
(2023) 12 KL CK 0080
In the High Court Of Kerala
Case No : Writ Appeal No.1836 Of 2023

Principal Secretary

APPELLANT

Vs

Vasu Thilleri

RESPONDENT

Date of Decision : 08-12-2023

Acts Referred:

Citation : (2023) 12 KL CK 0080

Hon'ble Judges : A.Muhamed Mustaque, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : P.K.Baby, R.Parthasarathy, P.C.Sasidharan

Final Decision : Dismissed

Judgement

A.Muhamed Mustaque, J

1. This writ appeal is filed by the State. The first respondent retired from the service from an aided college on 30.04.2018. Before joining the aided college, he worked in the office of the Accountant General, Kerala, from 14.05.1986 to 08.10.1996. The issue is related to reckoning his previous service for the pensionary benefits.

2. The respondent also had a sandwiched service in the aided college in a leave vacancy from 09.10.1996 to 15.11.1998. This service is not in a substantive vacancy and therefore, it cannot be reckoned for pension. (See the judgment of this Court in Writ Appeal No.1460/2022 dated 04.01.2023).

3. The learned Government Pleader placing reliance on Rule 29 of Part III of Kerala Service Rules (for short, the 'Rules') submitted that since there is a break of two years from the previous service and joining in substantive service of aided college subsequently, the first respondent is not entitled to reckon the previous service for the purpose of pension. It is further submitted that interval period of previous pensionable service, and subsequent pensionable service is too long beyond joining time applicable, not to be treated as forfeiture of pension in

previous service. According to him, since the service followed by the previous service is not in a substantive vacancy, that period cannot count.

4. Thus, the sandwiched period cannot be reckoned as a qualifying service for pension. However, this Court cannot ignore the purport of Rule 31 of Part III of the Rules. The Rule 31 reads thus:

“31.Interruptions:- Interruptions in the service of an employee will count for pension provided it is not specifically laid down in these rules or otherwise ordered by competent authority and recorded accordingly in the Service Book:

Note 3: In cases where the period of an interruption in service exceeds one year, the benefit of reckoning the period of such interruption in service shall be restricted to the periods he was actually in service prior to the date of the interruption.”

5. In the light of Rule 31 Part III of the Rules, it can be seen that the interruptions in the service of an employee will count for pension. The argument of the learned Government Pleader is attractive in the light of Rule 29 that the resignation to take up employment normally results in forfeiture of pension, except when the appointment is to take up employment in public service. We note that resignation from the previous service was to take up employment in public service, though that service in a leave vacancy may not qualify for pension, it will not cease to be an appointment in public service. Therefore, the resignation will not entail in forfeiture of past service. Thus, we find no reason to interfere with the impugned order. The writ appeal is dismissed.