

(2012) 02 KL CK 0171

In the High Court Of Kerala

Case No : WA. No. 339 of 2012 in WPC. 28358 of 2011

P.B. Sajith

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0171

Hon'ble Judges : C.N. Ramachandran Nair, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : S. Subhash Chand, for the Appellant; Liju Stephen, Govt. Pleader for R1 to R4, for the Respondent

Judgement

Ramachandran Nair, J.—Appellant is a teacher appointed in a leave vacancy. He has already served the school for 4 years, i.e. from 2005 - 2010 and he was paid salary during all these four years. The dispute is with regard to reemployment in the leave vacancy on account of extension of leave availed by the teacher who took long leave. Appellant's counsel as well as the Manager's counsel submits that appellant is not paid any salary from 1-4-2010 onwards, even though he was continuously employed since then and has been teaching in the school in the vacancy available on account of leave taken by another teacher. There is a connected case wherein the challenge is against cancellation of appointment of a regular teacher by the DPI and confirmed by the Government. In this case the learned Single Judge first issued interim order releasing salary to appellant. However, later by the order impugned in this Writ Appeal, he withdrew the earlier order. Connected Writ Petitions are pending before the learned Single Judge and since final hearing for disposal may not take place immediately, appellant's counsel presses for immediate orders on payment of salary subject to the result of the Writ Petition. After hearing all sides, we feel it would be unjust to deny salary to a person who works as teacher from April 2010 onwards. Admittedly the appellant is in continuous employment as a teacher and is serving the school in the 7th year out of which he was paid salary only for 4 years. We, therefore,

dispose of the Writ Appeal by vacating the interim order of the learned Single Judge and direct respondents to release salary arrears to appellant from 1-6-2010 till date and continue to pay salary subject to the result of the Writ Petition. The learned Single Judge will be absolutely free to decide the case on merits and if the appellant is found to be ineligible for salary pursuant to the judgment, it will be open to the learned Single Judge to direct refund of the amount paid.

The Writ Appeal is disposed of as above.