

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 22332 of 2007 (R)

PETITIONER(S) :

ALICE M.A., W/O. P.F. JOSEPH,
AGED 37 YEARS, PERSONAL ASSISTANT TO JUDGE GR.II
HIGH COURT OF KERALA ON DEPUTATION AS CONFIDENTIAL
ASSISTANT, KERALA STATE LEGAL SERVICES AUTHORITY
RESIDING AT THAIPARAMBIL HOUSE, MOOTHAKKUNNAM P.O.
ANDIPILLIKAVU, ERNAKULAM DISTRICT.

BY ADVS.SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.P.A.KUMARAN
SMT.VINEETHA B.

RESPONDENT(S) :

HIGH COURT OF KERALA,
REPRESENTED BY THE REGISTRAR GENERAL
HIGH COURT OF KERALA, ERNAKULAM.

R,R1 BY ADV. SRI.KRB.KAIMAL (SR.)
R,R1 BY ADV. SRI.B.UNNIKRISHNA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kkj

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER NO.A2-13761/2000 DATED 16.11.2000
ISSUED BY THE RESPONDENT

EXT.P2; TRUE COPY OF THE ORDER NO.A2-13761/2000 DATED 24/11/2000

EXT.P3: TRUE COPY OF THE ORDER NO.A2-63265/2000 DATED 12.04.2002
ISSUED FOR THE RESPONDENT

EXT.P4: TRUE COPY OF THE ORDER NO.A2-63265/2002 DATED 25.06.2002
ISSUED FOR THE RESPONDENT

EXT.P5: TRUE COPY OF THE ORDER NO.A2-1718/2003 DATED 9.03.2003

EXT.P6: TRUE COPY OF THE ORDER NO.A2-5398/2004 DATED 18.03.2004

EXT.P7: TRUE COPY OF THE ORDER NO.A2-86119/2004(1) DATED
17.02.2005 ISSUED FOR THE RESPONDENT

EXT.P8: TRUE COPY OF THE ORDER NO.A2-5398/2004 DATED 14.03.2005

EXT.P9: TRUE COPY OF THE ORDER NO.A2-5398/2004 DATED 14.03.2005

EXT.P10: TRUE COPY OF THE REPRESENTATION DATED NIL ALONG WITH
COVERING LETTER DATED 05.03.2007 ISSUED BY THE MEMBER
SECRETARY, KERALA LEGAL SERVICES AUTHORITY

EXT.P11: TRUE COPY OF THE ORDER NO.A2-17405/2007 DATED 04.07.2007
ISSUED FOR THE RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R1A: TRUE COPY OF THE O.M.NO.A2-5398/2004 DATED 18.03.2004
ISSUED BY THE RESPONDENT

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.22332 of 2007

Dated this the 11th day of February, 2015

J U D G M E N T

The petitioner has filed this writ petition challenging the refusal of the respondent to reckon the period that she was kept out of service due to discharge for want of vacancy as part of her period of probation. It is contended that, if the said period were reckoned, the petitioner would have got promotion to a higher post.

2. The petitioner was appointed as a Confidential Assistant Grade II in the service of the respondent and she joined duty on 20.11.2000. She was on probation. However, on 17.04.2002, as per Exhibit P3 the petitioner was discharged from service due to want of vacancy. The petitioner was later on re-appointed as per Exhibit P4 dated 25.06.2002 and was permitted to join duty on the Forenoon of 24.06.2002. The petitioner completed the prescribed period of probation of two years on 11.03.2003. However,

since her work was not found to be satisfactory, the period of probation was extended up to 11.03.2004. Thereafter, the period was further extended and her probation was declared only on 12.03.2005. Her probation was declared as per Exhibit P8 proceedings dated 14.03.2005. In the meantime, by Exhibit P7 proceedings dated 17.02.2005, she was superseded in the matter of promotion to the next higher grade of Shorthand Writer Grade II. After the declaration of her probation, the petitioner submitted a representation, Exhibit P10 on 05.03.2007 contending that, the period from 17.04.2002 to 24.06.2002 that she had remained discharged from service for want of vacancy should be reckoned for the purpose of computing her period of probation. If so reckoned, it is contended that, she would have completed her probation two months prior to 12.03.2005. Consequently, she would not have been superseded by Exhibit P7, in the matter of promotion.

3. According to Advocate M.R.Hariraj who appears for the petitioner, as per Rule 10A of the Kerala High Court

Service Rules, 1970 (hereinafter referred to as 'the Rules' for short) every person appointed to any category of the service otherwise than by promotion or transfer from some other category shall be on probation for a total period of two years 'on duty' within a continuous period of three years. The expression 'on duty' has been defined in Rule 2 (c) of the Rules to include the period of probation of also. The expression 'Member of service' has been defined in Rule 2(f) to include the period that a person is kept out service for want of vacancy also. It is therefore contended that, the period during which the petitioner was kept out of service for want of vacancy should taken into account for the purpose of reckoning the period of probation. The counsel places reliance on Rule 19 of Part-II KS & SSR to contend that, the said provision stipulates the manner in which probation would be suspended while discharging a person from service for want of vacancy. In the absence of any such provision in the Kerala High Court Service Rules, it is contended that the petitioner continued to be on

probation even during the time that was she had been discharged from service as stated above.

4. Advocate Unnikrishna Kaimal appears for the respondent. A counter affidavit has been filed. According to the counter affidavit, the probation of the petitioner had been computed properly and in accordance with the Rules. The petitioner had been ousted from service during the period from 17.04.2002 to 24.06.2002, for a period of 67 days. She had availed leave for a period of 45 days. Thus, her probation had to be extended by a period of 112 days. Her probation was declared 12.03.2005. The period of 112 days could not be counted for computing the period of probation. This is for the reason that, Rule 2(c) stipulates the reckoning of only the period that a person had spent 'on duty' to be taken into account. It is further contended that, in view of Rule 16A of the Rules, the petitioner was not eligible to be considered for promotion, her probation not having been successfully completed as on the date of issue of Exhibit P7. It is therefore contended that, this writ

petition is only to be dismissed.

5. Heard. It is not in dispute that, the petitioner had been discharged from service for want of vacancy on 17.04.2002 and that she had remained out of service up to the date of her reappointment on 24.06.2002. The limited question is whether the said period could be treated as 'on duty'.

6. Sub rules a and b of Rule 10 reads as follows:-

10.Probation:-

(a) Every person appointed to any category of the service otherwise than by promotion or transfer from some other category in the service shall be on probation for a total period of two years on duty within a continuous period three years.

(b) Every person appointed to any category of the service by promotion or transfer from some other category in the service shall be on probation for period of one year on duty within a continuous period of two years.

The above provision stipulates that, every person appointed to any category of service shall be on probation for a total period of two years 'on duty' within a continuous period of three years. It is clear from the wordings of the above

provision that, a person has to be 'on duty' for a total period of two years. Rule 2(c) of the Rules reads as under:-

Duty - A person is said to be "on duty" as a member of the service.

(1) When he is performing the duties of a post borne on the cadre of the service is undergoing probation; or

(2) When he is on joining time;or

(3) When he is absent from duty during vacation or on authorised holidays or on casual leave taken in accordance with the instructions regulating such leave issued by the State Government, having been on duty immediately before and immediately after such absence.

The above provision makes it clear that, a person is said to be treated as a 'Member of the service' under the three sets of circumstances mentioned therein. The circumstances are the following:-

(1) When he is performing the duties of a post borne in the cadre of the service is undergoing probation; or

(2) When he is on joining time;or

(3) When he is absent from duty during vacation or on authorized holidays or on casual leave taken in accordance

-:7:-

with the instructions regulating such leave issued by the State Government, having been on duty immediately before and immediately after such absence.

Therefore, a person can be said to have been on duty as a member of the service only under the circumstances mentioned in the above Rule. It is clear from the above Rule that, a person ought to have performed duties of the post borne on the cadre or should have been a probationer. Therefore, a person who has not performed duties cannot be said to come within the scope of the above provision.

7. Section 2(f) defines 'Member of the service' in the following words:

"Member of the service" means a person who has been appointed to the service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service, or been discharged otherwise than for want of a vacancy and may be a probationer, an approved probationer, or a full member. (**emphasis supplied**)

The above definition makes it clear that Member of the service means a person who has been appointed to service and who has not

1. been retired or resigned,
2. been removed or dismissed,
3. been substantively transferred or reduced to another service,

or been discharged otherwise than for want of vacancy. Therefore, it is contended that, a person who has been discharged for want of vacancy would remain a member of the service.

8. Even if the above contention is accepted, the fact remains that, the petitioner has not performed her duties during the period that she was kept out of service having been discharged for want of vacancy. The object of placing a person on probation is for the purpose of assessing the quality of the person's work and his/her manner of discharge of duties. The said very purpose would be defeated if the period that a person was kept out of service is held entitled to be reckoned as probation. Any such approval would also be against the tenor of Rule 2(c) of the Rules. Therefore, it is held that the period that the

petitioner was kept out of service, having been discharged for want of vacancy, is not liable to be treated as part of her period of probation.

9. It is contended by the counsel for the petitioner that, Rule 19 Part II of the KS&SSR contains a specific provision namely suspension of the period of Probation for discharging a person for want of vacancy. It is true that, Rule 19 contains such a provision. But such a provision is absent in the present Rules. Even under Rule 19, it is not mandatory that a person who is discharged for want of vacancy during probation should also have his probation suspended. The user of the word 'may' indicates that it is only discretionary. The fact that such a provision is conspicuously absent in the High Court Service Rules only supports the conclusion that such a procedure is not contemplated by these Rules.

10. Apart from the above, the petitioner had not challenged Exhibits P5, P6 and P8 orders by which her probation was extended, at the appropriate time. This writ

petition is seen filed only in the year 2007, though the said orders were of the years 2003,2004 and 2005. There is no explanation for the delay. As per Exhibit P7, though the petitioner had been superseded on 1.7.2005, the said order has not been challenged even in this writ petition. Exhibit P8 proceedings by which the representation submitted by the petitioner was rejected is also not challenged.

For the above reasons, I do not find any grounds to interfere with the impugned orders or to grant any of reliefs sought for. This writ petition is therefore dismissed.

**K.SURENDRA MOHAN,
JUDGE**

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