

D.Beeba Vs. State of Kerala

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Court : Kerala

Decided On : Jan-27-2014

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : D.Beeba

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI MONDAY, THE 27TH DAY OF JANUARY 2014 7TH MAGHA, 1935 WP(C).No. 19483 of 2012 (I)

----- PETITIONER(S): ----- D.BEEBA, AGED 29 YEARS, D/O.MOHANAN, PART TIME URDU TEACHER, SABARI VLNM UP SCHOOL, VILAYANCHATHANOR, VILAYANOR P.O., PALAKKAD, RESIDING AT VILAYANCHATHANUR, PALAKKAD. BY ADV. SRI.U.BALAGANGADHARAN RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVT., GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM-695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM-695 001.

3. THE ASSISTANT EDUCATIONAL OFFICER, COYALMANNAM-678 702.

4. THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD-678 001.

5. THE HEADMISTRESS, SABARI VLNM UP SCHOOL, VILAYANCHATHANOOR, VILAYANOOR P.O., PALAKKAD-678 671.

6. THE MANAGER, SABARI VLNM UP SCHOOL, VILAYANCHATHANOOR, VILAYANOR P.O., PALAKKKAD-678 671. R1 TO R4 BY GOVERNMENT PLEADER SRI.R.RANJITH R5 & R6 BY ADVS. SRI.V.M.SHYAM KUMAR SMT.KRIPA ELIZABETH MATHEWS SRI.V.N.HARIDAS SMT.DIVYA C.MOHAN THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss WPC.NO.19483/2012 (I) APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1: TRUE COPY OF THE APPOINTMENT

ORDER

OF THE PETITIONER DATED 16-2-2009. EXHIBIT P2: TRUE COPY OF THE

JUDGMENT

IN WPC187222010 DATED 13-9-2010. EXHIBIT P3: TRUE COPY OF THE

ORDER

NO.RA(1) 76551/10 DATED 22-12-2010. EXHIBIT P4: TRUE COPY OF THE LETTER OF R3 NO.C/1100/2011 DATED 14-6-2011. EXHIBIT P5: TRUE COPY OF THE

JUDGMENT

IN WPC192792012 DATED 25-7-2011. EXHIBIT P6: TRUE COPY OF THE GO(RT) 1732/12/G.EDN DATED 10-4-2012. EXHIBIT P7: TRUE COPY OF THE

ORDER

NO.K.DIS C/50/12 DATED 10-7-2012 OF THE AEO, KUZHALMANAM. EXHIBIT P8: TRUE COPY OF THE LETTER OF THE PETITIONER TO THE AEO, KUZHALMANNAM DATED 18-2-2012. RESPONDENTS' EXHIBITS: NIL /TRUE COPY/ P.S.TO JUDGE Kss A.V.RAMAKRISHNA PILLAI, J

----- W.P.(C) No.19483 of 2012

----- Dated this the 27th day of January, 2014

JUDGMENT

Under challenge in this writ petition is Ext.P7 to the extent it does not direct to disburse pay and allowance of full time teacher to the petitioner with effect from the date of Ext.P1.

2. The petitioner, a Part Time Urdu Teacher in an aided school, was appointed as per Ext.P1 with effect from 1.6.2009 against the post vacated by one Sudevan who was enjoying full time status by way of Group-C diversion.

3. The petitioner alleges that Group-C periods like Physical education, Drawing, Music etc. were lying vacant in the said school. She had earlier approached this Court by a writ petition wherein the Director of Public Instructions was directed to consider the revision petition of the petitioner. On the basis of the same, Ext.P3 was issued rejecting the claim. The petitioner alleges that Ext.P3 was issued relying on the submissions of the clerk WPC No.19483 of 2012 2 in the office of the AEO, though the petitioner had submitted sufficient proof in support of the claim. The petitioner filed a revision under Rule 12F of Chapter XXIII of KER. As it has not been forwarded by the AEO, the petitioner again approached this Court and this Court by Ext.P5 judgment ordered that the revision be forwarded to the authorities concerned. On the basis of the same, Ext.P6 was issued. In Ext.P6, there was a clear direction to the Assistant Educational Officer, Kuzhalmannam to approve the appointment of the petitioner as Full Time Urdu teacher through Group-C diversion if sufficient periods were available for diversion from Group-C subjects and she is otherwise eligible as per the rules.

4. The grievance of the petitioner is that the Assistant Educational Officer, though issued Ext.P7 proceedings, made an addition stating that she is entitled to draw pay and allowances only from the date she has been actually discharging the duties of Full Time Teacher and accordingly, she was being denied pay and allowances in the post even now. It is in this context, the petitioner has come up before this Court. WPC No.19483 of 2012 3 5. The respondents have filed a detailed counter in which they have submitted that the petitioner has performed duty only as Part Time Teacher with effect from 1.6.2009 vide letter No.60/12 dtd.17.5.2012 and as the petitioner has actually performed duty as part time teacher, she is not entitled to receive salary as full time teacher. It was further

submitted that the appointment of the petitioner was approved as full time urdu teacher as per G.O.(Rt) No.1732/12/ G.Edn.dated 10.4.2012. It was only in the light of the above G.O., full time Urdu post was sanctioned to the school concerned. Therefore, it was averred that there was no provision for granting full time salary as the teacher has performed duty only as a part time teacher.

6. I have heard the learned counsel for the petitioner and the learned Government Pleader. The impugned orders were also perused.

7. Admittedly, the petitioner joined duty as PT Urdu Teacher as per Ext.P1 with effect from 1.6.2009. It is the definite case of the petitioner that at that time Group-C periods like Physical Education, Music, Drawing etc. were lying unmanned. This is not at all WPC No.19483 of 2012 4 challenged by the contesting respondents.

8. It is also relevant to note that as per Ext.P6, the Additional Secretary to Government has directed the Assistant Educational Officer to approve the appointment of the petitioner as Full Time Urdu teacher by Group-C diversion. The whole complication arose, as the Assistant Educational Officer added a rider in Ext.P7, by which the petitioner was ordered salary of the Full Time Teacher only with effect from the date of the approval as Full Time Teacher. This, according to the petitioner, is illegal as she was not appointed as Full Time Teacher because of any fault on her part. As it is an admitted fact that the Group-C periods like Physical education, drawing, music etc. were lying vacant in the school concerned, the appointment of the petitioner was delayed only because of the procedural laches on the part of the educational authorities.

9. Therefore, I see force in the submission made by the learned counsel for the petitioner that she is entitled to get salary of Full Time Teacher with effect from the date of Ext.P1, though it was forcefully WPC No.19483 of 2012 5 submitted by the learned Senior Government Pleader that there cannot be any pay as full time for the period during which the petitioner was working as part time teacher.

10. The learned senior Government Pleader further pointed out that against Ext.P7, the petitioner can approach the Government with a revision where he can ventilate the grievance.

11. The learned counsel for the petitioner submitted that the petitioner was being driven from pillar to post to get her grievances redressed by filing revisions and writ petitions and therefore, a further direction to approach the Government with a revision will only protract the litigation.

12. However, this Court is of the view that since there is an alterate remedy available to the petitioner, it is only just and proper to direct the petitioner to exhaust that remedy. Therefore, this writ petition is disposed of reserving the right of the petitioner to file a revision within a period of one month from today along with a copy of this judgment. In the event of filing such a WPC No.19483 of 2012 6 revision within the aforesaid time, the same shall be reckoned as one filed in time. The concerned authority shall consider the revision and Ext.P6 in the light of what has been observed above in this judgment and this exercise shall be completed by the respondent concerned within a period of three months. To facilitate speedy disposal, the petitioner shall be at liberty to produce a copy of this judgment as well as a copy of Ext.P6 before the revisional authority along with the revision. sd/-
A.V.RAMAKRISHNA PILLAI JUDGE css/ TRUE COPY P.S.TO JUDGE

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