

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 25120 of 2012 (L)

PETITIONER(S):

**K.M. VICTORIA, AGED 52 YEARS,
WIFE OF MATHEW JOSEPH,
HIGH SCHOOL ASSISTANT (MALAYALAM),
ST.JOSEPH'S HIGH SCHOOL, MATHILAKAM,
THRISSUR DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR AT AYYANTHOLE-680 003.**
- 3. THE DISTRICT EDUCATIONAL OFFICER,
IRINJALAKUDA, THRISSUR DISTRICT-680 121.**
- 4. THE HEADMASTER,
ST.JOSEPH'S HIGH SCHOOL, MATHILAKAM,
THRISSUR DISTRICT-680 685.**

**R1 TO 3 BY GOVERNMENT PLEADER SRI.P.K.ABDUL RAHMAN
R4 BY ADVS. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

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

PJ

APPENDIX

PETITIONER(S) EXHIBITS

- P1- TRUE COPY OF THE LETTER NO.32/2000 OF THE HEADMASTER ALONG WITH RELEVANT PAGE OF THE AUDIT OBJECTION.
- P2- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE GOVERNMENT DATED 7/2000.
- P3- TRUE COPY OF THE ORDER NO.G3/4786/99 OF THE 2ND RESPONDENT DATED 13.10.2010.
- P4- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE HEADMISTRESS OF THE SCHOOL DATED 29.11.2010.
- P5- TRUE COPY OF THE ORDER NO.B1.2527/11 L.DIS. DATED 19.12.2011 OF THE 3RD RESPONDENT.
- P6- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT ON 05.2.2012.
- P7- TRUE COPY OF THE LETTER NO.55793/E3/2011/G.EDN. DATED 9.3.2012 OF THE GOVERNMENT.
- P8- TRUE COPY OF THE ORDER NO.B4-2919/2012 OF THE 3RD RESPONDENT DATED 18.5.2012.
- P9- TRUE COPY OF THE LETTER NO.55793/E3/11/G.EDN. DATED 18.09.2012 OF THE GOVERNMENT.
- P10- TRUE COPY OF THE G.O.(MS).NO.74/68/EDN. DATED 24.2.1968 OF THE GOVERNMENT.
- P11- TRUE COPY OF THE G.O.(MS).NO.67/69/EDN. DATED 5.2.1969 OF THE GOVERNMENT.
- P12- TRUE COPY OF THE DECISION REPORTED IN 2009(4) K.L.T. SHORT NOTES 61 (C.NO.53) SC DATED 8.10.2009.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M. SHAFFIQUE, J.

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W.P. (C) No. 25120 of 2012

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Dated this, the 9th day of November, 2015

J U D G M E N T

Petitioner has approached this Court seeking to quash Ext.P9 order in so far as it has upheld Ext.P10 audit objection and to declare that the sanction of higher grade on 1/11/1996 counting pre-resignation period in view of Government Order dated 5/2/1969 is legal and valid.

2. The short facts involved in the writ petition would disclose that the petitioner was granted ten years higher grade on 1/11/1996 counting all broken service. The Deputy Director of Education objected the grant of 10 years Higher Grade stating that the pre-resignation period will not count for any service benefits. Audit objection was served to the petitioner by the Headmaster, which was replied by the petitioner as per Ext.P2. Though no reply was received from the Government, the Deputy Director of Education by Ext.P3 directed the Headmistress to take necessary steps to implement the audit objection. Petitioner submitted Ext.P4 letter dated 29/11/2010 to the Headmistress. By

Ext.P5 dated 19/12/2011, District Educational Officer directed the Headmistress not to pay salary to the petitioner. The petitioner approached the Government by filing representation dated 5/2/2012. Though Ext.P5 order was stayed as per order dated 9/3/2012, the Government by Ext.P9 rejected the request of the petitioner for dropping the audit objection. Petitioner relies upon Exts.P10 and P11 Government Orders and also Government Order dated 2/5/1973 by which it is contended that all the restrictions for counting broken period of service has since been dropped by the Government w.e.f. 1/1/1973.

3. Counter affidavit has been filed by the 2nd respondent *inter alia* stating that petitioner was granted ten years higher grade by counting all broken service including pre-resignation service, which exceeds the prescribed limit of one month, which was objected at the time of audit of accounts. It is stated that as per Government Order dated 26/10/2008, approved service in Aided School will be counted for the sanction of the higher scale of pay to Government school teachers. Further reference is made to Government Order dated 5/2/1969 which says that the break in service could be condoned.

4. Learned counsel for petitioner made reference to GO (MS) No.62/73/S.Edn dated 2/5/1973 and clause (viii) being relevant, is extracted below:-

“(viii) Reckoning of service for grant of higher grade

In lieu of continuous teaching service insisted on for the purpose of sanction of higher grade to teachers, total teaching service will count for higher grade to teachers. This concession shall take effect only from 1.1.1973. Arrears will also be given with effect from 1.1.1973.

All types of service which are even now considered for higher grade will continue to be considered for the purpose. However, breaks in service exceeding 5 years will be reported to the Director of Public Instruction for consideration of the service before the break. Requests for condonation of break under the existing rules to enable teachers to get the higher grade earlier than 1.1.1973 which are pending with the Department and Government will continue to be considered and sanctioned under the existing rules. Future requests for condonation will not however be entertained.

The question of counting the training period for increment to teachers is under examination of Government.”

In view of the Government Order referred above, it is rather clear

that continuous teaching service is not insisted for the purpose of sanction of higher grade to teachers total teaching service. The total teaching service of course had to be taken into consideration as far as the petitioner is concerned for granting her grade in the year 1996.

5. Then the only question is whether resignation by the petitioner would deprive her for the higher grade. Petitioner relies upon the Government Order dated 5/2/1969 by which orders had been issued by the Government as under;

*“Government have examined the question in detail and are pleased to order that the breaks of service of teachers due to reasons like (1) resignation for joining service in a new school (2) absence of vacancy (3) relief on the closing date due to inadequate service for retention during vacation (4) absence for a period for which no eligible leave was available (5) withdrawal of recognition of schools (6) closure of schools (7) want of fitness certificates for temporary school buildings (8) disqualification of management (9) management disputes, will be condoned by Director of Public Instruction as below:
xxxx”*

6. In the light of the Government Order dated 5/2/1969

W.P(C) No.25120/12

-:5:-

read with Government order dated 2/5/1973, I am of the view that the Government was not justified in rejecting the plea of the petitioner in terms of Ext.P9. The audit objection had been sufficiently explained by the petitioner and going by the Government Order dated 2/5/1973, there is no specific mention that resignation for appointment in school will be treated as broken service.

Under such circumstances, this writ petition is to be allowed and accordingly Exts.P1 and P9 are set aside and it is declared that petitioner is entitled for higher grade from 1/11/1996.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

11/11/2015

//True Copy//

PS to Judge