

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYASHTA, 1937

WP(C).No.25539 of 2010 (N)

PETITIONER'S:

1. **K.V.RAMAHCNADRAN,H.S.A.(HINDI),
HIGH SCHOOL,PERINAD,PERINGOD P.O.
PALAKKAD - 678535.**
2. **A.R.PADMAJA,H.S.A.(ENGLISH),
HIGH SCHOOL,PERINGOD,PERINGOD P.O.
PALAKKAD - 678535.**

**BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.S.SHYAM PRASANTH**

RESPONDENT'S:

1. **THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD - 678001.**
2. **THE ACCOUNTS OFFICER,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD - 678001.**
3. **THE DISTRICT EDUCATIONAL OFFICER,
OTTAPPALAM,PALAKKAD - 678001.**

R1 TO R3 BY GOVT. PLEADER SRI.K.K.SAIDALAVI.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07.04.2015 THE COURT ON 25-05-2015,DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF PAY CERTIFICATE ISSUED TO THE 1ST PETITIONER BY THE HEADMISTRESS OF HIGH SCHOOL, PERINGODE.

EXT.P2:TRUE COPY OF PAY CERTIFICATE ISSUED TO THE 2ND PETITIONER BY THE HEADMISTRESS,H.S.,PERINGODE.

EXT.P3:TRUE COPY OF LETTER NO.G3/31018/06 DATED 13.7.2010 ISSUED BY THE 2ND RESPONDENT.

EXT.P4:TRUE COPY OF RELEVANT EXTRACT AUDIT OBJECTION ISSUED BY THE HEADMISTRESS ON 11.8.2010.

EXT.P5:TRUE COPY OF G.O(P) NO.296/2006/FIN. DATED 14.7.2006 ISSUED BY THE FINANCE DEPARTMENT (PRC-A) DEPARTMENT, GOVERNMENT OF KERALA.

EXT.P6:TRUE COPY OF JUDGMENT DATED 15.6.2006 IN W.P(C) NO.8942/2003 OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS:

EXT.R1(a):COPY OF PAY FIXATION ORDER W.E.F.23.7.1997.

EXT.R1(b):COPY OF THE PAY FIXATION ORDER W.E.F.01.08.1997.

EXT.R1(c):STATEMENT OF FIXATION OF PAY W.E.F.01.08.2004.

EXT.R1(d):STATEMENT OF FIXATION OF PAY W.E.F. 1.8.2006.

EXT.R1(e):STATEMENT OF FIXATION OF PAY W.E.F.16.3.1999.

EXT.R1(f):STATEMENT OF FIXATION OF PAY W.E.F. 1.8.1997.

EXT.R1(g):STATEMENT OF FIXATION OF PAY W.E.F. 1.8.2004.

EXT.R1(h):STATEMENT OF FIXATION OF PAY W.E.F. 1.8.2006.

EXT.R1(i):G.O(MS) NO.134/86/G.EDN. DATED 7.8.1986.

EXT.R1(j):G.O (MS) NO.57/91/(89)FIN, DATED 18.1.1991.

EXT.R1(k):G.O(P) NO.259/06/FIN DATED 12.6.2006.

//TRUE COPY//

P.S. TO JUDGE

A.M.SHAFFIQUE, J

W.P.C.No.25539 of 2010

Dated this the 25th day of May 2015

J U D G M E N T

The petitioners, teachers of Peringode High School seek to quash Exts.P3 and P4. By Ext.P3, the second respondent directed the Headmistress of the school in which they were working, to implement the audit objection at Ext.P4, by which it was stated that the pay fixed at Rs.5,625/- in the HSA scale of Rs.5000-8150 with effect from 01/08/2002 is irregular and as per Government order dated 14/07/2006, a teacher is eligible for HSA higher grade scale only on completion of 20 years of service. It was directed that the excess salary drawn by them on such irregularity has to be recovered from 01/04/2005 onwards. Petitioners also seek a declaration that Ext.P5 Government order dated 14/07/2006 is not applicable to the petitioners in so far as their pay fixation and grade promotion were granted with effect from 01/08/2002 and 23/07/2005.

2. The facts involved in the case would disclose that the petitioners were granted higher grade on completion of 10 years of service and thereafter on completion of 18 years of service in the scale of HSA. First petitioner was appointed as Lower grade teacher on 01/08/1984. He was sanctioned higher grade after 10 years with effect from 01/08/1994. He was promoted as HSA (Hindi) with effect from 23/07/1997. On completion of 18 years service on 01/08/2002, he was granted higher grade in the scale of HSA at Rs.5000-8150. On completion of 8 years in the post of HSA (Hindi), he was granted higher grade with effect from 23/07/2005.

3. Second petitioner joined service as UPSCA on 01/08/1984 and promoted as HSA (English) with effect from 23/07/1997. On completion of 18 years service she was granted higher grade in the scale of pay at Rs.5000-8150 with effect from 01/08/2002. She was granted higher grade on completion of eight years as HSA (English).

4. It is thereafter that Ext.P3 direction was issued and the petitioner has approached this Court challenging the

same. It is contended that Ext.P5 Government order dated 14/07/2006 relied upon by the respondent authorities has no retrospective effect. Grade promotions were given to the petitioners in 2002 and 2005 taking into consideration the rules prevailing as on the said date. The Government order dated 14/07/2006 has no application to the case of the petitioners.

5. Counter affidavit has been filed by the first respondent inter alia stating that in the Primary school service and HSA service, the combined grade promotion scheme was dispensed with as per Government order dated 25/03/2006 and therefore grade promotion cannot be continued beyond 01/03/2006. The Government order dated 18/01/1991 was not in force with effect from 01/03/2006 onwards. Further it is stated that in terms of paragraph 4 of Government order dated 14/07/2006, those who were granted the benefit of time bound higher grade promotion in the pre-revised scale of pay of HSA Grade 1, senior grade prior to 01/03/1997 and during the period from 01/07/2004

to 24/03/2006 by reckoning primary and high school service will be regulated on the basis of Government order dated 12/06/2006. Ext.R1(k) is the said Government order. It is further stated that Government order dated 14/07/2006 is only a clarification relating to higher grades admissible to HSA's who were appointed/promoted from the category of primary teachers with more than 10 years service in primary section after 1997 and 2004 pay revisions are effected. It is contended that as per Government order dated 07/08/1986 and the modified orders issued by the Government, primary school teachers including language teachers in the primary section on being appointed or promoted to the high school after having put in more than 10 years of service in the primary section will be eligible for time bound higher grade promotion as HSA Grade 1 on completion of 20 years service and senior grade on completion of 30 years in the primary and HS section taken together. Therefore it is contended that fixation of pay of the petitioners in the pre-revised scale of HSA Grade 1 on completion of 18 years of total service is

against Government orders in force.

6. The petitioners rely upon Ext.P5 Government order itself to contend that at the time when higher grade were granted to the petitioners there was no illegality in the same and Ext.P5 Government order cannot take away the said right.

7. In Ext.P5, reference is made to Government orders dated 07/08/1986, 18/01/1991, 25/11/2004 and 30/11/2004 and it is stated that HSA's appointed/promoted from the category of primary school teachers with more than 10 years service in the primary section will be eligible for time bound higher grade promotion as HSA Grade 1 and HSA senior grade on completion of a continuous service of 20 years and 30 years in the primary and high school section taken together. However, by Government order dated 25/11/1998, the scale of pay of primary school teacher Grade 1 and HSA Grade II post were not identical and the scale of pay of HSA grade II was higher than that of primary school teacher grade I. Therefore, those who got appointment/promotion as

HSA Grade II from the category of primary school teacher Grade 1 on or after 01/03/1997 were eligible for the fixation benefit as per Rule 28A KSR Part I, in the post of HSA Grade II and again as HSA Grade 1 on completion of 20 years of service. That apart, the period of time bound higher grade promotion also changed from 10/20/25 years to 10/18/23 years with effect from 01/11/1998. Therefore, it became necessary for the Accountant General as per letter dated 28/03/2005 and 05/05/2006 to issue further clarification. The Government, after examining the entire issue, clarified that primary school teachers including language teachers in the primary section, on being appointed/promoted prior to 01/03/1997 as HSA Grade II, after having put in more than 10 years service in the primary section will be eligible for HSA grade I, on completion of 20 years total service and HSA Senior Grade on completion of 28 years total service with effect from 01/11/1998. Further, in respect of primary school teachers including language teachers in the primary section having more than 10 years service on being

appointed/promoted as HSA Grade II on or after 01/03/1997, with Rule 28A of Part I KSR fixation benefit will be eligible for HSA Grade 1.

8. Therefore the short question to be considered in the above writ petition is regarding the validity of Ext.P4 audit objection. In Ext.P4, the irregularity pointed out is regarding pay fixation with effect from 01/08/2002, as it is contrary to Government order dated 14/07/2006.

9. Learned counsel for the petitioners placed reliance on Government order dated 25/11/1998, by which teachers were allowed three grade promotions on completion of 10,18 and 23 years instead of 10,20 and 25 years.

10. A reference to Government orders produced as Exts.R1(i), (j) and (k) is necessary to understand the contentions urged by the 1st respondent. Ext.R(i) is the Government order dated 07/08/1986. The operative portion reads as under:

“Government have examined the matter in detail and are pleased to order that the G.Os read as first and second paper above will be modified as follows

1. *Government order dated 12-1-1981.*

Primary School Teachers including Language Teachers in Primary Section on being appointed or promoted to High School after having put in more than 10 years of service in the primary section will be given HSA Grade I on completion of a total service of 20 years and Senior Grade on completion of 30 years.

2. *Government order dated 17-11-1984.*

Primary School Teachers working as Senior Grade Teachers and Primary School Headmasters when promoted as HSAs will be given HSA Grade I counting an aggregate service of 20 years.

The above orders will take effect from 16-9-1985."

Ext.R(j) is the Government order dated 18/01/1991. The operative portion reads as under:

"Government have examined the matter in detail and are pleased to order that Primary School Teachers including Language Teachers appointed as H.S.As will be allowed the scale of pay of Primary Teacher (Selection Grade) on Rs.1250-2230 on completion of a total service of 25 years, reckoning the total service in Primary and High School Sections together, without any change in the designation of the post held by them. The scale of pay thus allowed will be treated as personal scale. When such a teacher becomes eligible

for H.S.A (Senior Grade), it will be sanctioned and fixation of pay in such cases will be done with reference to the pay he would have drawn in the post of H.S.A Grade 1 on a regular basis, and not with reference to the pay he has drawn in personal scale of pay allowed, but drop in emoluments, if any, will be protected to be absorbed in future increases in pay.

This order will take effect from 1-7-1988."

11. Ext.R1(k) is the Government order dated 12/06/2006. It is stated that the pre-revised scale of pay of HSA Grade II and Grade I posts have been merged together and re-designated as HSA with revised scale of pay of Rs.8390-13270 with effect from 01/07/2004. By another Government order dated 10/04/2006, the post of HSA (Senior grade) in the pay scale of Rs.9590-16650 has been incorporated in the pay revision order. Since the revised scale of pay ordered in the pay revision orders have effect from 01/07/2004, HSA's will be eligible for two time bound higher grade scales, that is, Senior Grade and Selection Grade on completion of 10 years and 18 years respectively from 01/07/2004 to 28/02/2006 and on completion of 8

years and 16 years respectively from 01/03/2006 onwards. Further it is stated that in view of the said orders, grade scale of HSA's were granted 10/18/23 years time bound higher grade promotions in the pre-revised scale prior to 01/07/2004 and for the period from 01/07/2004 to 24/03/2006 has to be revised on the basis of the revised scale of HSA's Senior Grade and HSA Selection Grade with effect from 01/07/2004 or from the date on which the grade was granted or from the date of option in terms of the pay revision orders. In paragraph 5 which is relied upon by the respondent, two options were given to those who were granted 10 years time bound grade promotion on or after 01/07/2004 but before 25/03/2006 in the pre-revised scale of pay of HSA Grade I on Rs.5000-8150. On this basis, it is contended that the petitioners are eligible for fixation of pay in the post of HSA Grade I only on completion of total service of 20 years, that is on 01/08/2004.

12. Now coming to Ext.P5 Government order, especially paragraph 4, it is stated that as per Government

order dated 25/03/2006 it has been ordered that HSA's will be eligible for 8/16 years time bound higher grade promotion with effect from 01/03/2006 by reckoning HSA service alone and they are not eligible for the personal scale of primary school teacher reckoning service in the primary and high school section together. Hence the previous Government orders are not in force with effect from 01/03/2006. It is further stated that those who were granted the benefit of time bound higher grade promotion in the pre-revised scale of pay of HSA Grade I, Senior Grade prior to 01/03/1997 and during the period from 01/07/2004 to 24/03/2006 by reckoning primary and high school service will be regulated on the basis of orders contained in Government order dated 12/06/2006 which is produced as Exhibit R1(k).

13. It is apparent that the aforesaid provision has no application to the petitioners as they were promoted to the post of HSA on 23/07/1997 and they were granted higher grade in the scale of HSA with effect from 01/08/2002.

Therefore, Ext.P5 Government order does not apply to the case of petitioners. A reference to Ext.R1(k) also does not indicate that the same had been made applicable to the petitioners. Under such circumstances, I am of the view that the audit objection relying upon Ext.P5 Government order has no application to the case of the petitioners and therefore Exts.P3 and P4 are liable to be quashed and accordingly I do so, and the writ petition stands allowed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

