

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 30930 of 2014 (M)

PETITIONER(S):

**R. RAJAGOPAL AGED 57 YEARS
S/O.P.K.RAMAKRISHNAN, AZHAKATHUPUTHEN VEEDU
NALLILA PO, KOLLAM DISTRICT 691 515
RETIRED ASSOCIATE PROFESSOR, S.N.COLLEGE, KOLLAM**

BY ADV. SRI.M.S.RADHAKRISHNAN NAIR

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY SECRETARY
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001**
- 2. DIRECTOR OF COLLEGIATE EDUCATION
THIRUVANANTHAPURAM 695 001.**

R1&2 BY ADV. GOVERNMENT PLEADER,SRI. RINNY STEPHEN CHAMAPARAMBIL.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, ALONG WITH WPC. 284/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 COPY OF THE INTIMATION SLIP OF PERNSIONARY BENEFITS
- EXHIBIT P2 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER
DATED 5/4/2014
- EXHIBIT P3 COPY OF THE REPLY DATED 17/9/2014 OF END RESPONDENT AND
TRUE ENGLISH TRANSLATION
- EXHIBIT P4 COPY OF THE REPLY DATED 9/10/14 TO THE APPLICATION UNDER RTI
ACT AND TRUE ENGLISH TRANSLATION
- EXHIBIT P5 COPY OF THE GOVERNMENT LETTER NO.12608/F3/HIGHER
EDUCATION DATED 16/6/2012 AND TRUE ENGLISHJ TRANSLATION
- EXHIBIT P6 COPY OF THE GO(MS) NO.209/96/H.EDN DATED 24/12/96
- EXHIBIT P7 COPY OF THE GO(P) NO.2357/99/FIN DATED 25/11/99

RESPONDENT(S)' EXHIBITS

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). Nos. 30930 of 2014 & 284 of 2015
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Dated this the 29th day of July, 2015

JUDGMENT

As the issue involved in both these writ petitions is similar, they are taken up together for consideration and disposed by this common judgment. For the sake of convenience, the reference to facts and exhibits is from WP(C) No.30930 of 2014.

2. The petitioner is a retired Associate Professor of SN College, Kollam and he retired on 30.06.2013. It is not in dispute that his retirement benefits have since been sanctioned by the respondents. While in service, the petitioner had two broken spells of service between 16.10.1985 and 20.12.1985 and thereafter from 01.01.1988 to 30.06.1988. The said spells of service were not taken into account, while disbursing the retirement benefits due to the petitioner. The petitioner, therefore, preferred Ext.P2 representation before the respondents to include the broken spells also, while reckoning the qualifying service for pension. By Ext.P3 order dated 17.09.2014, the 2nd respondent rejected the request of the petitioner. It was the stand of the 2nd respondent in the said order, that as per the provisions of Part III KSR, only the period of service considered for increment would be considered for retirement benefits and since in the instant case, the service during

the broken spells was not counted for the purposes of increment, the same would not qualify for the purposes of pension either. It was also noticed that the verification certificate issued in respect of the petitioner was issued without including the broken spells. The petitioner would rely on Ext.P6 Government Order, GO(MS) No.209/96/H.Edn. dated 24.12.1996, which contemplates that temporary service, including broken periods, can be considered as qualifying service for the purposes of placement. Reliance is also placed on Ext.P7 Government Order, GO (P) No.2357/99/FIN dated 25.11.1999 for contending that provisional service with or without break upto 30.05.1994, which qualify for increment in terms of Government Decision Note 2 in Rule 33 Part I KSR, will be reckoned as qualifying service for pension, irrespective of date of retirement after 20.11.1989. The petitioner relies on the said Government Orders to contend that inasmuch as the service during the broken spells would have qualified for increment as per the provisions of the Government Decision referred to above under Rule 33 of Part I KSR, the said broken spells should also be included in the computation of qualifying service for the purposes of pensionary benefits due to the petitioner.

3. A counter affidavit has been filed by the respondents, wherein the stand taken is that, insofar as the broken spells of service rendered by the petitioner have not been taken into account for the purposes of grant of increment, the same would not be treated as qualifying service for the purposes of pension either. Ext.P6 Government Order is stated to be inapplicable to the case of the petitioner, since it talks about reckoning of a period for the purposes of placement alone. As regards reliance placed by the petitioner on Ext.P7 Government Order, it is stated that the petitioner had at no point of time, relied on the said Government Order, for the purposes of getting the broken spells of service reckoned for the purposes of grant of increment and therefore, he could not rely on it, at this distance of time solely for the purposes of grant of pension. A reply affidavit has also been filed by the petitioner refuting the averments in the counter affidavit.

4. In Writ Petition 284 of 2015, the factual situation is more or less identical, save for the fact that the petitioner in that writ petition retired as an Associate Professor of DB College, Sasthamkotta with effect from 31.03.2013. The broken spells of service rendered by the petitioner in that writ petition were

between 01.06.1982 to 14.10.1983, 15.10.1983 to 31.07.1985, 01.08.1985 to 16.09.1985. The contentions on behalf of the petitioner in this case are identical to those advanced in respect of the petitioner in Writ Petition 30930 of 2014.

5. I have heard Sri.Radhakrishnan, the learned counsel appearing for the petitioner in both the writ petitions as also Sri.Rinny Stephen Chamaparambil, the learned Government Pleader appearing for the respondents in both the writ petitions.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that it is not in dispute in the instant cases that the petitioners had not approached the respondents, within time, for reckoning the broken spells of service rendered by them, for the purposes of grant of increment. While in service, the petitioners received increments, that were disbursed to them by treating their service as commencing from the date of regular service. In other words, while receiving the increments, the petitioners had not raised any dispute with regard to the time when the increment actually fell due. If the petitioners were genuinely aggrieved by the non-

inclusion of the broken spells of service rendered by them in the reckoning of qualifying service for the purposes of grant of increment, then the petitioners ought to have challenged the orders granting increment at the relevant point in time. The petitioners having failed to act in a timely manner in respect of the grant of increment to them, cannot at this distance of time seek an inclusion of the said broken spells of service in the reckoning of qualifying service for the purposes of grant of pension. This is more so because, the Rule governing grant of pension is very clear, when it states that the qualifying service for the purposes of pension would be only such service as qualified for the grant of increment. Resultantly, I see no reason to interfere with the decision of the 2nd respondent rejecting the request of the petitioners for the inclusion of the broken spells of service rendered by them, while computing the qualifying service for the purposes of pension.

The writ petitions fail and are accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE