SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The State of Kerala vs Mony C.S.

The State of Kerala vs Mony C.S.

SooperKanoon Citation : sooperkanoon.com/1648523

Court : Kerala

Decided On : Oct-01-2021

Judge : Honourable Mr. Justice Alexander Thomas,Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(KAT)/244/2020

Appellant : The State of Kerala

Respondent : Mony C.S.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS & THE HONOURABLE MR. JUSTICE A. BADHARUDEEN FRIDAY, THE 1ST DAY OF OCTOBER 2021 / 9TH ASWINA, 1943 OP(KAT) NO. 244 OF 2020 AGAINST THE ORDER DATED 14.12.2018 IN TA 5835/2012 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM PETITIONERS/RESPONDENTS IN T.A: 1 THE STATE OF KERALA REP. BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001, KERALA. 2 THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHINAGAR, THIRUVANANTHAPURAM-695 001, KERALA. SRI.B.UNNIKRISHNA KAIMAL, SR.GOVT.PLEADER

RESPONDENTS/APPLICANTS IN T.A : 1 MONY C.S. PRINCIPAL, G.H.S.S KUMARAPURAM, AMBIKAPURAM P.O., PALAKKAD PIN 678 011. 2 PARVATHI.M PRINCIPAL G.H.S.S. CHNDAMPETTAH, PALAKKAD KERALA. BY ADV SMT.K.P.GEETHA MANI THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 01.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR) ALEXANDER THOMAS & A.BADHARUDEEN, JJ. ========== [arising out of the impugned final order dated 14.12.2018 in T.A No.5835/2012 on the file of the KAT, TVM Bench] ========== Dated this the 01st day of October, 2021

JUDGMENT

Alexander Thomas, J.

The respondents herein, had earlier filed a Writ Petition (Civil), W.P(C) No.9858/2011 before this Court with the following prayers [see page Nos.20 & 21 of the paper book of the O.P] : (a)Issue a writ of certiorari, or any other appropriate writ, order or direction calling for the records leading to Exhibits P-7 and to quash the same to the extent it denies monetary benefits and other consequential benefits to the petitioners;

(b)Issue a writ of Mandamus, or any other appropriate writ, order

or direction declaring that the petitioners are entitled to get promotion to the post of Principals of Government Higher Secondary Schools with effect from 01-08-2009 and all consequential benefits including the arrears of salary for the period from 01-08-2009 till they were given the scale of pay of Principals and also other consequential benefits and opportunities to make option or re-option for fixation of their pay scale;

and

(c) Pass such other orders or directions as this Hon'ble Court may deem just, fit and necessary in the facts and circumstances of the case including the costs of these proceedings.

2. After establishment of the Kerala Administrative Tribunal, in

accordance with the provisions contained in the Administrative Tribunal's Act, 1985, the above Writ Petition (Civil) No.9858/2011 was transferred from this Court to the Kerala Administrative Tribunal, for adjudication and decision. The said writ proceedings have been re-numbered by the Tribunal as Transferred Application, T.A No.5835/2012.

3. Now, the Tribunal after hearing both sides, has rendered the

impugned Annexure-III final order dated 14.12.2018 in T.A No.5835/2012, whereby, the main pleas of the applicants have been granted and the respondents in the O.A have been directed to disburse monetary benefits due to the applicant on account of the retrospective promotion as Principal of Higher Secondary School w.e.f 01.08.2009, as has been ordered in the case of the admitted juniors of the applicants.

4. Being aggrieved by the impugned Annexure-III final verdict

of the Tribunal in the above Transferred Application, the respondents therein (State of Kerala & the Director of Higher Secondary Education), have filed the instant Original Petition under Articles 226 & 227 of the Constitution of India with the following prayers [see page No.7 of the paper book of the O.P] : ..... to stay the operation and implementation of Annexure-III order dated 14.12.2018 in TA No.5835/2012 on the file of the Kerala Administrative Tribunal, Thiruvananthapuram pending disposal of the above OP(KAT).

5. Heard Sri.B.Unnikrishna Kaimal, learned Senior

Government Pleader appearing for the petitioners in the O.P/respondents in the T.A, Sri.P.N.Santhosh, learned Advocate appearing for the respondents in the

O.P/applicants in the T.A.

6. The two applicants were initially recruited as High School

Assistants (HSA) and Upper Primary School Assistant (UPSA) respectively in Government School service. Later, they were appointed on transfer basis to the post of Higher Secondary School Teachers (HSST) in July, 1997 & August, 1997 respectively. The Government had issued Ext.R1(a) G.O. (Ms) No.171/2003/G.Edn. dated 23.06.2003, wherein it has been ordered in para 4 thereof that, the senior most qualified Higher Secondary School Teacher of the Higher Secondary School concerned, will be the Principal subject to the following stipulations [see page No.49 of the paper book of the O.P] :

1. The seniority for being placed as Principal will be determined with reference to the date from which they are continuosly (sic) working as Higher Secondary School teacher. In case there are more than one Higher Secondary School Teachers with the same date of appointment in the Higher Secondary School Teacher cadre, seniority will be fixed reckoning the seniority as High School Assistant.

2. Higher Secondary School Teachers thus placed as Principal will be eligible for special allowance of Rs.250/- P M.

3. The Headmasters will continue as Headmasters of High School Section.

4. The Higher Secondary School Teacher who take charge as

Principal will continue to teach as a Higher Secondary School Teacher but with a reduction of teaching periods to a maximum of four periods a week. Those periods of teaching will be distributed among other Higher Secondary School Teachers.

5. Corporate Educational agencies having more than one Higher Secondary Schools under their Management shall appoint only qualified Senior Most Higher Secondary School Teacher under the Management as Principal.

7. It is common ground that, in tune with Ext.R1(a) G.O. (Ms)

No.171/2003/G.Edn. dated 23.06.2003, the 1st applicant was posted as Principal of the Higher Secondary School concerned in July 2005 and the 2nd applicant was posted as Principal of the Higher Secondary School concerned in February, 2006. A seniority list of Principals of Government Higher Secondary Schools was published, in which the names of the two applicants herein were omitted, whereas the names of about 200 incumbents who were admitted juniors to the applicants were included. Those included in the seniority list were promoted as

Principal in the higher scale of pay on the basis of G.O.(Rt.) No.3240/09/Gen. Edn. dated 01.08.2009. Being aggrieved by the act of the official respondents in appointing them to the post of Principal, on the basis of the above G.O dated 01.08.2009, the applicants have preferred representations dated 05.08.2009 (Exts.P-1 & P-2) before the competent authority pointing out the illegality in the seniority list and seeking rectification thereof. By Ext.P-3 order dated 02.11.2009, the competent authority of the State Government had included the applicants as well as some other Higher Secondary School Teachers of Government School in the select list for promotion as Principal for the year 2009 and in which, the applicants have been included as serial Nos.6 & 9 respectively in the said select list. However, the earlier select list published as per order dated 22.07.2009 giving the benefit in favour of the admitted juniors of the applicants, was not modified, so as to effectuate the promotion of the applicants w.e.f 22.07.2009. It is later by Ext.P-4 order dated 27.03.2010 that, the applicants and some other

higher secondary school teachers were promoted as Principal. The specific case of the applicant that, since admitted juniors have been included for promotion, as per G.O (Rt.) No.3240/2009/Gen.Edn. Dated 01.08.2009, the two applicants should also be given the benefit of promotion to that post w.e.f 01.08.2009, which is the date on which their admitted juniors have been promoted.

8. It is common ground that, pursuant to the earlier posting of

the petitioners as Principal of Government Higher Secondary Schools from 07.07.2005 to 13.06.2006, on the basis of Ext.R1(a) G.O, the two applicants have been discharging the duties and functions of Principal of the Government school concerned and no other incumbents have worked in those posts and has claimed

salary as Principal in those schools. It is in the light of these grievances that, the applicants had approached this Court by filing the instant Writ Petition (Civil), W.P(C)

No.27945/2010, which was transferred to the Tribunal. Later, the Government as per Ext.P-7 order dated 25.01.2011 has granted notional promotion to the applicants with effect from the date on which their immediate juniors have assumed charge as Principal, subject to the condition that back arrears are not admissible. A reading of Ext.P-7 G.O dated 25.01.2011 would make it clear that the applicants have been given notional promotion as Principal of Government Higher Secondary Schools w.e.f 01.08.2009, the date on which the said benefit has been

given in favour of the admitted juniors of the applicants. However, the arrears of pay and allowances in the post of Principal w.e.f 01.08.2009 has been denied. It is pointed out that they have received full pay and allowances in the post of Principal only w.e.f 23.07.2010 in pursuance of Ext.P-4 dated 27.03.2010, on which date they were regularly promoted as Principal.

9. The Tribunal after hearing both sides, has taken the

considered view that it is the admitted case of both sides that the applicants have infact been duly discharged the duties and functions of the post of Principal in the Government Schools concerned with effect from their initial placement as Principal on the basis of Ext.R-1(a) G.O in the years 2005 & 2006 onwards. Therefore, in the light of these aspects, the Tribunal has held that since actual regular promotion has been conferred in favour of the admitted juniors of the applicants, w.e.f 01.08.2009, confining the promotion benefits in the case of the applicants only on notional basis w.e.f 01.08.2009, is not justifiable in law and that since the applicants have been discharging the duties and functions of the post of Principal, since then, as above they are entitled to full pay and allowances from 01.08.2009, the date on which the

admitted juniors of the applicants have been given promotion and pay & allowances in the post of Principal.

10. After hearing both sides, we are of the firm view that the

Tribunal has given sound and good reasons for justifying their conclusions in the matter. It is on this basis that, the Tribunal has ordered that the R1 in the T.A shall disburse monetary benefits eligible to the applicants on account of their retrospective promotion as Principals of Higher Secondary Schools w.e.f 01.08.2009, within the time limit stipulated therein. There is no dispute that in pursuance of Ext.R1(a) G.O, the applicants have infact discharged duties and functions of the post of Principal, from 07.07.2005 and 13.06.2006

onwards. No other incumbent has been posted as Principal of the schools since then and no other incumbent has received full pay and allowances in the post of Principal in those schools for the relevant period in question. Since the applicants were discharging duties and functions in the post of Principal, there is no question of denying backwages on the ground that the regular promotion would entail change of duties and responsibilities. The contention raised by the petitioners in the O.P that the applicants have not discharged duties and functions in the post of Principal and by placing reliance on Rule 23(a)

of Part-I KSR, is thus clearly untenable. True that, the method of appointment envisaged in Ext.R1(a) G.O dated 23.06.2003 was placement of the senior most Higher Secondary School Teacher of the school concerned as Principal of the said school concerned. But for all purposes, the incumbents like the applicants have discharged duties and functions in the post of Principal. It is much later, that the regular method of appointment was envisaged by the Department. Admitted juniors have been given the benefit of regular promotion w.e.f 01.08.2009 and the omission to give the same benefit to the applicants with effect from that day, is clearly illegal and discriminatory and violative of the elementary principles enshrined in Articles 14 & 16 of the

Constitution of India. Therefore, merely because the method of appointment envisaged in Ext.R1(a), is styled as placement and not as an appointment, will not make any substantial difference, as regards the conclusions arrived at by the Tribunal in this case. Hence, the abovesaid contentions raised by the applicants, will also stand overruled. No grounds to invoke the public law remedy have been

made out in the instant case. However, we note that the Tribunal

has rendered the final verdict, as per Annexure-III as early as on 14.12.2018. The present O.P(KAT) has been filed only on 08.07.2020. In view of the long delay in the matter, it is ordered that the competent authority among the applicants, more particularly, R1 will ensure that the directions and orders of the Tribunal at Annexure-A3 are complied with, without any further delay, at any rate, within an outer time limit of six weeks from the date of receipt of a copy of this judgment. The learned counsel for the respondents will immediately forward copies of this judgment to the petitioners in the O.P, for necessary information and immediate compliance.

With these observations and directions, the above Original Petition will stand dismissed. Sd/- ALEXANDER THOMAS, JUDGE Sd/- A.BADHARUDEEN, JUDGE vgd APPENDIX OF OP(KAT) 244/2020 PETITIONERS' ANNEXURES ANNEXURE I TRUE COPY OF THE WP(C) NO.9858/2011 WITH ITS EXHIBITS ANNEXURE II TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT ALONG WITH ITS EXHIBITS. ANNEXURE III TRUE COPY OF THE ORDER DATED 14/12/2018 IN TA.NO.5835/2012.

EXHIBIT P1 TRUE COPY OF THE REPRESENTATION DATEDE

DATED 2/11/2009 ISSUED BY THE GOVERNMENT. EXHIBIT P4 TRUE COPY OF THE RELEVANT PAGES OF THE GO(RT) NO.1400/10/GL.EDN DATED 27/3/10 PROMOTING THE PETITIONERS AS PRINCIPALS. EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED RESPONDENTS. EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 8/11/2010 IN WP(C) NO.27945/2010 OF THIS HON'BLE COURT. EXHIBIT P7 TRUE COPY OF THE GO(RT) NO.358/11/GI.EDN DATED 25/1/11 ISSUED BY THE 1ST RESPONDENT. EXHIBIT R1(A) TRUE COPY OF GO(MS) NO.171/2003/G.EDN DATED 23/6/2003. EXHIBIT R1(B) TRUE COPY OF GO(P) NO.154/09/GI.EDN DATED EXHIBIT R1(C) TRUE COPY OF GO(RT) NO.3240/2009/GI.EDN DATED 1/8/2009.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com