

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 35058 of 2004 (W)

PETITIONER :

T.G.KUMUDA BAI, RETIRED HEADMISTRESS,
L.P.SCHOOL, KARAYAMUTTAM, VELEKAT HOUSE, KIZHAKUMURI,
PERINGOTTUKARA, THRISSUR.

BY ADVS.SRI.K.B.GANGESH
SRI.ANIL GEORGE

RESPONDENTS :

1. THE ASSISTANT EDUCATIONAL OFFICER,
VALAPPAD, P.O.CHENTRAPPINNI, THRISSUR.
2. THE DEPUTY DIRECTOR (EDUCATION),
OFFICE OF THE DEPUTY DIRECTOR, COLLECTORATE, THRISSUR.
3. THE ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM.

R1 TO R3 BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

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|--------|---|---|
| EXT.P1 | : | COPY OF G.O.(P)No.615/(138)/97 Fin DTD.28.6.97. |
| EXT.P2 | : | COPY OF THE SANCTION ORDER OF THE 1ST
RESPONDENT DTD.16.10.97. |
| EXT.P3 | : | COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DTD.15.10.2001. |
| EXT.P4 | : | COPY OF G.O.(P)No.206/2003/Fin DTD.5.4.2003. |
| EXT.P5 | : | COPY OF THE JUDGMENT OF THIS COURT IN
O.P.No.2413/03. |
| EXT.P6 | : | COPY OF THE JUDGMENT PASSED BY THIS COURT IN
O.P.No.6133/02 DTD.27.5.04. |
| EXT.P7 | : | COPY OF THE COMMUNICATION FROM THE 1ST
RESPONDENT DTD.5.7.04. |
| EXT.P8 | : | COPY OF THE COMMUNICATION FROM THE OFFICE OF
THE ACCOUNTANT GENERAL DTD.16.7.04. |
| EXT.P9 | : | COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT
ON 16.9.04. |

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.35058 of 2004

Dated this the 7th day of July, 2015

JUDGMENT

The petitioner retired from service as Headmistress of U.P.School, Karayamuttom on 31.3.2001. She has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P9 order passed by the first respondent and seeking a writ of mandamus commanding the respondents to release her the pensionary benefits withheld illegally due to audit objection and also to revise the monthly pension taking into account the option exercised in the light of Ext.P1. She has also sought for a writ of mandamus commanding the respondents to pay her interest @15% per annum on the pensionary benefits illegally withheld in view of the audit objection referred to above.

2. Going by the averments in the Writ Petition, in the year 1997, while the petitioner was working as Headmistress, she had opted for the time bound higher grade and consequential re-fixation of pay, with effect from 1.7.1993, in the light of Ext.P1 Government

order, namely, G.O.(P)No.615/(138)/97 Fin. dated 28.6.1997. The first respondent by order dated 16.10.1997 sanctioned the option exercised by her in terms of Ext.P2 option dated 8.9.1997, with effect from 1.7.1993 and an endorsement to that effect was also made on Ext.P2. But, the second respondent objected to the option exercised by the petitioner in terms of Ext.P1 Government order.

3. The petitioner submitted representation against the objection raised by the second respondent, which was directed to be considered by the judgment of this Court in O.P.No.23900 of 2001. Pursuant to the directions contained in the aforesaid judgment, the second respondent passed Ext.P3 order dated 15.10.2001, upholding the audit objection, stating that, the petitioner was not entitled to opt for the time bound higher grade which fell due after 1992 under Ext.P1 Government Order. Ext.P3 order was under challenge in O.P.No.6133 of 2002. During the pendency of that Original Petition, the Government issued Ext.P4 order, namely, G.O.(P) No.206/2003/Fin. dated 5.4.2003 clarifying that all the persons, who have exercised option for time bound higher grade as per Ext.P1 order between 28.6.1997 to 27.9.1997, will be entitled for the

benefits stipulated in the Government order subject to the condition that the option will be applicable only from the actual date of exercise of option.

4. Relying on Ext.P5 judgment of this Court in O.P.No.2413 of 2003 dated 16.2.2004 the petitioner would contend that, in the case of another Headmistress of a U.P.School in Thrissur District itself, this Court held that the Audit Objection raised by the respondent in respect of the option exercised by the said person on the basis of Ext.P1 cannot be sustained in the light of paragraph 5 of Ext.P4 Government order, which order was produced as Ext.P8 in that Original Petition. Therefore, relying on Ext.P5 judgment, the petitioner would contend that, she is also entitled for re-fixation of pay in the time bound higher grade with effect from 6.9.1997, as she exercised her option on that date. According to the petitioner, in the light of Ext.P4 Government order dated 5.4.2003 and Ext.P5 judgment in O.P.No.2413 of 2003, she is entitled for re-fixation of pay in the time bound higher grade with effect from 6.9.1997 as she exercised her option on that date. Taking note of the submission that, in view of Ext.P4 Government order dated 5.4.2003 (Ext.P11 in

O.P.No.6133 of 2002) the grievance of the petitioner stands redressed, this Court disposed of O.P.No.6133 of 2002 by Ext.P6 judgment dated 27.5.2004, directing the respondents to take steps to settle her pensionary benefits in the light of said Government order dated 5.4.2003 and disburse her the eligible benefits within a period of three months from the date of production of a copy of the judgment. This Court has made it clear that, in case the disbursement is made beyond the aforesaid period of three months, the petitioner will be entitled to get interest at 12% and the officers responsible for the delay will be personally liable for the same.

5. Pursuant to Ext.P6 judgment, the first respondent by Ext.P7 communication dated 5.7.2004 directed the petitioner to submit a revised statement for pension so as to comply with the directions contained in the aforesaid judgment. Ext.P7 was followed by Ext.P8 communication dated 16.7.2004 issued from the office of the Accountant General, directing the first respondent to take immediate action in the matter. The petitioner would contend that, Ext.P6 judgment left no scope for the respondents to reconsider the option exercised by the petitioner on merits or to decline her the

benefits of the option so exercised under Ext.P1 Government order and that, the respondents were bound to settle the benefits based on Ext.P4 Government order and disburse the benefits accordingly. On 8.9.2004, the petitioner attended the personal hearing conducted by the first respondent. Thereafter, the first respondent issued Ext.P9 order dated 16.9.2004, stating that the petitioner is not entitled to any benefits in terms of Ext.P4 Government order since it is not applicable to the notional time bound higher grade fixation for Headmasters. It is aggrieved by Ext.P9 order, the petitioner has filed this Writ Petition seeking various reliefs.

6. A counter affidavit has been filed on behalf of the second respondent contending that, the petitioner filed re-option on 6.9.1997 as per Ext.P1 Government order dated 28.1.1997, electing notional selection grade under 88 pay revision scale (old scale) and to come over to 92 pay revision scale of notional selection grade, and also to come over to Headmistress scale by applying Rule 28A Part-I KSR with effect from 1.7.1993. As per the Rules and the Government orders in force, notional time bound higher grade of Headmistress should be fixed as per para 2(ii) (c) or (d) of G.O.(P)

No.380/94/(13)/Fin. dated 9.6.1994 with effect from 1.3.1992. According to the second respondent, re-option for electing notional time bound higher grade of Headmaster is not permitted as per Exts.P1 and P4 Government orders and it permit to exercise re-option for electing only regular time bound higher grade. So fixation of pay based on re-option of the petitioner dated 6.9.1997 as per Ext.P1 Government order was objected to by the second respondent, which was communicated to the petitioner vide letter No.B.4666/99 dated 1.10.1999 of the first respondent. But, the petitioner failed to take any effective steps to settle the audit objection. Pursuant to Ext.P6 judgment in O.P.No.6133 of 2002, by which the respondents were directed to take steps to settle the pensionary benefits of the petitioner in the light of Ext.P4 Government order, the 1st respondent conducted a personal hearing on 8.9.2004 and passed Ext.P9 order holding that the petitioner is not entitled to any benefits in terms of Ext.P4 Government order. According to the second respondent, the petitioner exercised re-option on 6.9.1997 as per Ext.P1 Government order for electing notional selection grade under pre-revised 88 pay revision scale with effect from 1.7.1993. Re-option

facility are not permitted in the case of notional time bound higher grade of Headmaster. Exts.P1 and Ext.P4 Government orders do not permit exercise of re-option for electing notional time bound higher grade of Headmaster. They only permit regular time bound higher grade. The petitioner exercised re-option and not option. The petitioner has given a declaration at the time of re-option, agreeing to refund any excess pay and allowances noticed in the scrutiny of the claims and check of pay fixation. So any erroneous pay fixation is liable to be rectified. Therefore, the second respondent would contend that, the petitioner is not entitled for any benefit under Ext.P4 Government order and as such the reasoning in Ext.P9 order passed by the first respondent is perfectly legal.

7. Heard arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

8. The issues that arise for consideration in this Writ Petition are as to the legality or otherwise of Ext.P9 order passed by the 1st respondent and whether the re-option exercised by the petitioner in terms of Ext.P4 Government order dated 5.4.2003 can be legally

sustained.

9. Going by the pleadings and documents on record, the petitioner retired from service on 31.3.2001 while working as Headmistress. On 6.9.1997, in terms of Ext.P1 Government order dated 28.6.1997, the petitioner exercised option for time bound higher grade and consequential re-fixation of pay with effect from 1.7.1993, which was sanctioned as evident from Ext.P2 statement of fixation of pay issued by the 1st respondent dated 6.9.1997. A reading of Ext.P1 Government order would show that, as per Para.2 of G.O.(P)No.930/93/(2) Fin. dated 18.12.1992, the Government employees have been permitted to opt time bound higher grade fell due/granted first on or after 1.3.1992, cancelling the option already exercised in respect of the post held by them prior to 1.3.1992. Later, the Government by G.O.(P)No.616/96/(III) Fin. dated 3.10.1996 have clarified that, the option for coming over to the revised scale with reference to the higher grade shall be with effect from the date of higher grade sanctioned, even if it is not the actual date due for higher grade. In modification of the aforesaid Government order, the Government in Ext.P1 clarified that, the

State Government employees and Teachers who got time bound grade on or after 1.3.1992 will be permitted to opt time bound higher grade on the date of their choice and to continue in the pre-revised scale till the date of option. It was also made clear that, the date of option for the revised scale of pay sanctioned as per Government orders dated 25.9.1993 and 8.12.1993 will be on the same date of option for time bound higher grade. It was also provided in Ext.P1 that the State Government employees and Teachers desirous of exercising the option/re-option based on Ext.P1 Government order will be permitted to do so within a period of 3 months from the date of order.

10. The 2nd respondent objected the option exercised by the petitioner. The petitioner submitted a representation before the 2nd respondent which resulted in Ext.P3 order dated 15.10.2001, upholding the audit objection by stating that she is not entitled to exercise option for time bound higher grade which fell due after 1992 under Ext.P1 Government Order. Ext.P3 order was under challenge before this Court in O.P.No.6133 of 2002. During the pendency of O.P.No.6133 of 2002, the Government issued Ext.P4

order dated 5.4.2003, as per which the re-option exercised in pursuance of Ext.P1 Government order dated 28.6.1997, during the period from 28.6.1997 to 27.9.1997, and the re-option exercised in pursuance of Government order dated 5.2.1999, during the period from 5.2.1999 to 4.5.1999, by those employees whose time bound higher grade fell due/sanctioned on or after 1.2.1992, as per the scheme of time bound higher grade in pay revision orders 1992, shall be accepted as valid subject to the general conditions in the circulars dated 18.3.1996 and 23.5.1997. This Court by Ext.P5 judgment disposed of O.P.No.2413 of 2003 filed by one M.V.Gopinathan, who retired from service while working as the Headmaster of PMMUP School at Chentrappinni in Thrissur District, after recording the submission made by the learned Government Pleader that, in view of Ext.P4 Government order appropriate follow up action will be taken without delay and his pay will be appropriately fixed. The learned counsel for the petitioner would point that, an audit objection similar to that in the case of the petitioner was there in the case of the aforesaid Gopinathan. However, in the case of the petitioner, the 1st respondent concluded

in Ext.P9 order that, she is not entitled to any benefits in terms of Ext.P4 Government order, since the said order is not applicable to the notional time bound higher grade fixation for Headmasters.

11. The fact that the re-option exercised by the petitioner on 6.9.1997 was one based on Ext.P1 Government order is not disputed in the counter affidavit filed by the second respondent. Going by Ext.P4 Government order dated 5.4.2003, the re-option exercised in terms of Ext.P1 Government order dated 28.6.1997, during the period from 28.6.1997 to 27.9.1997 by those employees whose time bound higher grade fell due/sanctioned on or after 1.2.1992, as per the scheme of time bound higher grade in pay revision orders 1992, shall be accepted as valid subject to the general conditions in the circulars dated 18.3.1996 and 23.5.1997. Ext.P1 Government order dated 28.6.1997 does not prohibit an option/re-option being exercised by a teacher for notional time bound higher grade. Similarly, Ext.P4 Government order dated 5.4.2003 does not specify that, the provisions contained in Para.5 therein has no application to an option/re-option exercised by a teacher for notional time bound higher grade.

12. The learned Government Pleader would point out that, since Ext.P1 Government order speaks only about Government employees and Teachers, the said Government order as well as Ext.P4 Government order has no application to Headmasters. But, it has to be noticed that, going by clause 7(a) of Rule 2, Chapter I of the Kerala Education Rules, the term 'teacher' includes the Headmaster. The learned counsel for the petitioner would point out that, an audit objection similar to that in the case of the petitioner was there in the case of the one Gopinathan, the petitioner in O.P.No.2413 of 2003. The said Original Petition was disposed of by Ext.P5 judgment after recording the submission made by the learned Government Pleader that, in view of Ext.P4 Government order appropriate follow up action will be taken without delay and his pay will be appropriately fixed. In the counter affidavit, the second respondent has admitted pursuant to the direction contained in Ext.P5 judgment, the pay of the aforesaid Gopinathan has already been regularised. In these circumstances, the reasoning of the first respondent in Ext.P9 order that, the petitioner is not entitled to any benefits in terms of Ext.P4 Government order dated 5.4.2003, since

the said order is not applicable for fixation of notional time bound higher grade for Headmasters cannot be sustained.

In the result, this writ petition is disposed of setting aside Ext.P9 order passed by the first respondent. Consequently, the petitioner shall be entitled for release of the pensionary benefits withheld on the basis of the audit objection raised by the second respondent. The respondents are directed to release the aforesaid amount to the petitioner and revise her pension and all other monetary benefits taking into account the option exercised by her and disburse all consequential monetary benefits, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of the judgment. No order as to costs.

Sd/-

ANIL K.NARENDHAN, JUDGE

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