

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 20487 of 2012 (I)

PETITIONER(S) :

GEETHA M.K. ,
HIGH SCHOOL ASSISTANT (HSA) ,
RAMANATTUKARA HIGHER SECONDARY SCHOOL (AIDED) ,
P.O.VYDIARANGADI, MALAPPURAM-673 633.

BY ADV. SRI.R.K.MURALEEDHARAN.

RESPONDENT(S) :

1. THE STATE OF KERALA,
REP.BY SECRETARY TO GENERAL EDUCATION,
THIRUVANANTHAPURAM - 695 001.
2. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM - 676 505.
3. THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM - 676 505.

BY GOVERNMENT PLEADER SRI.NOUSHAD THATTATHIL.

THIS WRIT PETITION (CIVIL)HAVING BEEN FINALLY HEARD
ON 05/02/2015, THE COURT ON 22/05/2015 DELIVERED THE
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1- A TRUE COPY OF THE RELEVANT PAGE OF THE SERVICE BOOK
 OF THE PETITIONER.
- EXT. P2- A TRUE COPY OF THE FORM OF OPTION DATED 22/07/2006 AND
 STATEMENT OF FIXATION.
- EXT. P3- A TRUE COPY OF THE RECTIFICATION REPORT ON THE AUDIT
 OBJECTION ALONG WITH THE COVERING LETTER DATED
 19/01/2011 OF THE 2ND RESPONDENT.
- EXT. P4- A TRUE COPY OF THE GO(P)NO.8/2012/FIN. DATED
 05/01//2012.
- EXT. P5- A TRUE COPY OF THE FORM OF OPTION.
- EXT. P5 (A) - A TRUE COPY OF THE STATEMENT OF FIXATION.
- EXT. P5 (B) - A TRUE COPY OF THE CHELAN RECEIPTS.
- EXT. P6- TRUE COPY OF THE ENDORSEMENT IN PAGE 31 OF THE SERVICE
 BOOK OF THE PETITIONER.
- EXT. P7- A TRUE COPY OF THE COMMUNICATION OF THE 2ND RESPONDENT
 DATED 07/04/2012.
- EXT. P8- A TRUE COPY OF THE COVERING LETTER OF THE HEADMASTER.
- EXT. P8 (A) - A TRUE COPY OF THE OBJECTION ENDORSED ON THE REVERSE
 SIDE OF EXT.P8.
- EXT. P9- A TRUE COPY OF THE JUDGMENT IN WP(C)27860/2007 DATED
 27/09/2011.
- EXT. P(A) - A TRUE COPY OF THE RELEVANT PAGES OF THE JUDGMENT IN
 WP(C)NO.7284/2011 DATED 27/09/2011.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20487 of 2012

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Dated this the 22nd day of May, 2015

JUDGMENT

Aggrieved by the direction of the 3rd respondent to refund the alleged excess pay till date, the petitioner has come up before this Court.

2. The petitioner joined the service as HSA in Ramanattukara Higher Secondary School, which is an aided school coming under the 3rd respondent on 1.6.1998. She participated in a strike held on 11.12.1998. The day of the strike was treated as dies non, which according to her, is illegal as Rule 14A of Part I KSR was deleted in 1988 and re-introduced only in 2005.

3. The petitioner opted 1.6.2006 as the date for 2004 pay revision which was accepted by the Government and pay was fixed accordingly. After five years, the 2nd respondent objected the same treating the struck work as dies non. The period was regularised as

leave without allowance and the petitioner remitted the pay for one day. However, the objection was not overruled. In the meanwhile, Ext.P4 Government order was issued permitting the petitioner to exercise re-option and she exercised re-option opting 2.6.2006 as the date of effect of option instead of 1.6.2006.

4. The re-option submitted to the 2nd respondent was relegated to the 3rd respondent directing to re-fund the excess pay till date. The 3rd respondent also directed to remit the excess pay upto the date of submitting the re-option. This, according to the petitioner, is illegal. She points out that there was no fault on her part and that the objection was raised after five years. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the State, they have contended as follows:

It was stated that as per fixation rules, the service reckoned for normal increment shall be counted for reckoning service

weightage. The day 11.12.1998 was regularised by granting leave without allowance on private affairs. Leave without allowance granted on private affairs as per Rule 88, Part I KSR will not be counted for normal increment. Therefore, the petitioner did not have 8 years service for reckoning weightage as on 1.6.2006. The Government had given a chance to the petitioner to re-opt the pay revision as per order dated 5.1.2012. However, the benefits consequent to re-option is admissible only with effect from the date of filing of re-option. In the case of the petitioner, the date of filing of re-option was 1.2.2012. Therefore, according to them, the petitioner is not entitled to get the relief prayed for.

6. Arguments have been heard.

7. The petitioner is aggrieved by Exts.P7 and P8(a) communications of the 2nd respondent and the endorsement by the 3rd respondent directing her to remit the entire arrears as on the date for accepting the re-option. This, according to the petitioner, is illegal

and liable to be quashed. The petitioner exercised the option in 2006 which was accepted and pay was fixed accordingly.

8. After five years, the 2nd respondent objected the fixation stating that the struck day i.e.11.12.1998 should not have been counted for completion of eight years service. After the objection was raised, pursuant to Ext.P4 Government order, the period was regularised as leave without allowance and the pay for one day was re-funded by the petitioner and she exercised re-option changing the date of effect of option from 1.6.2006 to 2.6.2006. By Ext.P7, the 2nd respondent relegated the petitioner to the 3rd respondent observing that the petitioner has to remit excess pay upto date and after submitting the same to the 3rd respondent. The 3rd respondent as per Ext.P8(a) directed the petitioner to remit the excess pay till the date of exercise of re-option.

9. It is relevant to note that the option was exercised by the petitioner in 2006 and no objection was raised till 2011. The delay in

objecting the option exercised by the petitioner by respondents 2 and 3 shall not prejudice the petitioner as there was no fault on her part. The day 11.12.1998 was illegally treated as dies non since Rule 14A of Part I KSR relating to dies non was deleted in 1988 and it was restored only in the year 2005. However, by Ext.P6, the period was regularised as leave with allowance. Therefore, the present objection to remit the entire excess pay till date of re-option cannot be justified.

10. The Apex Court in **Aliyamma Varghese v. Secretary General Education Department** [2007 (3) KLT 700] has observed that recovery from pay on account of audit objection after a long period of time is improper. In **Registrar of Co-operative Societies v. Israil Khan** [2009 (4) KLT SN 61], the Apex Court had narrated the circumstances under which the excess payment made to a Government servant can be recovered. It was observed that recovery of payment made to a Government servant in the lower rungs of service after he spent the amount he received is highly unjustifiable.

11. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed. Exts.P7 and P8 (a) are quashed. The respondents shall accept Exts.P5 & P5(a) and grant all consequential benefits to the petitioner *de hors* clause 4 (iii) of Ext.P4. Formal orders to this effect shall be issued within three months from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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