

(2002) 03 KL CK 0017

In the High Court Of Kerala

Case No : OP No. 20280 of 2001 (L)

M.P. Leela, Headmistress, Govt. U.P. School, C.P. Jacob, P.D. Teacher, Govt. U.P. School and K.V. Achamma, P.D. Teacher, Govt. U.P. School

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Citation : (2002) 03 KL CK 0017

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : M.V.S. Namboothiry and S. Santosh Kumar Perunad, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Denesan, J.—Petitioners are Government school teachers. By Ext. P1 Govt. Order dated 28-6-1997 Government clarified that the State Government employees and teachers who got time bound higher grade on or after 1-3-1992 will be permitted to opt the higher grade on the date chosen by them and to continue in the pre-revised scale till the date of option. In G.O. (P) No. 352/96/(86)/Fin. dated 11-4-1996 (Ext. P2) Government had already ordered that regular promotion/time bound higher grade granted to government employees and teaching and non-teaching staff of aided educational institutions upto 31-5-1996 alone will come within the purview of the option that could be exercised in terms of 1992 pay revision. But this restriction was lifted by Govt. Order dated 5-1-1998 cancelling Ext. P2.

2. Ext. P4 is another Govt. Order issued on 5-2-1999 by which Government accorded permission to exercise option/re-option to those employees, who could not exercise option/re-option for time bound grade sanctioned on or after 1-3-1992, due to the cut off date introduced earlier. But Ext. P4 has subsequently been withdrawn with effects from 5-2-1999 by Ext. P5 Govt. Order

dated 30-4-1999. However, after some time, Government issued a clarification as per Ext. P6 G.O. dated 22-6-1999 that applications for option/re-option submitted by employees between 5-2-1999 and 4-5-1999 would be entertained subject to the specific condition that no further re-option will be allowed in the matter of any account.

3. As per the re-option exercised by the 1st petitioner in the light of Ext. P1 Govt. Order dated 28-6-1997, her pay was fixed in the selection grade scale of Rs. 1600-2660 with effect from 1-2-1997 (with monetary benefit from 1-9-1997). The excess amount of Rs. 15,293/- drawn by the teacher for the period from 1-3-1992 to 31-1-1997 was refunded on 5-2-1997. The 2nd petitioner re-opted the pre-revised selection grade in the scale of Rs. 1250-2230 with effect from 1-2-1996 and came over to the revised scale of Rs. 1600-2660 in terms of Ext. P1 Govt. order. The excess amount of Rs. 14,054/- drawn for the period from 1-3-1992 to 30-11-1996 was refunded by that teacher on 5-11-1997. The 3rd petitioner re-opted the selection grade in the pre-revised scale of Rs. 1250-2230 with effect from 17-12-1996 and came over to the revised scale of Rs. 1600-2660 in terms of Ext. P1 Govt. Order. The excess amount of Rs. 14,471/- drawn for the period from 1-3-1992 to 16-12-1996 was refunded by the 3rd petitioner on 5-11-1997.

4. Petitioners grievance is that having thus acted upon the re-option exercised by the petitioners in terms of the Government Orders permitting them to do so and after getting the excess amount worked out on that basis refunded, the respondents are denying them the right for fixation of pay in the appropriate pay scale as also emoluments in consequence thereof, on the ground that the Accountant General has raised certain objections. Petitioners submitted representations before the higher authorities, but there is no response from them. At the same time they are denied the emoluments ignoring the re-option already accepted and acted upon.

5. Petitioners have prayed for a declaration that the options made by them pursuant to Exts. P4 and P6 are legal and valid. Petitioners submit that there is no justification to raise objections as done in Ext. P15.

6. I have heard Shri M.V.S. Nampoothiri, learned counsel for the petitioners and the learned Govt. Pleader for the respondents.

7. Petitioners' right for the time bound higher grade fell due on the after 1-3-1992. By Ext. P1 they were given permission to opt the higher grade on the date of their choice and to continue in the pre-revised scale till the date of option. Ext. P1 did not stipulate any cut off date. However, as desired by the Accountant General Government issued Ext. P2 in partial modification of Ext. P1 fixing a cut off date for re-opting the scale of pay of promotion post in the case of employees enjoying time bound higher grades. The cut off date thus introduced as per Ext. P2 is 31-5-1996. However, by Ext. P3 G.O. dated 5-1-1998 the cut off date introduced as per Ext. P2 was cancelled. Subsequently,

government found that due to the prevalence of the cut off date prior to Ext. P3 certain government employees and teachers could not enjoy the benefit extended as per Ext. P1. Accordingly, as per Ext. P4 Government granted permission to exercise option/re-option to those employees who could not exercise option/re-option for time bound higher grades sanctioned on or after 1-3-1992, on condition that such option/re-option shall exercised within three months from the date of Ext. P4 G.O. dated 5-2-1999. By Ext. P5 the period was further extended for 3 months from the date of that Govt. Order, i.e. 30-4-1999. Thereafter as per Ext. P6 Government issued another clarification ordering that all applications for option/re-option submitted by the employees between 5-2-1999 and 4-5-1999 would be entertained. It is evident from the facts of this case that the petitioners have exercised the option within the prescribed period and in terms of the Government orders referred to above. The objection raised against the re-option exercised by the petitioners is without taking into account Ext. P3 whereby the restrictions imposed with regard to the period of limitation upto 31-5-1996 was lifted. Counter affidavit justifying the impugned action says: "re-options exercised by the petitioners were not admissible as the grade promotions were sanctioned after the cut off date, i.e. 31-5-1996. In Ext. P2 order there is a restriction that the employees whose time bound higher grade fell due/granted upto 31-5-1996 above are allowed to permit re-option of 1992 pay revision." The above contention is taken, evidently, without taking into consideration Ext. P3 and subsequent Government Orders issued on the subject. I do not find any merit in the objection raised by the respondents. I hold that those objections are liable to be over-ruled.

8. In the result, petitioners are entitled to the reliefs prayed for the original petition. It is declared that the options made by the petitioners pursuant to Ext. P4 to P6 are valid. They are entitled to fixation of pay in terms of Ext. P4 to P6. The objections contained in Ext. P15 against the eligibility of the petitioners to enjoy the benefit of the re-option already exercised by them, is liable to be quashed and I do so. Petitioners shall be entitled to the consequential benefits. The Original Petition is allowed as above.