

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937HH

W.P.(C).No.17760 of 2009 (L)

PETITIONER(S):-

NARAYANABHAT, HEAD MASTER, S.G.A.L.P.S. MAYYALA,
P.O.PARAPPDELAMPPADY,
KASARAGOD DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ.

RESPONDENT(S):-

1. STATE OF KERALA,
RERESNTED. BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
SECFRETARIAT, THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
KASARGOD.
3. ASSISTANT EDUCATIONAL OFFICER,
KUMBLA AT BADIADKA.

R1 TO R3 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.17760 OF 2009-L

APPENDIX

PETITIONER'S EXHIBITS:-

- | | |
|---------|---|
| EXT.P1 | TRUE COPY OF THE BODY OF THE JUDGMENT DATED 27.09/2004 IN W.P.(C).NO.20876/04. |
| EXT.P2 | TRUE COPY OF G.O.(MS) NO.63/89/DATED 8.6.1989. |
| EXT.P3 | TRUE COPY OF THE ORDER DATED 2.9.2005. |
| EXT.P4 | TRUE COPY OF THE APPEAL DATED 29.09.2005 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. |
| EXT.P5 | TRUE COPY OF THE LETTER DATED 22.5.2006 ISSUED BY THE 2ND RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE REPRESENTATION DATED 4.8.2006 FILED BY THE PETITIONER. |
| EXT.P7 | TRUE COPY OF THE REPLY DATED 2.12.2006 TOGETHER WITH CARD DATED 8.11.2006. |
| EXT.P8 | TRUE COPY OF THE CERTIFICATE DATED 30.7.1990. |
| EXT.P9 | TRUE COPY OF G.O.(RT).NO.3182/04 DATED 26.07.2004. |
| EXT.P10 | TRUE COPY OF THE JUDGMENT DATED 17.10.2008 IN W.P.(C).NO.28055/2008. |
| EXT.P11 | TRUE COPY OF G.O.(RT).NO.5117/08 DATED 18.11.2008. |

RESPONDENT'S EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.17760 of 2009-L

Dated this the 11th day of September, 2015

JUDGMENT

The petitioner was appointed as a Lower Primary School Assistant [for brevity "LPSA"] on 25.01.1978, in an aided school and was promoted as Assistant-in-Charge from 18.9.1980. The petitioner though contends that he was discharging the functions as a Headmaster, was not appointed as a Headmaster, since the petitioner did not have Account Test qualification. The petitioner qualified the Account Test only in the year 1989. The petitioner was appointed as a Headmaster in 1991. However, the petitioner was granted the regular scale of pay in the post of Headmaster only with effect from 25.01.1993.

2. The petitioner contends that he ought to have been granted the regular scale of pay from the date of his appointment, since Account Test qualification was possible of exemption under sub-rule (3) of Rule 45B of Chapter XIV A of

the Kerala Education Rules, 1959 [for brevity “KER”]. The petitioner also relies on Exhibit P9 Government Order, where, according to the petitioner, similarly placed persons were granted the regular scale of pay.

3. Rule 1(1) of Chapter XXVI of KER prescribes that a Headmaster who had not put in a minimum of 15 years continuous service as a teacher shall not be given the scale of pay applicable to the Headmaster and they shall be given their grade pay and supervision allowance as may be fixed by the Government until they complete the prescribed minimum service. It is based on this rule that the petitioner has been granted the regular scale of pay only with effect from 25.01.1993, when he completed the said 15 years.

4. The said rule was substituted with effect from 15.09.1988. The Headmasters who were promoted prior to that date challenged the same before this court, which resulted in the decision of the Division Bench in **Annet D' Cunha v. State of Kerala [2004 (1) KLT 161]**. This Court found that the Rule has no retrospective effect and does not affect those teachers who are already promoted as Headmasters. It is following the

above binding precedent, the Government brought out Exhibit P9. Exhibit P9 also speaks of only persons appointed as Headmasters prior to 15.09.1988. The petitioner admittedly was promoted only in the year 1991. The petitioner's contention that Account Test ought to have been exempted also cannot be countenanced in view of the Division Bench decision in W.A.No.1015 of 2008 dated 18.09.2009. This Court found that the temporary promotion of an Assistant as a Headmaster is, as per Rule 45C of Chapter XIV A KER and the sub-rules therein provide only charge allowance and not for a regular scale of pay. The teacher-in-charge as per sub-rules (5) and (7) of Rule 45C is entitled only to charge allowance and grade pay.

In the above circumstances, both the contentions of the petitioner have to be negated. The writ petition is found to be devoid of merit and the same is, accordingly, dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]