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Mohanan.M. and Others Vs. State of Kerala and Another

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Court : Kerala

Decided On : May-21-2015

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Mohanan.M. and Others

Respondent : State of Kerala and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR THURSDAY, THE21T DAY OF MAY201531ST VAISAKHA, 1937 WP(C).No. 18384 of 2007 (L) ---------- PETITIONER(S): ---------- 1. MOHANAN.M., H.S.A(MATHS), P.M.S.A.P.T.S.V.H.S.S. KAIKOTTUKADAVU, P.O.ELAMBACHI KASARAGOD DISTRICT.

2. V.SREEDHARAN, H.S.A(PHYSICAL SCIENCE), P.M.S.A.P.T.S.V.H.S.S., KAIKOTTUKADAVU, P.O.ELAMBACHI KASARAGOD DISTRICT.

3. V.V.UNNIKRISHNAN, H.S.A.(SOCIAL SCIENCE) P.M.S.A.P.T.S.V.H.S.S, KAIKOTTUKADAVU, P.O.ELAMBACHI KASARAGOD DISTRICT.

4. SAVITHRI P., H.S.A(MATHS), P.M.S.A.P.T.S.V.H.S.S., KAIKOTTUKADAVU, P.O.ELAMBACHI KASARAGOD DISTRICT.

5. RETNAKARAN, K., H.S.A(PHYSICAL SCIENCE), P.M.S.A.P.T.S.V.H.S.S. KAIKOTTUKADAVU, P.O.ELAMBACHI, KASARAGOD DISTRICT. BY ADV. SRI.KALEESWARAM RAJ RESPONDENT(S): ---------- 1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION, KASARAGOD. R1,R2 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMPIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2105-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 18384 of 2007 (L) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: TRUE COPY OF THE LETTER DATED1408.2006 ISSUED BY THE2D RESPONDENT TOGETHER WITH REPORT ON THE AUDIT OF ACCOUNTS OF P.M.S.A.P.T.S.V.H.S.S. KAIKOTTUKADAVU EXT.P2: TRUE COPIES OF THE STATEMENT OF FIXATION OF PAY FILED BY THE PETITIONERS EXT.P3: TRUE COPY OF THE CIRCULAR DATED1605.2002 EXT.P4: TRUE COPY OF G.O.(P)No.405/06/(16)/FIN.DATED710.2006 RESPONDENTS' EXHIBITS: NIL //TRUE COPY// P A TO JUDGE A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.18384 of 2007 ..... Dated this the 21st day of May, 2015

JUDGMENT

The petitioners are working as H.S.As in the P.M.S.A.P.T.S. V.H.S.S, Kaikottukadavu. Subsequent to their promotion as HSA's an anomaly was noticed in the pay granted to the petitioners and their juniors in that, as a consequence of the implementation of the pay revision orders, juniors of the petitioners came to draw a higher grade than the petitioners. In order to avoid the anomaly arising pursuant to the implementation of the pay revision order, whereby the juniors of the petitioners came to draw higher pay than the petitioners in the category of H.S.A, the respondents stepped up the pay of the petitioners to make it at par with the pay received by their juniors. The said fixation of pay in respect of the petitioners was also accepted by the Government. Thereafter, pursuant to Ext.P3 Circular dated 16.05.2002, and an audit objection that was raised in respect of the

petitioners, the respondents took steps to review the fixation of pay already effected in favour of the petitioners. As a consequence of the above exercise, steps were taken to effect recovery of amounts allegedly paid in excess to the petitioners, consequent to the erroneous fixation, and it was at that stage that the petitioners approached W.P.(C).No.18384 of 2007 2 this Court through the present writ petition challenging the action of the respondents in attempting to recover the alleged excess amounts paid to the petitioners. In the writ petition, it is the specific case of the petitioners that, while determining the status of senior and junior for the purposes of ascertaining the existence of anomaly in connection with implementation of pay revision orders, the comparison must be among the incumbents to the posts of H.S.A's and not between incumbents to the post of H.S.A in any particular subject. The contention, in other words, is that a category wise classification of senior and junior, based upon the particular subject in which the persons are appointed as H.S.A's is not contemplated in any of the pay revision orders, and hence, it was not proper for the respondents to have sought for a recovery of amounts allegedly paid in excess to the petitioners by adopting such a stand in Ext.P3 Circular. The learned counsel for the petitioner would also point out that by Circular No.26790/J2/07/Gen.Edn dated 23.06.2009, the Government had occasion to consider a similar issue with regard to implementation of pay revision orders, and has clarified that the seniority list of teachers specified under Rule 34 of Chapter XIV A of KER for promotion to the post of Headmaster/Headmistress would be taken as indicative of the criteria for rectifying the junior senior anomaly W.P.(C).No.18384 of 2007 3 in pay fixation with effect from the pay revision order, 1998. It is the contention of the petitioners that if the said yardstick is applied to the facts in the instant case, it would be clear that there was no irregularity in the stepping up of the pay scales of the petitioners, and the action of the respondents in seeking to recover amounts allegedly paid in excess to the petitioners cannot be legally countenanced.

2. A counter affidavit has been filed on behalf of the 2nd respondent wherein it is stated that, as per Ext.P3 Circular, the Government have clarified that H.S.A (Core Subjects) and H.S.A (Malayalam) are different categories for the purposes of the pay revision orders. It is stated that, since the Government have not withdrawn Ext.P3 Circular or altered any of the conditions, the same would continue to hold

good. It is contended that in as much as the sanction of the post H.S.A (Core Subjects) and post of H.S.A (Malayalam) and language teachers are based on the available period for each subject, and the method of promotion of U.P.S.As as H.S.As is based on the subject requirements and the availability of the vacancies to the post of H.S.A in any particular subject, for the purposes of rectifying any anomaly during the course of implementation of pay revision orders, the senior-junior W.P.(C).No.18384 of 2007 4 relationship between two H.S.As must necessarily be determined subject wise and between H.S.As in the same subject.

3. I have heard the learned counsel for the petitioners and the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstance of the case and the submissions made across the bar, I am of the view that the writ petition must necessarily succeed. Chapter XXVI of the KER deals with the scale of pay of aided School teachers. As per Rule 1 of Chapter XXVI, teachers of aided Lower Primary, Upper Primary, High and Training Schools shall be paid the scale of pay applicable to teachers of Government Lower Primary, Upper Primary, High and Training Schools.

5. In Chapter XIV A, which deals with conditions of service of aided School teachers, Rule 34, which deals with the preparation of seniority list, contemplates the maintenance of a staff list, otherwise called a seniority list, of teachers in High Schools and Primary Schools subject to the provisions contained in Rule 37. Rule 34 speaks of the maintenance of a combined seniority list of H.S.A(Subjects) and H.S.A (Languages). It is made clear, however, W.P.(C).No.18384 of 2007 5 that the purpose of the seniority list is only to determine the relative position of persons who shall be eligible for promotion as High School Headmaster by virtue of length of service and prescribes qualifications for promotion as High School Headmaster. Rule 37 of Chapter XIV A, makes it clear that seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit provided that he is duly qualified for the post. It is made clear that in the case of teachers in the same grade in the same unit, whose date of commencement of continuous service is the same, seniority shall be decided with

reference to the date of first appointment. If the date of first appointment is also the same, seniority should be decided with reference to age, the order being the senior.

6. In the context of implementation of pay revision orders, I notice that although in Ext.P3 Circular, the Government had clarified that the integrated/combined seniority list of teachers maintained for promotion to the post of Headmaster/Headmistress cannot be a parameter for the purpose of fixation of pay, the said view has subsequently been deviated from in the Circular No.26790/J2/07/Gen.Edn. Dated 23.06.2009, wherein after W.P.(C).No.18384 of 2007 6 reference to Rule 34 of Chapter XIV A of the KER, the Government clarified that the seniority list prepared for the purposes of Rule 34 of Chapter XIV A of KER would be the criteria for rectifying the junior-senior anomaly in pay fixation with effect from the pay revision order, 1998. It is therefore reasonable to hold that, while determining the junior senior relationship between various H.S.As in a School for the purposes of rectifying any anomaly that may arise consequent to the implementation of a pay fixation order, it is the inter se seniority between the H.S.As as a category (and not H.S.As of any particular subject as a category), that would be relevant. If that be so, then the stepping up of the scale of pay of the petitioners, that was originally done, cannot be said to be irregular or illegal in any manner. I am of the view that the stand of the respondents that there was an irregularity, in the stepping up of the pay of the petitioners so as to rectify the anomaly, cannot be legally countenanced, and hence, their action to recover any alleged excess payment made to the petitioners on this ground cannot be legally sustained. Resultantly, the writ petition is allowed by quashing Ext.P1 in as much as it relates to the petitioners in the instant writ petition, and declaring that the stepping up of pay that was effected in W.P.(C).No.18384 of 2007 7 favour of the petitioners is legal and valid. There will be no order as to costs. A.K.JAYASANKARAN NAMBIAR JUDGE mns

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