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**(2009) 05 KL CK 0005**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) . No. 34228 of 2006 (Y)**

P.K. Margaleetha

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision : 21-05-2009**

**Acts Referred:**

**Citation : (2009) 05 KL CK 0005**

**Hon'ble Judges : P.N.Ravindran, J**

**Bench : Single Bench**

**Advocate : Santhosh Mathew, for the Appellant; Government Pleader, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

P.N. Ravindran, J.—Heard Sri.Santhosh Mathew, the learned Counsel appearing for the petitioner and Smt. Anu Sivaraman, the learned Government Pleader appearing for the respondents.

2. The petitioner retired from service on 31.5.2005 on attaining the age of superannuation, while she was serving as Headmaster in an aided Lower Primary School. The petitioner entered service as Teacher in ALP School, Chazhur on 1.6.1972. She was retrenched from the school during the period from 13.9.1975 to 1.12.1975. On the terms of G.O (MS) No. 104/69/G.Edn. dated 6.3.1969, this period was liable to be treated as eligible leave and leave on loss of pay. In accordance with the stipulations in the aforesaid Government order, the period from 13.9.1975 to 1.12.1975 was reckoned for the purpose of grant of senior grade to the petitioner in the category of Headmaster with effect from 1.8.1983. She was also granted subsequent higher grade promotions thereafter. This fixation was objected to for the first time in the year 2003 as per Exts. P2 and P3. It is stated that her pay was fixed in the senior grade scale of pay by reckoning the period from 13.9.1975 to 1.12.1975. The petitioner submitted her reply to Exts. P2 and P3. Overruling her contentions, the Assistant Educational Officer held in Ext.P4 that her pay fixation was not in order. The petitioner was

directed to refund the sum of Rs. 65,088/- being the excess salary allegedly drawn by her. Ext.P4 is under challenge in this writ petition.

3. The petitioner submits that on the terms of G.O(MS) No. 104/69/G.Edn. dated 6.3.1969, the period of 80 days from 13.9.1975 to 1.12.1975 was rightly treated as leave without allowances and that when Exts. P2, P3 and P4 were issued, the Deputy Director of Education and the Assistant Educational Officer overlooked the purpose underlying the issue of G.O(MS) No. 104/69/G.Edn. dated 6.3.1969. The petitioner contends that it was to avoid break in service that the period during which the petitioner was out of service was treated as leave without allowances and that the stand taken in Exts. P2, P3 and P4 is not tenable. The respondents have filed a counter affidavit contending that the fixation of pay consequent to the grant of senior grade by reckoning the period from 13.9.1975 to 1.12.1975 was irregular and that in view of the declaration given by the petitioner following the fixation of pay, she is liable to refund the excess salary drawn by her.

4. G.O(MS)No.104/69/G.Edn. dated 6.3.1969 stipulates that the period during which the retrenched teacher was out of service will be treated as eligible leave and leave on loss of pay in order to avoid break in service. The teacher will not however get salary and allowances for the period she was out of service. On the terms of G.O (MS) No. 104/69/G.Edn. dated 6.3.1969, the period of 80 days from 13.9.1975 to 1.12.1975 was rightly treated as service for the purpose of pay fixation to the senior grades. The intention behind G.O (MS) No. 104/69/G.Edn. dated 6.3.1969 is to prevent break in service. The only stipulation is that the teacher will not be entitled to salary and allowances for the period during which she remains out of service. The respondents have no case that the petitioner was paid salary and allowances for the period she was out of service. Their only objection is that the said period was reckoned for the purpose of pay fixation. In my opinion, in the light of the stipulations in G.O (MS) No. 104/69/G.Edn. dated 6.3.1969, the stand taken by the respondents in Exts. P2 and P3 cannot be sustained. The pay of the petitioner was in my opinion rightly fixed taking note of the purpose underlying G.O (MS) No. 104/69/G.Edn. dated 6.3.1969. The objection raised by the Deputy Director of Education and the Assistant Educational Officer in Exts. P2 and P3 is therefore without any basis. I am therefore persuaded to hold that Ext. P4 re-fixing the pay and allowances of the petitioner with effect from 26.1.1985 and directing refund of the sum of Rs. 65,088/- cannot be sustained.

In the result the writ petition is allowed, Ext.P4 is quashed and respondents are directed to re-fix the salary and allowances payable to the petitioner ignoring the objection raised in Exts. P2 and P3. Final orders in the matter shall be passed within three months from the date on which the petitioner produces a certified copy of this judgment. On such re-fixation, the pension payable to the petitioner shall be revised and arrears disbursed within another two months thereafter. In the view that I have taken, the sum of Rs. 65,088/- which was withheld from the

DCRG payable to the petitioner as per Ext.P1, shall be disbursed within one month from today.