(2014) 10 KL CK 0257

In the High Court Of Kerala

Case No : WP(C). No. 6010 of 2010 (A)

K. Rajasree APPELLANT

Vs

The State of Kerala RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0257

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : M.V. Bose, Vinod Madhavan and Nisha Bose, Advocate for the Appellant; Mohammed Siyad, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner challenges Ext. P4 order dated 05.12.2009 whereby the 1st respondent rejected the prayer of the petitioner for exercising a re-option with effect from 01.06.2006. The brief facts necessary for a disposal of the writ petition are as follows:

The petitioner joined service as LPSA in the Pallisserikkal LP School on temporary basis from 09.01.1986. She worked from 09.01.1986 to 25.03.1986, and thereafter, there was a break on account of summer vacation between 25.03.1986 to 02.06.1986. Thereafter, the petitioner was regularly appointed as LPSA with effect from 02.06.1986. She was granted higher pay scale in the post of LPSA with effect from 01.01.2001. Thereafter, she was promoted as Headmistress with effect from 15.03.2001 and she was also granted the Headmasters Scale with effect from the same date. It is stated by the petitioner that the 2004 pay revision was implemented on 25.03.2006 and the petitioner got the revised scale in the post of Headmistress with effect from 01.04.2006 as per her option. The option was exercised with effect from 01.04.2006 taking into account her initial appointment on temporary basis and considering the fact that the break in service from 25.03.1986 to 02.06.1986 had been subsequently regularised.

2. In an audit objection that was raised by the authorities under the KER, it was suggested that the H.M. Scale, that was granted to the petitioner with effect from 15.03.2001, was wrongly given since, on reckoning her service from 02.06.1986, she would have completed 15 years of service only on 02.06.2001. It was accordingly felt that the petitioner had been wrongly granted the H.M. Scale with effect from 15.03.2001. When steps were therefore initiated to recover the monetary loss that had resulted from grant of H.M. Scale to the petitioner with effect from 15.03.2001, the petitioner approached the respondent with a prayer for permission to exercise the re-option, under the 2004 pay revision, with effect from 01.06.2006 in lieu of 01.04.2006 that she had opted for earlier. It is this prayer of the petitioner that was rejected by the 1st respondent in Ext. P4 order on the ground that there was no change in the scale of pay pertaining to the petitioner which would justify the grant of a permission to the petitioner to change the date of her re-option for the purposes of 2004 pay revision. Ext. P4 order is impugned in the writ petition.

3. A counter affidavit has been filed on behalf of the 3rd respondent wherein the audit objection mentioned above is cited as a reason for Ext. P4 order. It is also stated that there is no provision to permit the petitioner to change the date of her re-option for the purposes of the 2004 pay revision.

4. I have heard Smt. Nisha Bose, the learned counsel appearing on behalf of the petitioner and the learned Government Pleader appearing on behalf of the respondents.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the objection with regard to the erroneous grant of the pay scale applicable to Headmistress, to the petitioner with effect from 15.03.2001 cannot be found fault with. The fact remains, however, that while the pay scale was granted to the petitioner with effect from 15.03.2001, and the said date was taken into consideration while extending the benefit of the 2004 pay revision to the petitioner in 2006, by accepting the request of the petitioner for her option with effect from 01.04.2006, the audit objection was in the year 2008, years after the exercise of re-option by the petitioner. In that view of the matter, while sustaining the audit objection and the consequential action taken by the respondents pursuant to the audit objection, I feel that it would be in the interest of justice that the petitioner be given an another opportunity to file re-option as a special case. Such a view has been taken by this Court in the judgment dated 13.02.2008 in W.P. (C). No. 33545 of 2007, produced in the writ petition as Ext. P6. Accordingly, if the petitioner submits a re-option within a period of one month from today, the same shall be accepted, if otherwise in order, and the petitioner''s pay fixed for the purposes of 2004 pay revision order on the basis of that option within a further period of one month from the date of receipt of the re-option.

6. The monetary benefits that are due to the petitioner, consequent to the exercise of re-option, shall be quantified and set off against any recovery that is

warranted on account of the audit objections against the petitioner and, if any amount is found due and payable to the petitioner pursuant to such adjustments, the same shall be paid to the petitioner within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.

