(2021) 01 KL CK 0586

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33123 Of 2019

Leslie Francis M APPELLANT

Vs

State Of Kerala And Ors RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0586

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Lindons C Davis, E.U. Dhanya, Nisha Bose

Judgement

1. This writ petition is filed seeking the following reliefs :-

â??i) to issue a Writ of Certiorari or any other appropriate writ, order or direction to quash Exhibit-P4 & P7 as unjust, illegal and unsustainable.

(ii) to issue a Writ of Certiorari or any other appropriate writ, order or direction to quash Exhibit-P8 as unjust, illegal and unsustainable to the extend it

which denies the service benefits to the petitioner's service period from 15.07.2008 to 14.07.2009.

(iii) to issue a Writ of Mandamus or any other appropriate writ, order or direction directing respondents 2 to 4 to refix the pay of the petitioner by

granting pay revision benefits and increments by taking in to the account of the petitioner's service for the period from 15.07.2008 to 14.07.2009.

(iv) to issue a Writ of Mandamus or any other appropriate writ, order or direction directing respondents 2 to 4 to pay arrears towards pay revision

benefits and increments within a time frame fixed by this Hon'ble Court.

2. Heard the learned counsel for the petitioner and the Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner was

appointed as UPSA on 27.6.2006 in the AUP School, Ezhumangad

and the appointment was approved. It is submitted that during the academic year 2008-2009, there was an objection raised with regard to bogus

admissions by a super check cell and Ext.P2 Government Order came to be passed in respect of the same. After verification of the details and the

connected records, the Government found that the findings of the super check cell were not justified and that there were several students whose

admission in the school could be considered for the Staff Fixation. It is stated that even without reckoning the 28 students who were found to be bogus

admissions, 4 divisions would be admissible in Standard VII under the 1:40 ratio as per the student strength of 137 admitted by the super check cell.

The AEO was, therefore, directed to revise the staff fixation order ensuring whether those students who were reported as continuing in the school

were admitted prior to the first day of visit of the super check for reckoning them in the staff fixation orders of the subsequent years. Thereafter,

Ext.P3 revised staff fixation order dated 29.03.2011 was issued sanctioning 4 class divisions to Standard VII in the AUP School. However, thereafter,

Ext.P4 audit objection was raised stating that the inclusion of 27 students in excess of 32 students in the staff fixation was incorrect and that there

would only be two posts available in the year 2018. The petitioner took up the matter in revision and Ext.P5 order was passed by the Government.

After examining the factual and legal aspects in the matter, the Government in Ext.P5 held as follows:

â??7. In the above circumstance, Government are pleased to issue orders directing the Director of Public instruction that the said loss sustained to

Government for Rs.142820/- shall not be recovered from the Petitioner and also directing to sanction all service benefits which was withheld and due

to the petitioner at the earliest. The Appeal Petition read as 1st paper above is disposed of accordingly and the Judgement of the Hon'ble High Court

of Kerala read as 2nd paper above is thus complied with.

8. The Director of Public Instruction will conduct a comprehensive enquiry into the matter by the Vigilance wing of that Office on the lapses occurred

from the part of the Officers who presided the staff fixation of the school for 2008-09 and will initiate appropriate disciplinary proceedings against the

officers, who are found responsible and also take steps to recover the liability fixed by the Accountant General from them.â??

4. It is stated that even thereafter, though the benefits due to the petitioner were released, the period from 15.07.2008 to 14.07.2009 was not counted

for pay fixation and for other benefits due to the petitioner. It is submitted by the learned counsel for the petitioner that the AEO has gone beyond the

directions contained in Ext.P5 by not reckoning the period for the service benefits due to the petitioner.

5. A counter affidavit has been placed on record by the AEO. It is stated that though the Government had directed that the service benefits of the

petitioner should be released, there was no clarity in Ext.P5 as to whether the period from 15.07.2008 to 14.07.2009 is to be counted as duty for all

purposes. It is stated that since there was a mistake in Ext.P3 staff fixation order, there would be no post available to accommodate the petitioner

during the relevant period and therefore, if the period is treated as duty for all purposes, there would be loss occasioned to the Government.

6. I have considered the contentions advanced on all sides. It is clear that the petitioner was continuing on approved appointment during the academic

year 2008-2009 as well. It appears that the question with regard to bogus admissions has been given a quietus by Ext.P3 revised staff fixation order

issued by the AEO pursuant to the directions issued in Ext.P2. The said staff fixation order remains unchallenged and unamended till date. In spite of

the audit objections raised, no attempt has been taken by any authority empowered in accordance with the provisions of the KER for revising Ext.P3

staff fixation order, which has been issued as early as on 29.03.2011. By Ext.P5, the role of the petitioner has been examined by the Government in

detail. It was found that the recovery of pay and allowances sanctioned to a teacher who had worked in a post, even if the sanctioning was due to an

erroneous staff fixation would be untenable in law. The Government had specifically directed that the loss assessed cannot be recovered from the

petitioner and directed that all service benefits withheld and due to the petitioner should be released. The only logical conclusion therefore is that the

period from 15.07.2008 to 14.07.2009 when the petitioner had continued on the basis of an approved appointment and on the basis of an unamended

staff fixation order is liable to be treated as duty for all purposes. The contention of the AEO that since there would have been a division fall, if the bogus admissions had been taken into account, cannot be considered by this court in view of the fact that the staff fixation order has undergone no

revision for the past ten years on the basis of any exercise permitted by law.

In the above view of the matter and in view of the specific findings in Ext.P5 by the Government, I am of the opinion that the petitioner is liable to

succeed in this writ petition. There will be a direction to respondents 2 to 4 to re-fix the pay of the petitioner and to grant all benefits, treating the

period from 15.07.2008 to 14.07.2009 as duty for all purposes, within a period of three months from the date of receipt of a copy of this judgment. This

will be without prejudice to the rights of the respondents to recover amounts, if any, found due from the officers responsible for any wrong fixation, in

accordance with law.

This writ petition is ordered accordingly.