

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 26154 of 2010 (T)

PETITIONER:

SAFFIYYA.V.T., FULL TIME MENIAL,
SNM HSS, PARAPPANANGADI, MALAPPURAM DISTRICT.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

1. THE STATE OF KERALA,
REP.BY SECRETARY TO GENERAL EDUCATION DEPARTMENT
TRIVANDRUM.
2. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.
3. THE DISTRICT EDUCATIONAL OFFICER,
TIRUR, MALAPPURAM DISTRICT.

BY GOVERNMENT PLEADER SRI.V.A.RAFEEQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : COPIES OF THE FORM OF OPTION DATED 11.06.2002 AND
THE STATEMENT OF FIXATION.

EXHIBIT P2 : COPIES OF THE FORM OF OPTION AND STATEMENT OF
FIXATION DATED 15.07.2008.

EXHIBIT P3 : COPY OF THE STATEMENT OF FIXATION DATED 30.09.2007

EXHIBIT P4 : COPY OF THE OBJECTION BY THE 2ND RESPONDENT.

EXHIBIT P5 : COPY OF THE CIRCULAR NO.44060/J2/11/GEN.EDN.
DATED 26.09.2012

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

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SHAJI P. CHALY, J.

W.P.(C). No.26154 of 2010

Dated this the 7th day of October, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P4 order, passed by the 2nd respondent, by which the 12 year service as on 01.07.2004 reckoned for increment of the petitioner was dis-allowed, holding that the provisional service rendered by the petitioner during the broken period from 04.11.1991 to 01.02.1992 and 30.06.1992 to 19.04.1993 will not be counted.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner was appointed as full time menial on 01.07.1993. Before that, petitioner has worked provisionally as a part time menial on two broken periods, ie, from 04.11.1991 to 01.02.1992 and 30.06.1992 to 19.04.1993. Petitioner opted for 1st higher grade on completion of 10 years, on 11.06.2002. As per Ext.P1 Order, the 1st higher grade was granted, counting the provisional service

rendered by the petitioner as stated supra by two broken periods. Petitioner has opted for 2004 pay revision on completion of 12 years by Ext.P3, from 01.07.2004. As per Ext.P2, petitioner opted for 18 years grade from 01.07.2008 onwards.

4. According to the petitioner, the 1st higher grade, on completion of period of 10 years as well as the grade on completion of 18 year period was granted to the petitioner. But by issuing Ext.P8 impugned order, the pay revision sought for on completion of 12 year period from 01.07.2004 was objected. Thus Ext.P4 issued by the 2nd respondent, objecting to 2004 pay revision is under challenge in this writ petition.

5. Even though, 5 years have elapsed from the filing of the writ petition, no counter affidavit is filed by the respondents. This Court on 03.09.2015 as well as on 16.09.2015, granted time to the respondents to file the counter affidavit. Today also, learned Government Pleader seeks time for filing counter. In view of the long pendency

of the matter, I think it is only just and appropriate that a decision is taken in this matter in accordance with law.

6. Learned counsel for the petitioner contended that the provisional service rendered by the petitioner is to be taken into account to consider the 2004 pay revision on completion of 12 years. The learned counsel in this context has invited my attention to explanation to rule 6(a) of Chapter XIV (A) of Kerala Education Rules, which reads as follows:

“Broken periods of duty within a continuous period of 2 years can be reckoned for calculating the one year duty period. In such cases, satisfactory completion of probation of the teachers concerned shall be declared by the Manager with retrospective effect from, the date on which is found eligible/suitable for such declaration of completion of probation.”

7. By relying on the said rule, learned counsel contends that the broken period of duty carried out by the petitioner is within two years as stated supra and the

continuous service started from 01.07.1993 onwards. The learned counsel also contends that in view of the provisions contained in explanation to rule 6(a), cited supra, petitioner is entitled to qualify for the calculation of the provisional service rendered by her during the broken periods referred above. That apart, learned counsel has invited my attention to Sub Rule 4 of Rule 61 of chapter XIV A KER, which reads as follows:

“All duty in a post on a time scale whether continuous or interrupted shall count for increment in that time scale”

8. By relying on the said provision, also counsel contends that, the provisional service rendered as stated above is entitled to be counted for calculating the 12 year period of service as on 01.07.2004. I have gone through the provisions of the law so cited by the learned counsel and found that the petitioner has rendered the provisional service as provided under explanation to rule 6(a) and therefore, she is entitled to have continuity as provided

under Sub Rule 4 of Rule 61 of Chapter XIV A.

9. That apart, learned counsel has invited my attention also to Sub Rule 1B of Rule 61 of chapter XIV A which reads as follows:

"The Headmasters of Aided Primary Schools who have passed the Account Test(Lower) conducted by the Kerala Public Service Commission or who have been exempted from passing that test shall be competent to sanction the increments due to the teachers and non teaching staff in their schools. The first increment due to the teachers and non teaching staff on satisfactory completion of probation shall however be sanctioned by them only after declaration of satisfactory completion of probation under rule 6".

10. Relying on the said provision, learned counsel canvased that the first increment due to the teachers and non teaching staff on satisfactory completion of probation shall however be sanctioned by the Headmasters of the aided primary school who have passed the account test

(lower) conducted by Kerala Public Service Commission or who have been exempted from passing that test shall be competent to sanction the increments. But only after declaration of satisfactory completion of probation under rule 6. The counsel also contended that the probation of the petitioner was declared within a continuous period of 2 years and within one year. This is not under dispute.

11. The learned Government Pleader contended that the broken period can be taken into account for fixing the increment alone and not for any other purpose. Therefore, the learned Government Pleader contended that the petitioner is not entitled to get benefit of the rules referred above.

12. I have heard the learned counsel for the petitioner Sri.R.K.Muraleedharan and the learned Government Pleader appearing for the respondents in extenso.

13. Having considered the rival submissions, I am of the considered opinion that the explanation to Rule 6(a) of Chapter XIV A and Sub Rule (1B) of Rule 61 of Chapter XIV

A and Sub Rule 4 of Rule 61 of Chapter XIV A of Kerala Education Rules will resolve the issue. So also the learned counsel for the petitioner brought my attention to Ext.P5 order passed by the 1st respondent dated 26.09.2012, explaining the calculation of the broken period of service contained under explanation to Rule 6 (a) and 61(4) of Chapter XIV A of the Kerala Education Rules and it is stated that the service of broken period continuously within a period of two years can be taken into account for calculating the total length of service for the period of sanctioning service benefits. Therefore, the rules referred by me supra, as well as Ext.P5 order of the 1st respondent when read together, I can reach only on the irresistible conclusion that Ext.P4 order passed by the 2nd respondent objecting to the 12 year period of service as on 01.07.2004, is not sustainable under law. Therefore, I have no hesitation to set aside Ext.P4 order passed by the 2nd respondent, in respect of the petitioner and accordingly I do so.

14. Resultantly, the consequent benefits which are withheld by the respondents pursuant to Ext.P4 objection raised, is to be released to the petitioner within a period of three months from the date of receipt of a copy of this judgment. Needless to say, petitioner will be at liberty to exercise action for further pay revisions available to her during the period of objection.

This writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

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