

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 35030 of 2011 (C)

PETITIONER:

**SREEDHARAN.K., AGED 54 YEARS, S/O. NARAYANAN,
"SREERATNA"NEAR CHAKRAPANI TEMPLE, P.O.ELAMBACHI
PIN-671311. RETIRED PRIMARY TEACHER, N. SUBRHAMANYA SHENOY,
MEMORIAL MUNICIPAL HIGHER SECONDARY SCHOOL, PAYYANNUR**

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENTS:

- 1. THE DY.DIRECTOR OF EDUCATION,KANNUR
KANNUR-1.**
- 2. THE HEADMISTRESS,N.SUBRAHMANYA SHENOY
MEMORIAL MUNICIPAL HIGHER SECONDARY SCHOOL
PAYYANNUR-670307.**
- 3. STATE OF KERALA,REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION, DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**

R1 & R3 BY GOVERNMENT PLEADER SRI.S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1: TRUE COPY OF THE INTIMATION SLIP OF PENSIONARY BENEFITS DATED 30-12-2010 ISSUED BY THE ACCOUNTANT GENERAL(A&E), KERALA
- EXT.P2: TRUE COPY OF THE LETTER DATED 11-05-2011 ISSUED BY THE A.E.O.,PAYYANNUR THE 2ND RESPONDENT.
- EXT.P3: TRUE COPY OF THE JUDGMENT DATED 5-9-2011 OF THIS HON'BLE COURT IN W.P.(C).23628 OF 2011.
- EXT.P4(A): TRUE COPY OF THE INTIMATION DATED 12-11-2011 ISSUED TO THE SUB TREASURY,PAYYANNUR BY THE 1ST RESPONDENT.
- EXT.P4(b): TRUE COPY OF THE NON-LIABILITY CERTIFICATE ISSUED BY THE 1ST RESPONDENT.
- EXT.P5: TRUE COPY OF THE LETTER DATED 4-7-2011 ISSUED BY THE 1ST RESPONDENT.
- EXT.P6: TRUE COPY OF THE LETTER DATED 19-10-2011 ISSUED BY THE 1ST RESPONDENT
- EXT.P7: TRUE COPY OF THE LETTER DATED 19-10-2011 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXT.P8: TRUE COPY OF THE LETTER DATED 2-11-2011 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXT.P9: TRUE COPY OF THE REPLY DATED 5-11-2011 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P10: TRUE COPY OF THE LETTER DATED 26-11-2011 ISSUED BY THE 2ND RESPONDENT.
- EXT.P11: TRUE COPY OF THE LETTER/ORDER DATED 22-11-2011 ISSUED BY 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXT.P12: TRUE COPY OF THE REPLY LETTER DATED 29-11-2011 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P13: TRUE COPY OF THE RECEIPT DATED 22-05-2007 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- EXT.P14: TRUE COPY OF THE ACCOUNT STATEMENT DATED 3-10-2007 SIGNED BY THE 4TH RESPONDENT AND COUNTERSIGNED BY THE PRESIDENT AND SECRETARY OF THE P.T.A.COMMITTEE.
- EXT.P15: TRUE COPY OF THE LETTER DATED 3-12-2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P.(C) No. 35030 of 2011 (C)

Dated this the 22nd day of September, 2015

J U D G M E N T

The petitioner is a retired Primary School Teacher, who superannuated on 2.7.2010.

2. The Pension Pay Order is seen at Ext.P1 dated 30.12.2010. The petitioner's DCRG was not disbursed since the Non-Liability Certificate had not been issued and the petitioner was before this Court with a writ petition which was disposed of by Ext.P3 directing the 2nd respondent therein to issue the Non-Liability Certificate/Liability Certificate within three weeks. Exts.P4(a) and P4(b) are the Liability Certificates issued in compliance with the said order. The petitioner was also paid the entire DCRG in the year 2010 itself.

3. Later, a proceeding was initiated as per Ext.P5 dated 4.7.2011, finding that there was some discrepancy in the maintenance of records of the Payyannur Municipal U.P.

School, when the petitioner was in charge between 1.11.2003 and 22.5.2007. Notice was issued calling for explanation. The petitioner replied as per Ext.P6. However, a liability was fixed at Rs.31,797/- as per Ext.P7. A reminder to deposit the amount was made at Ext.P8. Despite Ext.P9 explanation, Ext.P10 order was passed confirming the liability fixed on the petitioner and seeking deduction of Rs.31,797/- from the arrears of pay due to the petitioner, which came to Rs.39,734/-. The balance amount of Rs.7,937/- was also directed to be paid to the petitioner. Ext.P11 is the order based on which Ext.P10 was issued. Ext.P11 directed the amounts to be deducted from any amount due to the petitioner. It is in pursuance of the said order that the deductions were made from the salary arrears. The deductions were effected as per Ext.P15.

4. The petitioner retired as early as on 2.7.2010 and the Non-Liability Certificates were also issued. In the said circumstance, Note 3 of Rule 3 of Part III Kerala Service

Rules is relevant. Under Rule 3, Part III of Kerala Service Rules the Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period. This, however, is subject to the further restriction that such departmental proceedings shall not be in respect of any event which took place more than four years before such institution. After retirement it also has to be with sanction from the Government. The petitioner's liability is said to have been fixed on an enquiry conducted, without notice to the petitioner. The enquiry is also said to have been initiated on the complaint of another teacher. No sanction of the Government is also evident.

5. Further, even when a notice is issued prior to the retirement, the proceedings are to be initiated only on a cause of action which arose in the four years preceding the date of retirement. In the present case the cause of action is said to be between 1.11.2003 and 22.5.2007, which also falls foul of the above prescription.

6. In such circumstance, Exts. P10, P11 and P15 would stand set aside. There can be no proceedings for fixing any liability against the petitioner, at this distance of time. The amounts deducted from the arrears of salary due to the petitioner, shall be refunded to the petitioner within a period of three months from the date of receipt of the certified copy of this judgment, failing which the amount shall bear interest @ 6% from the date of deduction till the date of payment.

Writ petition is disposed of. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE