
(2023) 07 KL CK 0200
In the High Court Of Kerala
Case No : Writ Petition (C) No. 9391 Of 2012

Jaseena P.M

APPELLANT

Vs

Secretary To Government

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Citation : (2023) 07 KL CK 0200

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : P.Sankarankutty Nair, K.Sandesh Raja, Kum.Vidya Menon,
Sunilkumar Kuriakose

Final Decision : Disposed Of

Judgement

Viju Abraham , J

1. Petitioner was appointed as Upper Primary School Assistant in the 4th respondent school on 02.06.2004 against the retirement vacancy of P.P. Subadramma UPSA. The said appointment was duly approved by the 3rd respondent as is evident from Ext P1. During the academic year 2007-08, there was reduction of two post of LPSA due to abolishment of two divisions as per the staff fixation order and the petitioner and one Preethy who were working as UPSAs were retrenched on the ground that LPSAs and UPSAs are to be treated as a single unit.

2. Later on the retrenchment of the petitioner and the said Preethy was considered by this Court in WP(C) No. 23606/2008 in Ext P2 judgment, wherein it was declared that in view of the fact that the reduction in division was in the LP school section and only LP school assistants would have been retrenched and not the petitioners and therefore the petitioners are directed to be reinstated in service with salary and other benefits as if they have never been retrenched.

3. Government filed an appeal against the said judgment and an interim order staying the judgment was passed by this Court and the writ appeal was referred

to a Full Bench for consideration. In the meanwhile the petitioner approached the Government by filing a revision under Rule 92 of the Kerala Education Rules for considering the claim of the petitioners for appointment to the vacancy which occurred on 29.02.2010 on account of retirement of one Rajan. The petitioner was reappointed by the manager to the vacancy which arose on 01.06.2010 on account of retirement of one Rajan from the post of LPSA on 27.02.2012. Eventhough the petitioner was working in the said vacancy, same was also not approved even after two years on account of the fact that the writ petition as well as the writ appeal is pending before this Court.

4. The contention taken by the petitioner is that there are 13 posts for the year 2010-11 and the petitioner could be approved in the 13th post for the said year and for the year 2011-12 by applying the ratio 1:40 as in the case of other teachers. Pursuant to the direction issued by this Court the Government decided the matter as per Ext P10 holding that as per the existing staff fixation report for 2010-11 there is no post to accommodate the petitioner and she can only be eligible for getting included in the retrenched list of teacher package and a direction was issued by the Director of Public Instructions to include the petitioner in the retrenched list of teachers package. The petitioner has approached this Court seeking a declaration that petitioner is entitled to be reappointed to the post sanctioned in the year 2007-08 subject to the decision taken by the Full Bench as per Ext P2 order. Petitioner has also sought for quashing Ext P10 order.

5. Heard the learned Government Pleader also.

6. The learned Counsel appearing on both sides submitted that the Full Bench of this Court has considered and decided writ appeal No. 1349/2011 and other connected cases and as per order dated 13.11.2014 the writ appeals were dismissed. In the light of the judgment of the Full Bench, the directions in Ext P2 are to be complied with.

7. In the light of above, I am of the opinion that the matters requires reconsideration at the hands of the 1st respondent. Therefore, Ext P10 is set aside. There will be a direction to the respondents to comply with the directions in Ext P2 including the direction to pay monitory benefits due to the petitioner. The issues raised by the petitioner will be reconsidered by the Government afresh in the light of the declaration of law by the Full bench of this Court in W.A. No. 1349/2011 and connected cases. A decision in this regard shall be taken by the Government and the salary and other benefits due shall be disbursed to the petitioner with an outer limit of three months from the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioner and any other affected persons.

With the above said direction, the writ petition is disposed of.