

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C) .No. 24780 of 2009 (N)

PETITIONER(S) :

JOSEPH JOHN,
RETIRED PRINCIPAL, MARTHOMA HIGHER SECONDARY SCHOOL,
CHUNGATHARA, THAZHAYII HOUSE, MYANDYANI,
CHANDAKUNNU, NILAMBUR, MALAPPURAM DISTRICT.

BY ADVS.SRI.ABRAHAM VAKKANAL (SR.)
SRI.PAUL ABRAHAM VAKKANAL
SRI.DIJO SEBASTIAN
SMT.VINEETHA SUSAN THOMAS

RESPONDENT(S) :

1. THE STATE OF KERALA
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.
- *3. REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
MALAPPURAM DISTRICT.

(*THE WORD REGIONAL IS DELETED AS PER ORDER DATED 08.02.2012 IN
IA.1973/2012)

4. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.
5. THE DISTRICT EDUCATIONAL OFFICER,
WANDOOR, MALAPPURAM.
6. THE ACCOUNTANT GENERAL (A&E) ,
KERALA, THIRUVANANTHAPURAM.

R4 BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1 TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 04/07/1977.

EXT.P2 TRUE COPY OF THE APPOINTMENT LETTER ISSUED TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE STATEMENT OF FIXATION OF PAY IN THE REVISED PAY SCALE ISSUED TO THE PETITIONER.

EXT.P4 TRUE COPY OF THE STATEMENT OF FIXATION OF PAY OF PRINCIPAL IN THE HIGHER GRADE.

EXT.P5 TRUE COPY OF THE STATEMENT OF FIXATION OF PAY HIGHER GRADE (27 YEARS) IN AN AIDED SCHOOL ISSUED BY THE 3RD RESPONDENT.

EXT.P6 TRUE COPY OF THE LETTER DATED 03/04/2008 ISSUED BY THE 4TH RESPONDENT.

EXT.P7 TRUE COPY OF THE LETTER DATED 15/04/2008 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.P8 TRUE COPY OF THE LETTER DATED 28/04/2008 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P9 TRUE COPY OF THE REPRESENTATION DATED 02/06/2008.

EXT.P10 TRUE COPY OF THE LETTER DATED 23/06/2008.

EXT.P11 TRUE COPY OF THE LETTER DATED 23/06/2008 ISSUED BY THE 4TH RESPONDENT.

EXT.P12 TRUE COPY OF THE LETTER DATED 16/07/2009.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.24780 of 2009

Dated this the 15th day of October, 2015

JUDGMENT

The petitioner entered service as a probationary UPSC as evidenced by Ext.P1. On 18.1.1978, the petitioner was appointed as a probationary HSA (Designation) as per Ext.P2. By Exts.P3 to P5, respondent No.5 has granted fixation of pay in the Higher Grade. However, by Exts.P8 and P12, respondents 2 and 4 denied the Higher Grade stating that the petitioner would become eligible for higher grade only if he has completed 27 years of qualifying service by computing the period of service as HSA and Principal. The petitioner points out that the same is against the dictum laid down by this Court in Ext.P14 judgment. It is with this background the petitioner has come up before this Court.

2. Arguments have been heard.

3. In the counter affidavit filed by the State, it was

contended that as per G.O.(MS) No.299/90/28/Fin. dated 5.5.1990, Government have clarified that the Headmaster's higher grade would be allowed to Headmasters of secondary schools and equated categories who have put in 7 years of service as Headmaster/Assistant Educational Officer or 27 years of total service as High School Assistant and Headmaster of HS/Training school, Assistant Educational Officer taken together. Therefore, according to the respondent, in the light of G.O. dated 5.5.1990, the petitioner is eligible for Headmaster's higher grade reckoning the services as HSA and Headmaster only.

4. I have heard the learned senior counsel for the petitioner and the learned Government Pleader in the matter.

5. The objection raised by the respondent is that the petitioner does not have qualifying period of 27 years for granting higher grade since he appointed as HSA only on 1.2.1978. The petitioner entered into service as UPSA on 12.7.1977.

6. The learned senior counsel would argue that the 4th respondent ought to have considered the date on which the petitioner entered into service as teacher. Ext.P7 letter was sent by the petitioner on 15.4.2008 before the 4th respondent clarifying the said position. However, the same was rejected by Ext.P8 stating that by Government order dated 5.5.1990, he would become eligible for higher grade only if he has completed 27 years of qualifying service by computing the period of service as HSA and Principal.

7. The learned senior counsel for the petitioner would submit that the reasoning of the 4th respondent is erroneous in the light of the decision of this Court in Writ Appeal No.692/1995. The learned senior counsel invited my attention to the decision which is produced and marked as Ext.P14. In that case, the Division Bench considered the ambit of the Government Order which provided that Headmasters of Secondary Schools would be allowed higher grade on completion of seven year's service as Headmaster or 27 years of total service as

Teacher. The contention of the State in that writ appeal was that the said period of 27 years is with reference to a teacher in the High School. The Division Bench observed that such a restrictive interpretation is quite unwarranted in view of the explicit language employed by the Government in the said order. It was also observed that the period of 27 years is quite long and it could not have been the intention of the Government that the incumbent should have been a teacher for 27 years in the High School itself. Therefore, it was observed that it is enough that he had rendered 27 years' service as teacher whether in the High School wing or in any other wing of the school. Viewed in that profile, the petitioner is entitled to the relief as prayed for.

In the result, this writ petition is allowed. Exts.P8, P12 and P13 are quashed.

It is hereby declared that the petitioner is entitled for 27 years higher grade and the service benefits as well as the pensionary benefits. The respondents are directed to sanction 27 years of higher grade and sanction the

service benefits as well as the pensionary benefits accordingly and disburse the same to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE