

(2021) 01 KL CK 0305

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38274 Of 2018

Jalajakumari K.P

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0305

Hon'ble Judges : Devan Ramachandran, J

Bench : Single Bench

Advocate : Naveen T, K.N. Rajani, Chithra Chandrasekharan, V.S. Abhishek, Biji A Manikoth, N.N. Sugunapalan, S. Sujin, P.M. Manoj

Judgement

1. The petitioner, who is stated to have retired from the services of the KPM Vocational Higher Secondary School, Ernakulam, as a Physical

Education Teacher, on 31.03.2015, has approached this Court impugning Ext.P19 order of the Government, as per which, certain periods when she

was on leave without allowance has been treated only as 'Non Duty'. She prays that the said order be set aside and the period in question, namely

between 11.09.1995 to 31.03.2015, be directed to be construed as duty, to count for all her pensionary benefits.

2. Sri.T.Naveen â?" learned counsel for the petitioner, explains his client's case by saying that while she was working as a Teacher, she applied for

leave without allowance on medical grounds on 10.09.1995, since she was suffering from acute bone disease, for which she also underwent a major

surgery subsequently. He says that although this request was placed before the Manager, he did not forward it to the competent Educational Authority

for nearly nine months and therefore, that the District Educational Officer (DEO), thereafter, requisitioned the constitution of a Medical Board to

assess her health condition. He says that, however, no Medical Board was thereupon constituted and therefore, that when his client became well enough to join duty, she applied to be allowed to do so, but that no decision was taken by the Manager on this; and on the contrary, he issued her a charge memo and then terminated her service on the ground that she was on unauthorised absence.

3. Sri.T.Naveen says that therefore, his client filed WP(C)No.26023/2009 and secured Ext.P18 judgment from this Court, wherein, the disciplinary action against his client was set aside and it was left to the Government to take a final decision in her case, since, by then, she had superannuated. He alleges that, however, instead of complying with the directions in the judgment, the Government has now issued Ext.P19 order whereby, the period his client had spent on leave without allowances - from 11.09.1995 to 31.03.2015 - has been treated as 'Non Duty' without assigning any cogent or reliable reason for doing so. He, therefore, prays that Ext.P19 be set aside to such extent and the other reliefs sought for in this Writ Petition be granted.

4. In response, Sri.P.M.Manoj - learned Senior Government Pleader, submitted that Ext.P19 narrates the factual circumstances completely and that it is clear therefrom that the petitioner's case has been considered by the Government with all the sympathy that it deserves. He submitted that since the petitioner was on unauthorised absence from 11.09.1995 to 31.03.2015 - her application never having been considered or approved by the competent Educational Authority - she cannot claim any relief against Ext.P19. He, therefore, prayed that this Writ Petition be dismissed.

5. I have considered the afore rival submissions of the parties and have also examined the materials available on record.

6. The undisputed facts, as revealed by the pleadings and materials on record, would show that, though the petitioner says that she applied for leave as early as in 1995, the same had not been forwarded by the Manager to the competent Educational Authorities. This finally led to the requisition by the 2nd respondent-DEO to constitute a Medical Board, but this was also not done. Thereafter, when the petitioner tried to join back, the Manager stopped her and initiated disciplinary action, which was interfered by this Court through Ext.P18 judgment. In the meanwhile, the petitioner retired from service

on 31.03.2015.

7. That being so, in obedience to the directions of this Court in Ext.P18 judgment, the Government has now issued Ext.P19, treating the period when the petitioner was not in service as being 'Non Duty'; but the order does not say why this has been done, particularly when the facts involved as are above.

8. I am, therefore, of the firm view that Ext.P19 cannot obtain the imprimatur of this Court and that the Government must reconsider the matter, taking note of the afore circumstances and facts and also after affording an opportunity of being heard to the petitioner, as also to the Manager of the School.

In the afore circumstances, I order this writ petition and set aside Ext.P19 to the extent to which it orders that the period from 11.09.1995 to

31.03.2015 be treated as non-duty; with a concomitant direction to the competent Secretary of the Government of Kerala to reconsider the claim of

the petitioner, particularly taking note of the declarations and holdings in Ext.P18 judgment, as also my observations above and after affording an

opportunity of being heard to the petitioner as also to the Manager of the School - either physically or through video-conferencing â?" 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.

I make it clear that since I have not gone into the merits of the rival contentions of the parties, it will be up to the Secretary of the Government to

consider all the aspects, including those which have been narrated in this judgment, while arriving at a decision in terms of the directions above.