

Subhadra vs State of Kerala

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Court : Kerala

Decided On : Dec-01-2020

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/23998/2020

Appellant : Subhadra

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942 WP(C).No.23998 OF 2020(Y) PETITIONER: SUBHADRA, AGED 66 YEARS W/O.P.R.MOHANAN, TEACHER (RETD), V.V.S.H.S., MANNUTHY, INATH HOUSE, MUKKATTUKARA DESOM, NETTISSEY VILLAGE, THRISSUR DISTRICT BY ADV. SRI.P.V.CHANDRA MOHAN RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION (B) DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695 001 2 DISTRICT

EDUCATIONAL OFFICER THRISSUR -680 003 3 DEPUTY DIRECTOR OF EDUCATION THRISSUR -680 003 4 THE ACCOUNTANT GENERAL (A AND E) KERALA, OFFICE OF THE ACCOUNTANT GENERAL (A AND E), THIRUVANANTHAPURAM-695 001 SRI. UNNIKRISHNA KAIMAL -GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

01.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court impugning Ext.P2 Government Order, dated 21.06.2018, wherein, a request for payment of her ex-gratia pension has been rejected, stating that her prior service is not approved.

2. The petitioner says that the contents

of Ext.P2 are per se untenable since, as is evident from Ext.P1 order dated 21.10.2015, the 2nd respondent - District Educational Officer (DEO) has already approved her service. She says that, therefore, the edifice of Ext.P2 Government Order is vitiated and prays that the same be set aside and the competent Authorities be directed to grant her the ex-gratia pension as prayed for.

3. In response to the afore submissions

made on behalf of the petitioner by her learned counsel, Sri.P.V.Chandramohan, the learned Government Pleader, Sri.Unnikrishna Kaimal, submitted that, as is luculent from the statements in Ext.P2, the petitioner's service cannot be treated as a regular one and therefore, that she will not be entitled to obtain the ex-gratia pension under the Government Order, dated 26.12.2016. He submitted that it is only in the case of teachers who are forced to superannuate from service

even without period for minimum pension having been served that such benefits are granted. He further explained that the petitioner's service cannot be reckoned for the purpose of payment of ex-gratia pension since it has been approved only till 14.07.2008, even though her age of superannuation is 30.09.2009. He, therefore, prays that this Writ Petition be dismissed.

4. I have considered the materials available and have tested them against the pleadings available on record.

5. It is indubitable that the petitioner

has served as a teacher, which is evident from Ext.P1 order of approval. The fact that she was available for service until the date of her superannuation on 30.09.2009 is not disputed, but the only contention against her is that her service was terminated with effect from 14.07.2008 and that she was never reappointed until the date of her superannuation. The stand of the learned Government Pleader as seen above is that since she did not serve as on the date of her superannuation, she cannot be given the benefit of ex-gratia pension and that her service cannot be treated as regular.

6. I am afraid that I cannot, prima

facie, find favour with the afore submissions of the learned Government Pleader because it is also virtually admitted that the petitioner attained the age of superannuation on 30.09.2009 and that her earlier service had been approved through Ext.P1. The fact that she was not allowed to join duty on account of division fall and such other factors after 14.07.2008 till the date of her superannuation cannot be the sole factor as per which her benefits can be denied, particularly when she was available for service till the date of her superannuation, but not posted on account of lack of vacancies or division fall.

7. That apart, going by Ext.P2, the

Government says that her prior service cannot be treated as regular, but no reasons are stated therein as to why this has been so said, in spite of Ext.P1 order approving her services.

8. I am, therefore, of the firm view

that the entire matter must be reconsidered by the competent Authority of the Government, since Exts.P2 and P3 cannot obtain the imprimatur of this Court, as it presently stands. In the afore circumstances, I order this writ petition and set aside Exts.P2 and P3, so as to pave way for a fresh consideration of the petitioner's claim by the competent Authority, which shall be done after affording an her opportunity of being heard - either physically or through video-conferencing -

thus culminating in an appropriate order

thereon as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment. Sd/- DEVAN RAMACHANDRAN RR
JUDGE APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 A TRUE COPY OF THE ORDER DATED 21.10.2015 OF THE 2ND RESPONDENT EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 21.6.2018 OF THE 1ST RESPONDENT EXHIBIT P3 A TRUE COPY OF THE LETTER DATED 09.08.2019 OF THE 1ST RESPONDENT

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