

(2016) 11 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10729 of 2013 (M)

Havvaumma K.V.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-11-2016

Acts Referred:

Kerala Education Rules, 1959 — Rule 62
Kerala Service Rules Part III — Rule 29

Citation : (2017) 1 ILRKerala 85 : (2016) 4 KerLJ 835 : (2016) 4 KLT 895

Hon'ble Judges : Mrs. Anu Sivaraman, J.

Bench : Single Bench

Advocate : Sri. Bejoy Chandran, Government Pleader , for the Respondent Nos. 1 to 4; Sri. U. Balagangadharan, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mrs. Anu Sivaraman, J. - This writ petition is filed seeking the following reliefs:

"(i). writ in the nature of certiorari to set aside Exhibit P8 as legally unsustainable.

(ii) writ in the nature of mandamus commanding the 4th respondent AEO to reckon 9 years of service rendered by the petitioner from 24.7.1978 in four different spells and grant all service benefits and other consequential benefits viz. increment, higher grade, pay revision benefits etc. reckoning the aforesaid four spells of service.

(iii) writ in the nature of mandamus commanding the 4th respondent to reckon the past service of the petitioner from 24.7.1978 leaving aside period out of service as qualifying service for pension and other terminal benefits.

(iv) declare that the petitioner is entitled to reckon 9 years of service rendered by the petitioner from 24.7.1978 in four different spells and grant all service benefits and other consequential benefits viz. increment, higher grade, pay revision benefits etc. reckoning the aforesaid four spells of service."

2. The petitioner was initially appointed as full-time Arabic Teacher on 24.7.1978 in the 5th respondent's school and it was duly approved. She was retrenched on 30.4.1980 due to abolition of post. She was again appointed as leave substitute from 13.6.1981 to 31.1.1984 in the 6th respondent's school and the spell was duly approved. The petitioner was again appointed as per Exhibit P3 as a leave substitute from 1.2.1984 to 31.1.1989 in 6th respondent's school and the appointment was duly approved. Thereafter, she was appointed from 1.2.1989 to 31.1.1994 in the same school. The petitioner resigned from the post due to personal problems on 30.6.1989. The resignation was accepted.

3. On 1.7.1996 the petitioner was again appointed in the 5th respondent's school in a regular vacancy and she continued in the school as Arabic Teacher until her retirement on 31.3.2015. The petitioner submitted requests before the educational authorities to reckon the past service for all service benefits and pension. By Exhibit P8, the Government rejected the claim of the petitioner in view of Rule 62 of Chapter XIV-C of KER read with Rule 29 of Part-III KSR. Exhibit P8 Government decision denying the benefit of past service is under challenge in this writ petition.

4. Heard learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

5. Learned counsel for the petitioner placed reliance on the decisions of this Court reported in Subhadra v. State of Kerala (1996(1) KLT 679) and Lilly V.A. v. State of Kerala and others (2016 KHC 414) to contend that the petitioner is entitled to count the entire broken spells of service as qualifying service.

6. A counter affidavit has been filed on behalf of the 1st respondent admitting the factual aspects as set out in the writ petition. However, it is contended that the contention of the petitioner that the broken spells of service as Arabic teacher prior to her resignation are liable to be counted as qualifying service for increment, higher grade and pay revision is not at all sustainable in view of the various provisions contained in the Kerala Education Rules as well as the Kerala Service Rules. As per Rule 62 of Chapter XIV-C KER, the premature resignation of a teacher from the school entails forfeiture of past service. Hence the past broken service rendered by the incumbent cannot be counted for pensionary benefits. It is also contended in the counter affidavit that the petitioner resigned from service with effect from 30.6.1989, while working at the 6th respondent's school and hence her past service including the pre-resignation period cannot be counted for any monetary benefits including pension.

7. I have considered the contentions advanced. The only question which arises for consideration is with regard to the effect of the resignation submitted by the petitioner on 30.6.1989. It is clear that the petitioner's three earlier spells of service as Arabic Teacher had been approved. They are independent spells of approved service. The petitioner was appointed for the fourth time in a leave vacancy of five years duration. Her appointment in this vacancy was with effect

from 1.2.1989. On 30.6.1989, she submitted her resignation. Evidently, this resignation can relate only to her appointment with effect from 1.2.1989. Applying the provisions of Rule 62 of Chapter XIV-C KER and Rule 29 of Part III KSR, the forfeiture of past service can only mean, forfeiture of the service of the petitioner in the spell in question, i.e., with effect from 1.2.1989. The resignation submitted by her cannot have the effect of obliterating her previous approved service in earlier vacancies.

In the above view of the matter, I am of the considered opinion that the earlier approved spells of service put in by the petitioner are liable to be counted for service benefits including pension. The counter affidavit filed on behalf of the 1st respondent does not raise any contention against the counting of the first three spells of service as qualifying service, except to state that such service is also forfeited by the resignation on 30.6.1989. Having held that the resignation on 30.6.1989 can only result in forfeiture of the petitioner's past service in respect of that particular appointment, i.e., with effect from 1.2.1989, the petitioner would be entitled to count the earlier service for service benefits. It is declared so. The respondents shall pass orders revising the pensionary benefits due to the petitioner by refixing the pay and pensionary benefits in terms of what is stated above. Orders in this regard shall be passed without further delay and the monetary benefits shall be calculated and disbursed to the petitioner within four months from the date of receipt of a copy of this judgment.

The writ petition is ordered accordingly.