

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

W.P.(C).No.18052 of 2006 (Y)

PETITIONER(S):-

LOVELY VARGHESE,
L.D.CLERK, NEWMAN COLLEGE, THODUPUZHA.

BY ADV. SMT.I.SHEELA DEVI.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF COLLEGIATE EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.

R1 & R2 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE CIRCULAR NO.54/92/(139)/FIN.
 DATED 6.11.1992 ISSUED BY THE 1ST RESPONDENT.
- EXT.P2 TRUE COPY OF THE GOVERNMENT ORDERR NO.G.O.(P)
 NO.554/84/(597)/FIN. DATED 27.09.1984 ISSUED BY THE
 1ST RESPONDENT.
- EXT.P3 TRUE COPY OF THE REPRESENTASTION DATED 11.6.2002
 SUBMITTED BY THE PETITIONER BEFORE THE
 2ND RESPONDENT.
- EXT.P3(a) TRUE COPY OF THE STATEMENT SHOWING PAY FIXED
 ORIGINALLY AND PAY TO BE FIXED AS PER RE-OPTION
 SUBMITTED BY THE PETITIONER TO THE 2ND
 RESPONDENT THROUGH PROPER CHANNEL.
- EXT.P4 TRUE COPY OF THE FORWARDING LETTER DATED
 31.12.2002 BY THE PRINCIPAL, NEWMAN COLLEGE,
 THODUPUZZHA TO THE 2ND RESPONDENT.
- EXT.P4(a) TRUE COPY OF THE RE-OPTION SUBMITTED BY THE
 PETITIONER DATED 19.12.2002 TO THE SECRETARY
 (FINANCE).
- EXT.P5 TRUE COPUY OF THE PROPOSAL OF REVISED PAY
 FIXATION FORWARDED TO THE 2ND RESPONDENT AS
 PER LETTER DATED 21.06.2003.
- EXT.P6 TRUE COPY OF THE ORDER NO.31336/D3/05 DATED
 24.1.2006 BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.18052 of 2006-Y

Dated this the 30th day of September, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P6, which refused her higher grade and re-option.

2. The brief facts to be noticed, from the records, is that the petitioner was appointed to the post of Peon on 10.06.1986. However, her appointment was approved by the 2nd respondent only from 29.02.1988. Even going by the counter affidavit, it is seen that subsequently a spot verification was conducted at the College under the Diocese of Kothamangalam on 15.02.2000 and the petitioner's appointment was approved with retrospective effect from 10.06.1986, vide order No.F3/50206/99/Coll.Edn. dated 15.03.2000. The counter affidavit also indicates that the earlier approval was on account of certain discrepancies in the records with respect to the promotion/fresh appointment. In any event, the fact remains that the petitioner's appointment was approved from 10.06.1986 in the post of Peon.

3. The petitioner, however, going by the grant of approval of appointment only from 29.02.1988, had exercised the option in the year 1998 for the higher grade taking her entry into service on 29.02.1988. On her being granted approval from 10.06.1986, the petitioner was before the 1st respondent seeking permission for re-option as also for higher grade taking her service to have commenced from 10.06.1986. The Government rejected the same by Exhibit P6.

4. The ground for rejection, as seen from Exhibit P6, is that no retrospective promotion notionally granted, can count for higher grade. However, this Court does not see any sustainable material to find that the petitioner's appointment was by "promotion". The petitioner is said to have been appointed to the post of a Peon, which vacancy arose on promotion of a last grade servant. In such circumstance, there could be no question of a notional appointment. The retrospective effect given is also not notional, since from a reading of the records, this Court is inclined to find that the appointment itself was of 10.06.1986; but, however, due to certain discrepancies in the dates of promotion; the petitioner's appointment was approved only from 29.02.1988.

5. The same having been subsequently approved from 10.06.1986, from which date the petitioner had been continuing in the post, there is also no justification for the ground stated in Exhibit P6, being that notional appointment could not be considered for grant of higher grade and that for computation; the period actually spent in the post could alone be considered. This Court is of the opinion that Exhibit P6 has been passed on a wrong premise that the petitioner's appointment was a promotion and then there was a notional promotion granted with retrospective effect.

6. However, to understand the same, one has to see the approval granted with effect from 29.02.1988 and the later one dated 15.03.2000 which granted approval with retrospective effect from 10.06.1988. Both orders are not seen produced. In the above circumstances, Exhibit P6 would stand set aside; but, however, directing the Government to consider the issue within a period of four months from the date of production of a certified copy of this judgment. The issue of whether the appointment was a fresh appointment or a promotion has to be verified by the Government and if it is found to be an appointment, in which post

the petitioner was continued from 10.06.2006 onwards, then the petitioner has to be granted higher grade computing the initial date of appointment as 10.06.1986 and be permitted to re-opt.

The writ petition is disposed of as above. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]