

Deepika Vs. State of Kerala

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Court : Kerala

Decided On : Aug-14-2006

Reported in : 2007(1)KLT71

Judge : P.R. Raman, J.

Acts : Kerala Service Rules, 1959 - Rules 33, 33(2), 82, 88 and 91; Kerala Education Rules - Rule 2

Appeal No. : W.P.(C) No. 3014 of 2006

Appellant : Deepika

Respondent : State of Kerala

Advocate for Def. : M.J. Rajasree, Government Pleader

Advocate for Pet/Ap. : M. Sasindran and; Tojan J. Vathikulam, Advs.

Disposition : Petition allowed

Judgement :

P.R. Raman, J.

1. Petitioner is a High School Assistant who was selected for the B.Ed Degree Course. Her selection was in terms of Ext. P1, a proceeding issued by the Director of Public Instruction. As per Clause 7 of Ext. P1, the trainee will not be entitled for

both subsistence allowance as well as leave salary for the period while undergoing the course. Petitioner opted for the leave salary instead of subsistence allowance. She applied for leave for completing the B.Ed course. By Ext. P2 order of the Deputy Secretary to Government, petitioner was granted Half Pay Leave for 115 days from 5.6.2003 to 27.9.2003 and Leave without allowances for 186 days from 20.9.2003 to 31.3.2004 for study purpose under Rule 91 Part I of the Kerala Service Rules. As per Rule 91 Part I K.S.R., officers with a continuous officiating or temporary service of two years or more, will be granted in addition to any leave which they are eligible for, leave under this rule for obtaining superior qualifications provided, however, that the two years' minimum service will not be insisted on in the case of temporary or officiating officers belonging to the Scheduled Castes and Scheduled Tribes. Though the petitioner did not ask for leave for obtaining B.A. or B.L. Degree qualification the authorities granted leave under Rule 91 for enabling her to complete the B.Ed Course. As per Note 2 under the said rule, the term 'superior qualification' denotes only such of the qualification as on acquisition are intended to enhance the usefulness of the Government servant concerned as a member of the service or will improve his prospects in the service of which he is a member. Petitioner being a High School Assistant, a B.Ed, degree is a necessary qualification for being promoted to the post of Head Master, as per Chapter XXXI Rule 2 of the Kerala Education Rules. It was accordingly that her leave was sanctioned invoking Rule 91 of Part I of the Kerala Service Rules. As per Ext. P2, the leave period will not be counted for any service benefit including pension. This restriction imposed as per Ext. P2 was challenged by the petitioner by filing a representation before the Government, which eventually passed Ext. P4 order whereby the Half Pay Leave sanctioned for 115 days was sanctioned under Rule 82 in partial modification of Ext. P2 whereby she was entitled to the service benefits for the Half Pay Leave period. However, leave without allowance for 186 days was sanctioned under Rule 88 of K.S.R. and it was further ordered that the said period will not be counted for service benefits including pension.

2. The short question that arises for consideration is whether the leave sanctioned as per Rule 88 will also be counted for service benefits like pension and whether there is any illegality in Ext. P4 in denying the petitioner the service benefits for this period? Rule 88 Part I of the Kerala Service Rules reads thus:

Leave without Allowances:

(i) Leave Without Allowances may be granted to any officer in special circumstances.

(a) when no other leave is by rule admissible, or

(b) when other leave is admissible but the officer concerned applies in writing for the grant of leave without allowances.

(ii) Except in the case of an officer in permanent employ, the duration of leave without allowances shall not exceed 3 months on any one occasion.

3. According to the learned Counsel for the petitioner, even the Loss of Pay Leave as sanctioned under Rule 88 entitled to be treated and counted for service benefits by virtue of Rule 33. Rule 33 merely says that all duty in a post on a time scale counts for increments in that time scale. As per Sub-rule 2 of the said rule, all leave except leave without allowances taken otherwise than on medical certificate and service on deputation count for increments in the time-scale applicable to a post in which an officer was officiating at the time he proceeded on leave or deputation and would have continued to officiate but for his proceeding on leave or deputation. As per the proviso thereunder leave without allowances under Rule 91 A shall count for increments subject to certain conditions. Further, the second proviso under Clause 2 says that the leave without allowance taken by teachers for completion of training courses such as B.Ed., Hindi Teacher's Training, Language Teacher's Training and Teachers Training Certificate Course shall count for increment. It is the contention of the petitioner that by virtue of the said proviso whatever be the provision under which she was granted leave for completing B.Ed course, she is entitled for claiming increments.

4. On the other hand, it is contended by the learned Government Pleader appearing on behalf of the State that only if the leave is sanctioned under Rule 91 A that both the proviso thereunder be attracted and in this particular case leave without allowance was sanctioned under Rule 88 and so the second proviso will not enable the petitioner to claim the benefit of that proviso. I am unable to accept

this contention for two reasons. Firstly, Rule 91 A is a separate rule entitling a person for claiming leave for taking Post Graduate Degree. A training course like B.Ed is not a Post Graduate Degree Course and secondly, when the second proviso specifically refers to B.Ed course and the leave availed was for completing the said course must be understood as an independent provision and will entitle the person to claim the benefit of the said proviso, provided the leave is sanctioned for completing the B.Ed. Course. As against the statutory rule, the Government cannot take away the benefit by virtue of any circular or executive order. In so far as Ext. P4 has taken away the statutory right conferred on the petitioner under the second proviso of Sub-rule 2 of Rule 33, it is oppose to the statutory, provisions and liable to be set aside.

5. In the above circumstances, Ext. P4 to which it has denied the service benefits like increments to the petitioner, being oppose to the statutory provision as aforesaid, the same is set aside. It is declared that the petitioner is entitled to claim the benefit of increment for the period of leave sanctioned under Rule 88 also.

The Writ Petition is allowed as above.