
(1979) 03 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 2264 of 1977-C

P.E. Subramanian Namboodiri

APPELLANT

Vs

Director of Public Instruction

RESPONDENT

Date of Decision : 23-03-1979

Acts Referred:

Kerala Service Rules, 1958 — Rule 12(7), 33

Citation : (1979) 03 KL CK 0007

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : V. Sivaraman Nair and K. Kanakachandran, for the Appellant; Cyriac Jaseph, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran, J.—The Petitioner when he was a Junior Hindi Teacher was selected and deputed to undergo certificate course in Hindi Training at the Hindi Teachers Training College, R.V. Puram, Trichur, as per the order End. D3-9039/65 dated 15th June 1965 of the 3rd Respondent, the District Educational Officer, Kasargod. From 19th June 1965 to 31st March 1966 he was on deputation for this purpose. During that period of deputation he was given only a stipend of Rs. 40 per month.

2. The question that falls for decision is whether a teacher, who was deputed for training, entitled only to a stipend, not for salary, during the period of deputation, would be entitled to claim the period of deputation to be reckoned for the purpose of eligibility for increment. In Exts. P-1, P-2, P-5, P-6 and P-7 orders Respondents 2 and 3, Regional Deputy Director of Public Instruction, Kozhikode, and the District Educational Officer, Kasargod, respectively, have taken the stand that the Petitioner on deputation for the purpose of training would not be entitled to count the period of deputation for the purpose of increment inasmuch as the training was not essential for his continuation in the post, and that during that period he was not paid his salary, but a stipend of Rs. 40 per month.

3. The counsel for the Petitioner drew my attention to note 5 of Rule 12(7) of the Kerala Service Rules, Part I, which reads as follows:

The period spent on training by teachers (both stipendiary and non-stipendiary) deputed for training from Departmental Schools to Training Colleges/Training Schools may be treated as duty.

4. The Government Pleader, however, relied on note 2 to Rule 33 of the same Rules to contend for the position that the Petitioner who was not officiating in the post he was holding when he proceeded on deputation, was not entitled to have the period of deputation reckoned for the purpose of increment. The said note reads as follows:

In the case of an officer who, while officiating in a post proceeds on training or to attend a course of instruction and who is treated as on duty, while under training, the period of such duty, will count for increment in the post in which he was officiating prior to his being sent for training or instruction, if he is allowed the pay of the officiating post during such period.

It is stressed by the Government Pleader that it is the admitted case that during the period of deputation the Petitioner was not paid the pay of the officiating post, and all that was paid to him was only a stipend of Rs. 40 per month. The counsel for the Petitioner would contend that what is contained in note 5 is a special provision with respect to teachers, and by virtue of that note the Petitioner would be treated as on duty; it would follow that he was entitled to have the period of deputation for the purpose of training reckoned for the purpose of increment also. He also drew my attention to Government Order No. MS. 84/74/G. Edn., General Education (J) Department, dated 13th April 1974, a copy of which has been produced along with the counter-affidavit by the filed 2nd Respondent and marked Ext. R-1. Paragraph 2 of Ext. R-1 reads as follows:

2. Government after examining the question of granting increments to the teachers who underwent training during the periods as stated above order as follows:

The period of training undergone by teachers who were deputed for training from Departmental Schools to training schools/training colleges, will be counted for increment even if the condition under note 2 to Rule 33 K.S.R., Part I, that is, they should be given the pay of the post is not satisfied.

5. The Government Pleader contended that Ext. R-1 Government Order is not applicable to the Petitioner inasmuch as in Ext. P-1, dated 7th April 1975 the Director of Public Instruction has stated as follows:

I may inform you that Jr. Language Teachers are selected for L.T.T. Course. They are not deputed. L.T.T. qualification is not necessary for them to continue in their posts but is required only for promotion. Hence the Jr. Language teachers are not eligible for increments or other benefits counting the period of L.T.T. course.

I do not think that there is a serious contention as to whether the Petitioner was on deputation or not. The contention is confined to the non eligibility of the Petitioner to have the period of deputation reckoned for the purpose of increment in view of Ext. P-1 order passed by the Director of Public Instruction. Ext. P-1 order appears to have been issued by the Director of Public Instruction either without noticing Ext. R-1 Government Order or in violation of the contents thereof. In either case, that will not justify Ext. P-1 order. I, therefore, hold that the Petitioner was entitled in terms of note 5 to Rule 12(7) of the K.S.R., Part I, and Ext. R-1 Government Order to have the period on deputation for training reckoned for the purpose of increment. The result is that Exts. P-2, P-5, P-6 and P-7 orders are quashed.

The writ petition is allowed as above. There will be no order as to costs.