

Jayasree S. Vs. District Educational

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Court : Kerala

Decided On : Dec-20-2014

Judge : Honourable Mr.Justice C.T.Ravikumar

Appellant : Jayasree S.

Respondent : District Educational

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR SATURDAY, THE 20TH DAY OF DECEMBER 2014 29TH AGRAHAYANA, 1936 WP(C).No. 6022 of 2012 (C)

----- PETITIONERS: ----- 1. JAYASREE S., AGED 46 YEARS PAVIZHAM, VALLIKEEZHU, KAVANADU P.O. KOLLAM.

2. DAYA.S. SREEVARAHAM, RNRA-142, THIRUMULLAVARAM P.O., KOLLAM-12. BY ADV. SRI.S.ABDUL RAZZAK RESPONDENTS: ----- 1. DISTRICT EDUCATIONAL OFFICER KOLLAM- 691001.

2. THE DEPUTY DIRECTOR (EDUCATION) KOLLAM-691001.

3. THE HEADMASTER, M.G.T.HIGH SCHOOL, MUKATHALA P.O., KOLLAM-691001.

4. GOVERNMENT OF KERALA REPRESENTED BY SECRETARY GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT

THIRUVANANTHAPURAM-1. R1,R2 & R4 BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2012-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 6022 of 2012 (C) APPENDIX PETITIONERS' EXHIBITS EXHIBIT-P1. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P2. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P3. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P4. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P5. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P6. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P7. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P8. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P9. PHOTOCOPY OF APPOINTMENT

ORDER

EXHIBIT-P10.PHOTOCOPY OF

JUDGMENT

DATED223.2004 IN W.P.(C) NO.35231/2003. EXHIBIT-P11.PHOTOCOPY OF IST RESPONDENT'S

ORDER

NO.B4/2784/03 DT.03.9.2004. EXHIBIT-P12.PHOTOCOPY OF1T
RESPONDENT'S

ORDER

NO.B4/2784/03 DT.30.8.2011. EXHIBIT-P13.PHOTOCOPY OF
REPRESENTATION DT.21.11.2011. RESPONDENTS' EXHIBITS: NIL // TRUE
COPY // TKS P.S. TO JUDGE C.T.RAVIKUMAR, J -----
W.P.(C) No. 6022 of 2012 ----- Dated this the 20th day
of December, 2014

JUDGMENT

The petitioners were High School Assistants (Physical Science) in MGTHS, Mukhathala prior to their joining in Governmental Service. Exts.P1 to P5 would reveal the stint of approved service of the first petitioner in the said school spanning from 12.6.2002 to 9.3.2004. In the case of the second petitioner Exts.P6 to P13 would reveal the approved service rendered by her during the period from 16.1.2001 to 9.3.2004 in different spells. After rendering such aided school service the first petitioner joined as a UPSA in Government service and the second petitioner entered in Government service as an Upper Division Clerk in the Revenue Department. The captioned writ petition has been filed mainly seeking the following relief:- "A writ of mandamus or other appropriate writ, direction or order directing the 1st respondent to protect and retain all statutory claims of the W.P.(C) No. 6022 of 2012 2 petitioners on regularisation as ordered in Ext.P12 order and to release all monetary benefits including arrears of vacation salary due under Ext.P11 for the service approved in Exts.P1 to P9." 2. I have heard the learned counsel for the petitioners and the learned Government Pleader.

3. A counter affidavit has been filed on behalf of the first respondent. Evidently, in the said counter affidavit the particulars of the approved 'aided school service' rendered by the petitioners herein, as obtained from Exts.P1 to P9, were not at all disputed. It is stated therein that MGTHS Mukhathala is an Aided School under the jurisdiction of the District Educational Officer, Kollam and in view of the management dispute involved in A.S.No.120/2002 this Court ordered the DEO, Kollam to act as the Official Receiver of the said school with immediate effect until

further orders. In the order dated 12.7.2002 in CMP No.2348/2002 in A.S.No.120/2002 this Court ordered that the Official Receiver could appoint teachers temporarily to fill up the posts according to their priority in the previous W.P.(C) No. 6022 of 2012 3 appointment in the school. Ext.P12 itself would reveal the said fact as also the fact that the petitioners and six others named thereunder were appointed temporarily as teachers in MGTHS, Mukhathala pursuant to the said order. It is stated in paragraph 4 of the counter affidavit that as per Ext.P10 judgment in W.P.(C) No.35231/2003 and the order in C M P No. 1394/2003 in A S NO.120/2002 this Court directed to allow the teachers appointed as per the direction in the order dated 12.7.2002 in A.S.No.120/2002 to continue in service till A S No.120/2002 is finally disposed of and their vacation salary was also directed to be disbursed. It is further stated therein that in the light of the said order and the judgment the Official Receiver allowed the petitioners herein and the other petitioners in W.P.(C) NO.35231/2003 to continue on temporary basis and in the case of all such appointees except the petitioners their salary during vacation was released and the vacation salary as regards the petitioners was not paid as they left the school respectively on 30.1.2004 and 9.3.2004. It is further stated therein that the DEO, Kollam issued an order dated 03.6.2004 for payment of vacation salary based on the judgment dated 4.8.2004 in C.O.(C) 829/2004. In paragraph 6 of the W.P.(C) No. 6022 of 2012 4 counter affidavit it is stated that as per judgment dated 31.3.2011 in A.S.No.120/2002 and W.P.(C) NO.18334/2009 this Court ordered to treat the other six provisional teachers appointed by the Official Receiver pursuant to the order in CMP.No.2348/2002 as regular hands and to reckon their seniority from the date of entry in service. The contention of the petitioners is that in the light of Ext.P10 judgment the petitioners were also allowed to be continued till A.S.No.120/2002 is disposed of and it was also found that they would be entitled to get salary during vacation. On the other hand, it is the contention of the first respondent that the petitioners who left the school on 30.1.2004 and 9.3.2004 respectively to join Government service got no eligibility for vacation salary and that apart, this Court, as per judgment dated 31.3.2001 in A S NO.120/2002 and in W.P.(C) No.18334/2009, ordered to treat only the other six provisional teachers as regular hands and to reckon their seniority alone from the date of entry in service. In short, it is the contention that the petitioners cannot

claim such benefits extended to the said six provisional teachers and therefore, this writ petition is liable to be dismissed. W.P.(C) No. 6022 of 2012 5 4. In view of the rival contentions the question to be considered is whether the petitioners are entitled to get their temporary appointment effected pursuant to the order in C.M.P.No.2348/2002 in A.S.No.120/2002 regularised and also for monetary benefits including arrears of vacation salary. It is the fact that the petitioners and six others namely, Sudha.S, Sulekha.C, Usha.C, Sindhu.V, Shiji.C.S. and K.Sudhadevi were appointed as teachers temporarily pursuant to the order dated 12.7.2002 in A.S.No.120/2002 directing the Official Receiver to appoint teachers as such according to their priority in the previous appointment in the school and the said fact is evident from the statements in the counter affidavit and also from Exts.P11 and P12. It is also a fact that subsequently, all of them were ordered to be allowed to continue till the disposal of A.S.No.120/2002 and it was also ordered to release their vacation salary. The existence of such an order in the case of the petitioners is evident from Ext.P10 judgment. A careful evaluation of the circumstances would reveal that the petitioners continued in service thereafter based on the orders and while so they got appointment in Government service and accordingly, relieved from W.P.(C) No. 6022 of 2012 6 MGTHS, Mukhathala respectively on 30.1.2004 and 9.3.2004. The others continued based on the earlier orders till the disposal of A S No.120/2002 as per judgment dated 31.3.2011. Based on the direction in the judgment dated 31.3.2011 and also in W.P.(C) No 18334/2009 (as is obvious from paragraph 6 of the counter affidavit) the six provisional teachers appointed by the Official Receiver pursuant to the order in CMP.No.2348/2002 in the said Appeal Suit along with the petitioners were ordered to be treated as regular hands and their seniority was also directed to be reckoned from the date of their entry in service. There cannot be any doubt that in the said circumstances the petitioners could have continued in service in MGTHS Mukhathala on the strength of the aforementioned orders to obtain the benefits as extended to the other temporary appointees in and vide Ext.P12. In the light of the indisputable facts obtained from the pleadings in the writ petition and also from the statements in the counter affidavit filed by the first respondent and Exts.P11 and P12 it can only be said that till the date of leaving the aided school service respectively on 30.1.2004 and 9.3.2004 the petitioners and the beneficiaries of

Ext.P12 were similarly situated in all respects. In such circumstances, it can be safely taken that they too would have obtained the benefits, as has W.P.(C) No. 6022 of 2012 7 been extended to the other temporary appointees under Ext.P12 but for their leaving the aided school service. In such circumstances, the question is whether claim of the petitioners for regularisation and the consequential monetary claims including arrears of vacation salary (which were given in the case of the beneficiaries of Ext.P12) till the date on which they left the service of the said school could be granted in the facts and circumstances. In this context, it is relevant to note that the only reason assigned by the first respondent to deny the petitioners such benefits is that they left the service of the school respectively on 30.1.2004 and 9.3.2004. I am of the considered view that it is a case wherein the salutary maxim 'Parium eadem est ratio, idem jus' which means 'of things equal, the reason and the law is the same' should apply lest it would violate the equality doctrine enshrined under Article 14 of the Constitution of India. The inevitable conclusion is that the petitioners are entitled to get treated as regular hands and to get consequential monetary benefits including arrears of vacation salary respectively till 30.4.2004 & 9.3.2004. Consequently, there will be a direction to the first respondent to issue appropriate orders treating the petitioners as well, as regular hands till 30.4.2004 and 9.3.2004 from the date of entry in service of MGTHS, Mukhathala and to grant them all benefits which were extended to the beneficiaries in Ext.P12 including the arrears of vacation salary. W.P.(C) No. 6022 of 2012 8 Since they have already left the service of MGTHS, Mukhathala the question of fixation of their seniority in the said school do not arise. This shall be done expeditiously, at any rate, within a period of four months from the date of receipt of copy of this judgment. It is also made clear that the petitioners would also be entitled to get all service benefits flowing from the order treating them as regular hands, in accordance with law. The writ petition is allowed to the above extent. Sd/- C.T.RAVIKUMAR Judge dlk/TKS

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