

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 14703 of 2009 (G)

PETITIONER(S):

**V.N.REMANI, HIGH SCHOOL ASSISTANT (S.S),
VOCATIONAL HIGHER SECONDARY SCHOOL,
BRAHMAMANGALAM, THALAYOLAPARAMBU,
KOTTAYAM DISTRICT.**

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT EDUCATIONAL OFFICER,
KADUTHURUTHY, KOTTAYAM DISTRICT.**
- 3. THE MANAGER, VOCATIONAL HIGHER SECONDARY SCHOOL,
BRAHMAMANGALAM, THALAYOLAPARAMBU,
KOTTAYAM DISTRICT.**

**R1 &2 BY GOVERNMENT PLEADER SRI.SOJAN JAMES
R3 BY ADV. SRI.TOJAN J.VATHIKULAM, ADDL.CGSC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE APPOINTMENT ORDER DT.7/6/93 OF THE PETITIONER**
- P2: COPY OF THE ORDER G.O.DT.20/2/96 ISSUED BY THE GOVERNMENT**
- P3: COPY OF THE ORDER G.O.DT.1/9/97 ISSUED BY THE GOVERNMENT**
- P4: COPY OF THE ORDER G.O.DT.13/7/98 ISSUED BY THE GOVERNMENT**
- P5: COPY OF THE LETTER DT.17/10/98 SENT BY THE DEO, PALA TO THE R1**
- P6: COPY OF THE REPRESENTATION DT.6/11/99 SUBMITTED BY THE PETITIONER TO THE R1**
- P7: COPY OF THE REPRESENTATION DT.7/10/03 SUBMITTED BY THE PETITIONER TO THE R1**
- P8: COPY OF THE REPRESENTATION DT.14/7/06 SUBMITTED BY THE PETITIONER TO THE R1**
- P9: COPY OF THE ORDER G.O.DATED 26/3/2001 ISSUED BY THE GOVERNMENT**
- P10: COPY OF THE ORDER DATED 29/8/02 ISSUED BY THE R2**
- P11: COPY OF THE ORDER G.O.DT.2/9/08 ISSUED BY THE GOVERNMENT**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14703 of 2009

Dated this the 23rd day of September, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P11 order passed by the 1st respondent, by which the period during which the petitioner was thrown out of service to be treated as leave without allowance, which would not be reckoned for any service benefit like increment, fixation of pay, pension, higher grade and accumulation of earned leave though it is found that the petitioner was entitled for protection under Rule 51A of KER.

2. The petitioner alleges that the post of HSA (SS), to which the petitioner was appointed on 07.06.1993, was abolished only during the academic year 1994-95. Hence, according to the petitioner, she was legally entitled to continue as HSA (SS) with effect from 07.06.1993 to 31.03.1995. However, the 3rd respondent illegally prevented the petitioner from discharging her duties

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beyond 03.09.1994; it is alleged. The petitioner points out that the fact that the petitioner was entitled to continue as HSA (SS) up to 31.03.1995 has been admitted by the 2nd respondent in Ext.P5, however, the petitioner was paid salary as HSA (SS) only with effect from 07.06.1993 to 14.07.1993. According to the petitioner, the above action of the respondents is absolutely illegal, arbitrary, unfair, unreasonable and violative of Article 14 of the Constitution of India. The petitioner further alleges that she is entitled to get arrears of salary from 15.07.1993 to 31.03.1995. The 1st respondent, vide Ext.P11, had admitted that the petitioner was legally entitled to get protection. According to her, it is only because of the illegality committed by the 3rd respondent, the petitioner was prevented from continuing in service and also enjoying the benefit of protection. In such circumstances, the 1st respondent ought to have passed orders directing to treat the period during which the petitioner was not allowed to continue as service for all

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purposes; so alleges the petitioner. In this writ petition, the petitioner also prayed for a direction to the 1st respondent to treat the period, during which the petitioner was out of service, as entitled for protection and also treat the said period for all service benefits including increment, fixation of pay, pension, higher grade and accumulation of earned leave.

3. In the counter affidavit filed by the respondent State, they have admitted that the petitioner was eligible for protection under Rule 51A. However, according to them, as there was no post, the petitioner had not been paid salary until she was reappointed and the period spent out of duty from 15.07.1993 to 31.07.2000 was regularized by granting leave without allowance as per GO(Rt) No.3988/2008/G.Edn. dated 02.09.2008 and the period of leave without allowance sanctioned will not count for any service benefits as per existing rules.

4. Arguments have been heard.

5. It is evident from the records now placed on

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board that the post of HSA (SS), to which the petitioner was appointed on 07.06.1993, was abolished only during the academic year, 1994-95. Therefore, according to the petitioner, she was legally entitled to continue as HSA (SS) with effect from 07.06.1993 to 31.03.1995. The definite case of the petitioner is that the 3rd respondent illegally prevented the petitioner from discharging her duties beyond 03.09.1994. It appears from Ext.P5 that the fact that the petitioner was entitled to continue as HSA (SS) up to 31.03.1995 has been admitted by the 2nd respondent. According to the petitioner, this is a case, in which the illegality committed by the Manager has resulted in causing monetary loss to the petitioner, which would squarely fall under Rule 7(4) of Chapter III of the KER. Ext.P8 representation submitted by the petitioner also did not evoke any positive response.

6. The 1st respondent, vide Ext.11, has admitted that the petitioner was legally entitled to get protection. However, as rightly pointed out by the learned counsel

for the petitioner, because of the illegality committed by the 3rd respondent, the petitioner was prevented from continuing in service and also enjoying the benefit of protection. In such circumstances, the 1st respondent ought to have passed orders directing to treat the period, during which the petitioner was not allowed to continue as service for all purposes. In this connection, the learned counsel for the petitioner invited my attention to a decision of the Division Bench of this Court in **Saji v. State of Kerala** [2010 (1) KLT 753], wherein it was observed that the protected teachers are teachers retrenched from aided schools after they have put in a specified period of service. Therefore, such teachers can continue to draw salary from the Government. The orders regarding protection of aided school teachers have been issued by the Government as a social security measure to protect those engaged in teaching from starvation on their retrenchment. Therefore, it was observed that the teachers thrown out from aided schools

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are deployed to suitable vacancies in government schools and the Government have also issued orders providing for appointment of retrenched teachers in other aided schools, especially, in newly opened schools. Viewed in that profile, this Court is of the view that the petitioner is entitled to get the reliefs as prayed for.

In the result, the writ petition is allowed. Ext.P11, to the extent it directs to treat the period during which the petitioner was out of service as leave without allowance, is hereby quashed. The 1st respondent is directed to pay for the period, during which the petitioner was out of service, all service benefits including increment, fixation of pay, pension, higher grade and accumulation of earned leave. Formal orders to this effect shall be passed within a period of two months from the date of receipt of a copy of this judgment. Monetary benefits shall also be released to that effect without any further delay.

Sd/-

A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-