

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 29975 of 2012 (V)

PETITIONER(S):

**C.RAJAN, AGED 55 YEARS,
S/O. CHELLAPPAN, TC 10/1745 (2), HOUSE NO.222B,
KUTHIRAKKAD LANE, VATTIYURKAVU P.O.,
THIRUVANANTHAPURAM-695 013. WORKING AS TELEPHONE OPERATOR,
LEGISLATURE SECRETARIAT, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM-695 033.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
LEGISLATIVE SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE ACCOUNTANT GENERAL (A&E), AUDIT,
KERALA, THIRUVANANTHAPURAM-695 033.**

BY SPECIAL GOVERNMENT PLEADER SRI.P.V.LONCHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE PROMOTION ORDER DATED 18.10.1986.

EXHIBIT P2: A TRUE COPY OF THE TRANSFER ORDER DATED 29.1.1990.

EXHIBIT P3: A TRUE COPY OF THE T.O.(MS)NO.651/92/REG.DATED 8.6.1992 ISSUED BY THE GOVERNMENT OF KERALA.

EXHIBIT P4: A TRUE COPY OF THE G.O.(MS)NO.915/94/LEG. DATED 21.10.1994 ISSUED BY THE GOVERNMENT OF KERALA.

EXHIBIT P5: A TRUE COPY OF THE CONSOLIDATED NOTE DATED 24.12.2003 SUBMITTED BY THE JOINT SECRETARY, LEGISLATURE SECRETARIAT, THIRUVANANTHAPURAM BEFORE THE 1ST RESPONDENT.

EXHIBIT P6: A TRUE COPY OF THE G.O.(MS)NO.219/04/LEG.DATED 12.2.2004 ISSUED BY THE GOVERNMENT OF KERALA.

EXHIBIT P7: A TRUE COPY OF THE G.O.(MS)NO.1147/05/LEG. DATED 04.10.2005 ISSUED BY THE GOVERNMENT OF KERALA.

EXHIBIT P8: A TRUE COPY OF THE REJECTION ORDER DATED 22.6.2011 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P9: A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE SPEAKER DATED 8.12.2011.

EXHIBIT P10: A TRUE COPY OF THE MEMO DATED 15.6.2012 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M. SHAFFIQUE, J.

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W.P. (C) No. 29975 of 2012

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Dated this, the 13th day of October, 2015

J U D G M E N T

Petitioner has challenged Exts.P3, P6, P7, P8 and P10 to the extent that the petitioner was denied salary for the period from 6/4/1990 to 13/5/1992. Petitioner also seeks a declaration that he is entitled to pay and allowances in the post of Telephone Operator w.e.f. 6.4.1990 to 13.5.1992 and other consequential reliefs are also sought for.

2. Petitioner submits that he joined service as Gardener (Class IV) on 15/10/1980. He was thereafter promoted as Duplicator Operator (Class III) on 20/10/1986. He was promoted as Clerical Assistant on 31/12/1986. On 13/1/1989, he was reverted as Duplicator Operator for the reason that the qualification for Clerical Assistant has been amended. Petitioner submits that from 6/4/1990 to 13/5/1992, he was on medical leave. Thereafter, the petitioner made certain representations and based on the judgment of this Court, the claim of the petitioner was considered and by Ext.P5 order, it was directed to fix pay of

the petitioner w.e.f. 6/4/1990 and he was given notional promotion as Telephone Operator from that date onwards. Based on Ext.P5, the Government issued order dated 12/2/2004, which is produced as Ext.P6. Thereafter, another order came to be issued on 4/10/2005 as Ext.P7 by which Government has ordered to delete the last part of the second paragraph of the Government Order dated 12/2/2004 i.e., "and that the fixation of pay will be done notionally from 6/4/1990 and with monetary benefits from 14/5/1992".

3. Petitioner filed a representation before the 1st respondent requesting to reconsider Ext.P7 order dated 4/10/2005, which was rejected in terms of Ext.P8. In Ext.P8, it is stated that the petitioner was eligible for pay and allowances from 14/5/1992 only as he was on leave without allowance for the period from 6/4/1990 to 13/5/1992. Petitioner submitted another representation which was rejected in terms of Ext.P10 dated 15/6/2012. It is in these circumstances that this writ petition came to be filed.

4. Counter affidavit has been filed by the 1st respondent *inter alia* stating that since the petitioner has availed of leave without allowance in the post of Telephone Operator from 6/4/1990, he was not entitled for any monetary benefits and it is in the said circumstances that the Government had passed appropriate orders. It is stated that pay and allowances are admissible to the petitioner only for the period during which he was working and admittedly he was on leave without allowance during the aforesaid period.

5. Having regard to the aforesaid factual situation, when it is clear that the petitioner had availed of leave without allowance, he is not entitled to treat the said period for the purpose of availing of any benefits. By Ext.P8, petitioner was informed that his post in the service shall be considered as Telephone Operator w.e.f. 6/4/1990 on notional basis and at any rate he was not entitled for any arrears on the basis of fixation specified in Ext.P5.

6. Though the petitioner has a contention that

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Government had taken a positive view in his case, in the absence of any specific provision which enables the petitioner to claim salary for the aforesaid period and also for fixation of his salary during the aforesaid period, I do not think that the petitioner is entitled to claim any benefits.

Therefore, there being no merit in the writ petition, the same is dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
14/10/2015

//True Copy//

PS to Judge