

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 29187 of 2004 (Y)

PETITIONER :

**JOSE JOSEPH, AGED 54 YEARS,
S/O.JOSEPH, KORATTIYIL HOUSE,
KALAKETTY P.O., KOTTAYAM DISTRICT.**

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENTS :

***1. CORPORATE MANAGER, CORPORATE,
EDUCATIONAL AGENCY OF CARMELITE SCHOOLS PRIOR,
GENERAL'S HOUSE P.B.NO. 1056, MONASTRY ROAD,
COCHIN-11. (DELETED)**

***THE NAME OF FIRST RESPONDENT REMOVED AND DELETED FROM
THE PARTY ARRAY AT THE RISK OF THE PARTY AS PER ORDER DT 7/1/2005
IN IA 16828/2004**

**2. THE DISTRICT EDUCATIONAL OFFICER,
KANJIRAPALLY.**

**3. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.**

**4. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, TRIVANDRUM.**

**5. ADDITIONAL SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION (A) DEPARTMENT, SECRETARIAT
TRIVANDRUM.**

**6. DEPUTY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION (A) DEPARTMENT, SECRETARIAT
TRIVANDRUM.**

**7. THE CORPORATE MANAGER,
ST.JOSEPH'S CORPORATE EDUCATIONAL AGENCY OF
C.M.I. SCHOOLS, KOTTAYAM.**

WP(C).No. 29187 of 2004 (Y)

**8. THE DISTRICT EDUCATIONAL OFFICER,
PALAI.**

**R7 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
BY ADV. SRI.C.P.SIVADASAN NAIR
R2 TO R6 & R8 BY GOVERNMENT PLEADER SRI. SOJAN JAMES**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE PROCEEDINGS F THE R1 DT 30/6/1992.
- P2: COPY OF THE ORDER PASSED BY THE R3 DT 20/5/1993.
- P3: COPY OF THE ORDER OF THE R4 DT 9/2/1994.
- P4: COPY OF THE APPEAL PETITION FILED BY THE PETITIONER BEFORE R5 DT
NIL.
- P5: COPY OF THE JUDGMENT IN OP 1543/1998.
- P6: COPY OF THE ORDER PASSED BY THE R5 DT 1/7/1994 G.O. RT
NO. 2241/94/GEN.EDN.
- P7: COPY OF THE NOTES OF ARGUMENT SUBMITTED BY THE PETITIONER
BEFORE THE R5 DT 13/8/1998.
- P8: COPY OF THE ORDER OF THE R5 DT 18/8/1998 G.O.RT NO. 3644/98/EN.EDN.
- P9: COPY OF THE JUDGMENT IN O.P. 25515 OF 1998 AND 19798 OF 2002
DT 11/12/2003.
- P10: COPY OF THE NOTES OF ARGUMENT DT 23/5/2004 FILED BEFORE THE R6.
- P11: COPY OF THE ORDER DT 13/8/2004 OF THE R8.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V.RAMAKRISHNA PILLAI, J.

= = = = =

W.P(C) No.29187 of 2004

= = = = =

Dated this the 18th day of September, 2015

JUDGMENT

The petitioner while working as High School Assistant of Sacred Heart School at Thevara under the first respondent was transferred from there to the St. Antony's High School at Poonjar under the same management as per order dated 30.6.1992.

2. The matter is with regard to the break of service of the petitioner for a period of 150 days i.e. from 1.7.1992 to 30.9.1992 and from 31.3.1993 to 31.5.1993. The petitioner was initially appointed as HSA on 15.1.1974. Subsequently, he was appointed at Sacred Hearts College at Thevara from where he was transferred to Poonjar as above. The break of service was found to be for a period as above and the same was not approved by the authorities concerned. The petitioner moved O.P No.25515 of 1998 and by Ext.P9 judgment this Court directed that the break of service be approved and as he has not claimed salary or other enhancements for the same. Despite the same, Ext.P11 order was passed by the 8th respondent. The petitioner alleges that the 8th respondent has not considered anything in Ext.P11 in spite of the clear direction of

this Court in Ext.P9 judgment. It is with this background, the petitioner has approached this Court.

3. In the counter affidavit filed by the respondent State, they have contended that the petitioner was transferred to Poonjar by the 1st respondent against the vacancy in Mathematics, though he was worked as HSA in Natural Science in the Sacred Heart, Thevara. The 2nd respondent, who is the District Educational Officer, did not approve the transfer on the ground that the subject ratio was not satisfied. Against the decision of the DEO, the respondents requested the Deputy Director of Education, Kottayam to approve the transfer on the ground that the conditions made mention of in the Government order dated 11.10.1998 need not be applied to those teachers who were appointed prior to 11.10.1988. The request was rejected since the subject ratio in terms of the Government order dated 11.10.1988 and Rule 43 of Chapter XIV A KER was required to be observed. The definite stand taken by them is that the transfer of the petitioner from Thevara to Poonjar was not in conformity with the subject ratio in force and the same was not approved by the DEO. They would further contend that the break of service of the petitioner is due to the fault of the 1st respondent.

4. Arguments have been heard.

5. The learned counsel for the petitioner submitted that the petitioner has not claimed any salary or other emoluments during the period of break. The fact that he was ready to forgo his salary and other emoluments can be discerned from Ext.P9 judgment also. According to the learned counsel for the petitioner, the break of service could be adjusted with any type of eligible leave.

Therefore, the writ petition is disposed of directing the respondents to reckon the period of break for all service benefits, except for the salary during that service period. 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.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj