
(2014) 10 KL CK 0061
In the High Court Of Kerala
Case No : Writ Appeal No. 1710 of 2009

Bindu K. Unnithan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-10-2014

Acts Referred:

Citation : (2014) 4 ILR 790 : (2015) 1 KLT 455

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : B. Unnikrishna Kaimal, Anil K. Nair and V. Madhusudhanan, Advocate for the Appellant; P.M. Saneer, Senior Government Pleader, Advocate for the Respondent

Judgement

Antony Dominic, J.—The appellant filed W.P. (C) No. 32809/08 challenging Exts. P-1, P-7 and P-9, staff fixation order for the year 2007-08 and the orders rejecting her appeal and revision. Her essential claim was that she is entitled to full-time benefits as ordered by the Government in Ext. P-2, GO.(Ms) 62/73/S.Edn. dated 2-5-73 and as clarified in Ext. P-3, GO.(Ms) No. 189/82/G.Edn. dated 14th of December, 1982. The learned Single Judge held that the appellant is only entitled to part-time benefits and negated her contentions. It is this judgment which is under challenge before us.

2. We heard the learned counsel for the appellant and also the learned Government Pleader appealing for the respondents.

3. The appellant started her career as a Lower Grade Hindi Teacher (full-time) in the school of which the 4th respondent is the Manager. In Ext. P-1 staff fixation order for the year 2007-08, only five divisions were sanctioned against the pre-existing six divisions. As a result of this, there was reduction of the minimum required period of fifteen and her full-time post was converted into a part-time post w.e.f. 15-7-2007. Her appeal and revisions were rejected by Exts. P-7 and P-9 orders passed by respondents 2 and 1 respectively.

4. The contention raised by the learned counsel for the appellant is that in view of Exts. P-2 and P-3 Government Orders, she is entitled to full-time benefits. The provision for conversion of part-time language teachers into full-time as contained in Ext. P-2 Government Order reads thus;

"(vi) Conversion of part-time language teachers into full-time.

The formula for creating full-time posts in independent high schools and U.P. Schools attached to high schools will be extended to independent U.P. Schools and L.P. Schools and U.P. Schools with attached L.P. Schools. Besides this, part-time language teachers who have put in more than 5 years service and have 8 periods of work shall henceforth be made full-time. The utilisation of the services of these teachers for teaching regular classes and other subjects and giving them adequate work will be examined by the Director of Public Instruction. This will be with effect from the academic year 1973-74."

(emphasis supplied)

5. Reading of this paragraph shows that part-time language teachers who have put in more than five years service and having eight periods of work are allowed full-time benefits. Subsequently, in response to a clarification sought by the Director of Public Instruction, the Government issued Ext. P-3. The clarification sought was whether five years requirement provided in Ext. P-2 would be satisfied if a claimant has five years aggregate service. This was clarified by the Government thus:

"3. Government have examined the matter in detail and are pleased to clarify that 5 years continuous aggregate service will be sufficient to give full-time benefit as per the GO. read as 1st paper above."

6. Thus, according to the appellant, she having commenced her service as a full-time teacher in January, 2002, as on 15-7-2007, when her post was converted as a part-time post, she was having more than five years service as full-time teacher. Therefore, she says that when aggregate service is to be reckoned for determining her eligibility for full-time benefits, her service as full-time teacher should also be reckoned. It is on that basis, the appellant seeks to sustain her claim for full-time benefit as provided in Ext. P-2 Government Order referred to above.

7. Learned Government Pleader resisted this plea by contending that the benefit that is provided in Exts. P-2 and P-3 is available only to part-time teachers who have five years aggregate service as part-time. According to him, therefore the appellant who had service as full-time teacher does not get protection of Exts. P-2 or P-3.

8. We have considered the submissions made.

9. In our view, there is substance in what the appellant contends. We have already seen that Ext. P-2 provided that part-time language teachers who have

put in more than five years service and have eight periods of work shall be made full-time. Therefore, a part-time teacher satisfying the above requirements is entitled to full-time benefits. If the interpretation of the learned Government Pleader is accepted, the benefit of Ext. P-2 Government Order will be available only to those part-time teachers who have rendered more than 5 years of service as part-time itself. In other words, before completing five years, if a part-time teacher becomes a full-time teacher and again becomes a part-time teacher, she will not be able to reckon her previous service as a full-time teacher to claim the benefit of Ext. P-2. Similar is the case when a full-time teacher like the appellant get herself reduced to part-time teacher after rendering service for any number of years will not be eligible for the benefit of Ext. P-2 where as her juniors, who worked as part-time teachers, with lesser workload, will be getting the benefit of full-time.

10. Such a situation would lead to undue hardships and even discriminatory treatment of senior teachers. In our view, it was to remedy that situation that the Government have clarified in Ext. P-3 that in reckoning the five year period specified in Ext. P-2 Government Order, aggregate service can be reckoned. In other words, a part-time teacher having service as full-time teacher should be eligible to reckon the full-time service also for the purpose of determining whether he or she has five years service specified in Ext. P-2. Otherwise, as we have already pointed out, there could be situations where the seniors will be at a disadvantage and therefore the interpretation as canvassed by the learned Government Pleader cannot be accepted.

11. The above view that we have taken is also fortified by Ext. P-10 staff fixation order issued by the AEO, Adoor. In this order, in a case which is similar to that of the appellant, reckoning the full-time service also, the five year period has reckoned and the benefit of full-time has been given to a part-time teacher.

12. For these reasons, we feel that the appellant is entitled to full-time benefit as claimed by her and therefore her claim deserves to be upheld.

13. We, therefore, allow the appeal, set aside the judgment of the learned Single Judge and direct that respondents 2 and 3 will pass appropriate orders enabling the appellant to claim full-time benefits w.e.f. 15-7-2007 till 15-7-2012, when she was made a full-time teacher.

Appeal is allowed as above.