

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

W.P.(C).No.34159 of 2010 (T)

PETITIONER(S):-

C.H. HASSAN
HEAD ACCOUNTANT(ON REMOVAL),
M.E.S.KEVEEYEM COLLEGE, VALANCHERRY, MALAPPURAM,
(RESIDING AT AL-HILAL, HAJIARPALLI P.O., MALAPPURAM-676519.

BY ADVS.DR.K.P.SATHEESAN [SENIOR ADVOCATE]
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.MATHEW SUNNY
SRI.ANOOP.V.NAIR.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
HIGHER EDUCATION (D) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -1.
2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM-33.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOZHIKODE, PIN-673001.
4. THE PRINCIPAL,
M.E.S.KEVEEYEM COLLEGE, VALANCHERRY, MALAPPURAM,
PIN-676552
5. THE CORRESPONDENT & CHAIRMAN
STANDING COMMITTEE ON M.E.S.COLLEGES, KOZHIKODE,
PIN-673001.

R1 TO R 3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R5 BY ADVS. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.P.G.PRAMOD

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

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE ORDER NO.MES/AC/E.A22/02 KMA
DATED 31.12.2004 ISSUED BY THE 5TH RESPONDENT.
- EXT.P2 TRUE COPY OF THE REPRESENTATION FILED BY THE
PETITIONER BEFORE THE HON'BLE MINISTER FOR
EDUCATION DATED 30.4.2008.
- EXT.P3 TRUE COPY OF THE LETTER WRITTEN BY THE 3RD
RESPONDENT TO THE 4TH RESPONDENT DT.6.3.2009.
- EXT.P4 TRUE COPY OF THE REPORT DATED NIL. GIVEN BY THE
4TH RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P5 TRUE COPY OF THE LETTER WRITTEN BY THE 2ND
RESPONDENT TO THE 3RD RESPONDENT DT.7.8.2009.
- EXT.P6 TRUE COPY OF THE LETTER WRITTEN BY THE
3RD RESPONDENT TO THE 4TH RESPONDENT DT.29.9.2009.
- EXT.P7 TRUE COPY OF THE GOVERNMENT LETTER
NO.15473/D3/2008/H.EDN. DATED 21.4.2010.
- EXT.P8 TRUE COPY OF THE COVERING LETTER ISSUED BY THE
3RD RESPONDENT TO THE PETITIONER DATED 7.6.2010.

RESPONDENT'S EXHIBITS:-

- EXT.R5(a) TRUE COPY OF THE MEMO DATED 23.07.2002, SENT BY THE
PRINCIPAL, MES MAMPAD COLLEGE TO THE PETITIONER,
DIRECTING HIM TO REJOIN DUTY IMMEDIATELY SINCE, HIS
APPLICATION FOR EXTENSION OF LWA FROM 21.03.2002 TO
20.05.2003 WAS REJECTED BY THE GOVERNMENT.
- EXT.R5(b) TRUE COPY OF THE REMINDER LETTER DATED 03.10.2002,
SENT BY THIS DEPONENT TO THE PETITIONER, REMINDING
HIM TO REJOIN DUTY.
- EXT.R5(c) TRUE COPY OF THE LETTER DATED 28.10.2002 OF THE
PETITIONER.
- EXT.R5(d) TRUE COPY OF THE LETTER DATED 12.06.2003, SENT BY THE
PETITIONER, WHICH WAS RECEIVED ON 25.06.2003.

vkul/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.34159 of 2010-T

Dated this the 11th day of November, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's claim for compassionate allowance under Rule 5 (a) of Part III of Kerala Service Rules [for brevity "KSR"] was rejected without hearing the petitioner.

2. The petitioner had, admittedly, been on Leave Without Allowance from 21.08.1983 to 30.10.2002. The petitioner was directed to re-join duty on expiry of the leave period and he did not comply with the same. The petitioner contends that he had been hospitalised with coronary disease and could not have travelled; from abroad.

3. In any event, the petitioner's services were terminated by Exhibit P1 dated 31.12.2004. The petitioner has not challenged the said order. The petitioner, subsequent to

that, after about four years, filed an application before the Hon'ble Minister for Education, dated 30.04.2008, for consideration of compassionate allowance. The same was forwarded to the Deputy Director and after consideration, the same was declined by the Government as per Exhibit P7. The petitioner claims that Exhibit P7 was passed without any hearing and if an opportunity for hearing was afforded, the petitioner would have been able to convince the authority as to the special reasons for consideration.

4. As was noticed earlier, the petitioner's termination in 2004 was not challenged by him. The petitioner even thereafter slept over the matter and filed a representation before the Hon'ble Minister for Education after four years. The same was considered and rejected by Exhibit P7, in 2010. The application itself, filed before the authority, was grossly delayed. Further, there can be no consideration directed at this point of time when the petitioner's termination itself was effected in 2004.

5. The learned Senior Counsel appearing for the petitioner would submit that the petitioner would lose 16 years service with the Government. It is to be noticed that the petitioner had proceeded on 19 years leave and was abroad during the said period. The petitioner having been employed abroad for all these years and having not cared to re-join duty after expiry of leave or even before a reasonable time of his date of superannuation, cannot claim any compassionate consideration. This Court is of the opinion that the petitioner's case does not disclose any special reasons; nor does the facts commend a consideration for compassionate allowance.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]