedings according sanction for refund of pension equivalent of gratuity deducted from the salary of the petitioner, because she is not in receipt of pension for her Government Service due to lack of minimum qualifying period. Accordingly it is mentioned that the amount of pension deduction has already been refunded.

2. Issue involved in this writ petition relates to a representation made by the petitioner before the Government during the year 2010, copy of which is produced as Ext.P6. The petitioner sought permission from the Government to withdraw the option exercised by

her during the year 1985 to continue in the service of the Institute of Management in Government. In Ext.P6 she had submitted that at the time when she had opted to continue in the service of the Institute, she was under the hope that the Institute will fix better service conditions for their employee and will introduce pensionary benefits. But despite the lapse of many years thereafter, no pensionary benefits was introduced with respect to the service in the Institute. Therefore the petitioner requested the Government to permit her to retire with effect from 31/03/2010, which is the date of superannuation applicable in the Government Service and to treat her as an employee continued in the Government Service, for the purpose of pension and other benefits. This Writ Petition was originally filed seeking direction for consideration of Ext.P6 representation. But during pendency of the Writ Petition the Government have issued Ext.P9 letter rejecting the request contained in Ext.P6. The Government observed that the petitioner had opted

service of the Institute on her own, in the year 1985 and since then she is no longer a Government servant. It was observed that, the petitioner availed all the benefits consequent to her option in the service of the Institute and is still continuing there. The option once exercised cannot be withdrawn and it is observed that the petitioner is still continuing in the service of the Institute, whereas she would have attained superannuation on 31/03/2010, if she was continuing under Government service. Therefore, it is observed that the petitioner cannot be permitted to avail any pensionary benefit eligible to Government employees. By virtue of the amendment effected in this writ petition, the petitioner is now challenging Ext.P9 order.

3. It is evident that, since the reconstitution of the Institute as an autonomous body in the year 1985, the petitioner continued in the service of the Institute under foreign employment, under the Government service, till the year 1985. The petitioner opted to remain in the

service of the Institute, voluntarily as per the option exercised on 05/11/1985. Thereafter she was absorbed into service of the Institute by virtue of Ext.R3(a), as early as on April 1986. She continued in the service of the 2nd respondent till the year 2010. Ext.P6 representation was submitted only at the wake of her attaining the age of superannuation under the Government service. There is no justification in seeking withdrawal of the option at that point of time, after the lapse of about 25 years. Further it is pertinent to note that, the petitioner had continued in the service of the Institute till the age of 60 and she had now retired during the year 2014. Therefore the Government was right in rejecting the request of the petitioner to permit withdrawal of the option and to retire with effect from 31/03/2010, in order to facilitate her to get pensionary benefits. This court do not find any valid reasons to interfere with the decision taken by the Government in Ext.P9. However, it is made clear that the petitioner will

be entitled to claim all benefits due in the service of the Institute by reckoning her prior service put in at the Government Department. She will be also entitled to submit appropriate representation before the 2nd respondent for introduction of pensionary scheme in the service of the Institute.

In the result, the writ petition fails and it is hereby dismissed, however, subject to liberty as mentioned above.

**Sd/- C.K. ABDUL REHIM
JUDGE**

MJL