

(2024) 06 KL CK 0054

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.2440 Of 2021, 60 Of 2021, 33 Of 2021, 744 Of 2021, 731 Of 2021, 977 Of 2021, 1581 Of 2021, 2831 Of 2021, 3093 Of 2021, 4724 Of 2021, 4983 Of 2019, 5167 Of 2021, 6507 Of 2021, 7412 Of 2021, 7905 Of 2021, 10365 Of 2022, 10871 Of 2019,

K.T.Sajith

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-06-2024

Acts Referred:

Citation : (2024) 06 KL CK 0054

Hon'ble Judges : Mohammed Nias C. P., J

Bench : Single Bench

Advocate : George Abraham, Nisha Bose

Final Decision : Disposed Of

Judgement

Mohammed Nias C. P., J

1. The petitioners are teachers working in various aided High schools who were earlier retrenched from service due to division fall or other reasons during the period from 1996 to 2010. They claim the protection of the Government Order G.O.(P) No.199/2011/G Edn. dated 1.10.2011, by which the Government decided to ensure jobs for those retrenched teachers. They claim that they were included in the teacher's bank under the aforesaid G.O. and that as per Circular dated 1.8.2011 of the General Education Department, it was clarified that the teachers who were temporarily appointed as cluster coordinators under the Sarva Siksha Abhiyan are eligible for all kinds of leave and service benefits as in the case of regular teachers. Hence, the petitioners claim that they are entitled to all the service benefits as that of the regular teachers. They further state that though this Court in WP(C)No.30107/2013 held that G.O.(P)199/2011/G Edn dated 1.11.2011 is nonest in the eye of law, it was held that the said Government Order can be considered for granting protection as this Court held that the formation of a teacher bank is not illegal.

2. The petitioners further rely upon G.O.(P) No.313/2013/G Edn, dated 29.11.2013 to contend that the conditions in G.O.(P) No.199/2011/G Edn. dated 1.11.2011 concerning the teacher's bank has been extended for the subsequent years as well. They also rely on the G.O.(P) No. 278/2014/G Edn. dated 23.12.2014 for substantiating their contention that the salary of protected teachers including teachers in SSA are being disbursed through the parent school and on G.O.(P) No.213/2015/G Edn. dated 6.8.2015 to claim that protection benefits that were granted to them earlier continued under the said Government Order as well. The petitioners challenge G.O.(MS) No.119/2018/G Edn. dated 23.8.2018 which took away the benefits earlier granted to them by the Government Orders mentioned above. It is also the argument of the petitioners that similarly situated teachers were granted benefits from 1.6.2012 and also relies on the judgment in WP(C)No.1450/2019, wherein it was declared that as per Note III of Rule 31 of Part III KER, if a teacher is retrenched from service due to division fall, the teachers are entitled to reckon the broken service for all service benefits. It is also argued that an amendment was carried out in KER as regards the protection afforded and therefore they are entitled to all service benefits from 1.10.2011.

3. The claims of the petitioners are resisted by the Government contending that the Government had introduced the teacher's bank vide the G.O. dated 1.10.2011 and the objective of the bank was to ensure jobs to the teachers and nothing more was offered to the petitioners. It is to be noted that the first category of teachers already had protection and enjoyed salary in the light of the protection order earlier granted by the Government Orders and the second group were working against the sanctioned posts and were appointed by the Manager during the ban period and were given salary from 1.10.2011. It is, therefore, the contention that the Government Order of 2011 did not give any protection to the teachers similar to the petitioners and in the Government Order dated 5.6.2012, it was specifically mentioned that the retrenched teachers included in the third category will be deployed as cluster coordinators under SSA and will only be entitled to entry pay in the relevant pay scale and the pay of those teachers was made from the SSA Fund Plan and not from the General Education Department. It is also their argument that all the Government Orders relied on by the petitioners have been found to be nonest by this Court in WP(C)No.30107 of 2013. The Government further contends that Circular dated 1.8.2012 relied on by the petitioners only holds that the cluster coordinators will be entitled to eligible leave and that the benefits enjoyed by the regular teachers will also be entitled to the cluster coordinators. They further argue that a regular teacher is entitled to increment only if they came under Rule 33(1) of KSR and since they were not given the pay from the General Education Department or given the time scale, such services cannot be reckoned for increment as per Rule 33 of Part I KSR. Time scale is also defined in Rule 12 (35) of Part I KSR and since the petitioners were only given basic pay without any periodic increase they will not be considered for grant of any increment. It is also their argument that the

engagement of the petitioners during the relevant time cannot be treated as a duty as per Rule 12 (7) of KSR Part I to claim increment as per Rule 33 of Part I KSR.

4. As regards G.O.(P) 278/2014/G Edn. dated 23.12.2014 relied on by the petitioners, the Government contends that this Court in the judgment reported in 2016 1 ILR Kerala 590 recorded the submission of the Advocate general that the scheme was not workable. In short, the Government contends that till the Government passed G.O.(P) No.213/2015/G Edn. dated 6.8.2015, the retrenched teachers were entitled only to the basic pay as per G.O.(Ms) No.177/2012/G Edn. dated 5.6.2012. For the first time they were brought under the category of protected teachers only by the Government Order dated 6.8.2015 but the said order was not implemented because of the stay of the said order in the batch cases pending and which were disposed of only on 17.12.2015 wherein the Government Order was upheld with certain changes by this Court in the judgment reported in ILR 2016 1 Kerala 590. It was in the light of the directions in the said judgment that the Government revised its order dated 6.8.2015 and issued G.O.(P) No.29/2016/G Edn. dated 29.1.2016 and it was only from that date the salary was directed to be paid from the General Education Department to the retrenched teachers and equated with the other protected teachers. In short, the salary was given on a time scale from the General Education Department to the protected teachers like the petitioners only from 29.1.2016 and till then only a basic salary was given to them. The Government also contends that there was no claim for salary made by the petitioners till the issuance of the 2016 government order as they were aware of the fact that they were only entitled to the entry pay alone with no other benefits. As regards the contention of the petitioners that similarly situated teachers were given benefits, the Government points out that proceedings have been already taken to recover the same from them and certain persons had challenged the recovery proceedings initiated by the government. Under such circumstances, it is argued that the prayer for protection of pay is not admissible given the provision laid down in Rules 52 and 61(4) of Chapter XIV A KER which will apply only when the teacher is appointed in the scale of pay in the identical posts.

5. The Government also relies on the judgment in WA No.1836/2019, which held that Rule 14 E of Part III KSR Note III stipulates that only if the break in service is less than one academic year, it can be reckoned for all service benefits. The Government also points out that vide notification dated 27.11.2019, Note III in Rule 31 in Part III KSR has been amended clarifying that interruption in service of the employee will not count for pension. The Government decision No.8 Rule 14E Part III KSR was also deleted by the same amendment and the amendments have been given retrospective effect from 16-12-2009. This amendment is not challenged in any of these writ petitions. G.O.(MS) No.119/2018/G Edn. dated 23.8.2018 it is only a clarification of the existing legal position and it does not take away any benefit to which they were entitled. Thus they pray for the dismissal of all the writ petitions.

6. Heard Sri. George Poonthorram learned Senior Counsel instructed by Sri.A.L.Navaneeth Krishnan, Sri.V.A.Muhammed, Sri.P.Chandrasekharan, Sri. George Abraham and Sri. T.T. Mahmood, the learned counsel for the petitioners and Sri. Nisha Bose learned Senior Government Pleader appearing for the respondents.

7. The petitioners essentially based their claim on the Government Order G.O.(P) 199/2011/G.Edn. dated 1.10.2011 to substantiate their contention that they were included in the teacher's package and thus entitled to protection. The number of such teachers was ascertained as per the Government Order dated 29.3.2012 who were treated as the third group in the Government Order that created the teachers package. They also submit that going by the Government Order dated 5.6.2012 it was found that those teachers deployed to the SSA, as Cluster Coordinators were entitled to the benefits of leave same as that of the regular teachers. The Government's response to this is that no protection was offered to the third group comprising the petitioners and nothing was specifically mentioned regarding their entitlement. As far as the 5.6.2012 Government Order is concerned, the Government contends that it only decided to deploy the retrenched teachers as cluster coordinators in the SSA. Even if they became part of the teacher's package, it was specifically mentioned that they were only entitled to entry pay in the relevant pay scale and that payment was made from the SSA Fund Plan and not from the General Education Department. That apart, the Government contends that all these orders are to be treated as nonest given the declaration by this Court in WP(C)No.30107/2013. The petitioner's contention again is based on the Circular dated 1.8.2012 where the Government clarified that all service benefits and other eligible leave benefits apply to the cluster coordinators. The Government resists this contention by stating that the Government Order dated 5.6.2012 mentioned that the cluster coordinators would be granted only entry pay in the relevant pay scale and that it showed that they were never treated at par with the regular teachers.

8. The petitioners further rely on G.O.(P)313/2013/G.Edn. dated 29.11.2013 to contend that the said Government Order directed the setting up of a permanent and a separate teachers' bank and that all of the leave vacancies were directed to be filled up from the teacher's package only. The Government resists this by contending that the said Government Order has also to be treated as nonest as it was a consequential order to the Government Order dated 1.11.2012 which stood quashed by this Court. As regards the Government Order dated 11.8.2014 relied on by the petitioners to say that they are entitled to all service benefits from 1.10.2011 because of the amendment carried out in KER introducing the teachers bank, the Government responds that the amendment was challenged and this Court in the decision reported in ILR 2016 1 Kerala 519 held that the amendment with retrospective effect cannot be sustained. The Government was permitted to constitute a teacher's bank which it did as per G.O.(P)No.29/2016/G.Edn. dated 29.1.2016 and the retrenched teachers from 1997 to 2012 deployed to SSA were brought under the definition of protected teachers for the

first time only from this Government Order.

9. The Government contends that there was no other Government Order that held out any promise to treat them at par with the teachers. They further contend that it is the first time in 2015 that the petitioners were directed to be treated at par with the other teachers as till then only a basic salary was given and no claim was raised by the petitioners before the introduction of this order in the year 2016. The said Government Order also declare that the period from joining out as cluster coordinators to 28.11.2016 will be treated as non-duty to avoid a break in their service.

10. On a consideration of the Government Orders referred to above and the rival contentions ,it is to be noted that there was no statutory provision in existence for granting protection to a teacher and it was only by a policy decision that the Government introduced the concept of protection for the first time in 1969 vide G.O.(Ms)104/69/G.Edn. dated 6.3.1969 which was also extended by the later Government Orders dated 29.9.1999 and 24.7.2000, whereby the benefit of protection was granted to the teachers who were in service up to 15.7.1997. Since the petitioners, who were retrenched from service after 15.7.1997 did not enjoy any protection and remained outside service, the Government issued an order dated 1.10.2011 to provide them employment. Though the 2011 Government Order did not specifically give any right as such to the group of teachers similarly placed as the petitioners herein, their number was directed to be ascertained. The Government Order dated 1.8.2012 clarified that the teachers who are temporarily appointed as cluster coordinators under SSA are eligible for all kinds of leave and other service benefits as in the case of regular teachers. However, the order dated 5.6.2012 specifically held that they would be entitled only to entry pay in the relevant pay scale itself shows that they were not treated as regular teachers by the said order.

11. The contention of the Government that a regular teacher is entitled to increment only if they come under Rule 33 (1) of KSR also cannot be lost sight of. To claim increment as per Rule 33 Part I KSR, the definition of time scale in Rule 12(35) of Part I KSR as well as the definition of duty in Rule 12(7) of Part I KSR are to be considered. The government further contends that teachers received the salary not from the State fund but from a different account it cannot be reckoned for pension and reliance is placed on Rule 10 of KSR, Part III which constitutes a bar for reckoning service when the salary is obtained from a different head. In short, none of the Government Orders as such specifically holds the petitioner entitled to all the service benefits including pay as that of the regular teachers. That apart, the Government by a notification dated 27.11.2019 amended Note III in Rule 31 in Part III KSR clarifying that interruption in the service of an employee will not count for pension . Government decision No.8 Rule 14 E Part III K S R was also deleted by the above amendment which was given retrospective effect from 16-12-2009.

12. Given the rival submissions as noticed above, it has to be seen that as per

G.O.(P) No.199/2011/G Edn. dated 1.10.2011, the Director of Public Instructions was to ensure that the teachers included in the teacher's bank are receiving pay and allowance in time without any hindrances. Though the learned Government Pleader submits the same concerns only Group 1 and 2 mentioned in the teacher's bank and not to the third group stated therein, there is nothing in the said Government Order that deprives any benefit to the third group. That apart, it is as per the direction in the above order that the Government issued an order dated 29.3.2012 drawing up a list of 1419 retrenched teachers and the said order says that they are included in the teachers' bank. Likewise, the Government Order dated 5.6.2012 also mentioned the appointment of the retrenched teachers as per conditions stated therein, however noticing that they will be entitled only to the entry pay in the relevant pay scale. The Circular dated 1.8.2012 also mentions that the cluster coordinators under the SSA are eligible for all kinds of leave and other service benefits as in the case of regular teachers. It is based on these orders that the petitioners mainly stake their claim for the reliefs sought in the writ petition. It is in this background the contention of the Government that it is only as per the G.O.dated 6.8.2015 that the retrenched teachers were first given protection has to be considered.

13. The contention of either side is not supported in full by, the above Government Orders which leaves matters in doubt as to the entitlement of the teachers like the petitioners. The same is evident from the fact that the Government issued the impugned order dated 23.8.2018 recalling the circular dated 1.8.2012 as well as the Government Order dated 1.11.2011 in so far as the same granted benefits to the teachers like the petitioners. It is also pertinent to note that the petitioners made a claim as made in the writ petitions only after the 2016 protection order.

14. It is trite that the rights of the parties can only arise from Government Orders/Circulars that state them unequivocally and if the Government had done the same, then the Government could have been prevented from going back on the same. Since these are all essentially in the realm of policy-making and therefore lie in the domain of the executive, in the first instance it is for the Government to make a conscious decision on the claims sought by the petitioners. The applicability of Government Orders arises only when matters are expressly stated or inferred through necessary implications. Though there are indications in the Government Orders relied on by the petitioners, no unequivocal promise intending to create any right is spelt out from the Government Orders referred to above.

15. For the aforementioned reasons, the impugned order in the writ petitions, namely, G.O.(MS)No.119/18/Gen.Edn dated 23.8.2018 is quashed. There will be a direction to the Principal Secretary, Department of General Education, Government of Kerala, Thiruvananthapuram, to consider the claim of the petitioners for the service benefits for the period they worked as cluster coordinators, till their redeployment to the parent school, with notice to them

and after affording an opportunity of hearing to them and also in the light of statutory provisions and the judgments referred to above. A decision has to be taken within six months from the date of receipt of a copy of this judgment. In cases where benefits have already been granted to the teachers and which are now sought to be withdrawn, further proceedings will be kept in abeyance till the Government takes a decision as directed above.

The Writ petitions are allowed as above