

(2010) 09 KL CK 0171

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27451 of 2010 (F)

Ramesh Lal P.R.

APPELLANT

Vs

The Assistant Educational Officer, The Headmistress,
S.M.A.M.L.P.S. and The Manager, S.M.A.M.L.P.S.

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0171

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Babu S. Nair, for the Appellant; No Appearance, for the Respondent

Judgement

K.T. Sankaran, J.—The case of the petitioner is the following: He was appointed as Lower Primary School Assistant in S.M.A.M.L.P. School, Aliparamba in Perinthalmanna Sub District on 15.10.2004. The appointment was approved. The petitioner went on leave without allowance on medical ground for the period from 24.2.2009 to 22.9.2009 (211 days). The application for leave without allowance submitted by the petitioner was forwarded by the Manager to the Government. The Government rejected the application as per Ext.P2 order dated 19.2.2010, which reads as follows:

I am to invite your attention to the reference cited and to inform that the genuineness of the Medical Certificate submitted by Shri. Ramesh Lal is doubtful. Therefore the application of LWA is rejected. The Service Book is returned herewith.

2. It is stated in paragraph 3 of the Writ Petition that after Ext.P2 order was passed, the petitioner had submitted another application and that the same is pending before the Government. But, no document is produced to show that such an application was filed. In paragraph 6 of the Writ Petition, it is stated that the petitioner had re-presented his application for leave before the Government.

3. The petitioner rejoined in service on 23.9.2009. However, his salary was not

paid. It is stated that for about one year, he is working without any salary.

4. I.A. No. 13428 of 2010 was filed by the petitioner to implead the State of Kerala as an additional respondent. I.A. No. 13429 of 2010 was filed for amendment of the Writ Petition, incorporating a prayer to quash Ext.P2 order and a prayer to issue a writ of mandamus commanding the additional fourth respondent to allow the application for leave without allowance applied for by the petitioner.

5. Heard the learned counsel for the petitioner as well as the learned Government Pleader. Ext.P2 order was passed without hearing the petitioner. If the additional fourth respondent thought that the medical certificate produced by the petitioner was "doubtful", an opportunity should have been given to the petitioner to explain and to produce additional documents, if any. On a perusal of Ext.P2 order, it is not clear whether the fourth respondent had any materials to arrive at the conclusion that the ground stated for leave without allowance was without any substance. Ext.P2 also does not indicate that any report from the educational authorities was called for. If the leave period is not regularised, the counsel submits that the petitioner would be put to irreparable injury and great hardship.

6. In the facts and circumstances as mentioned above, I am of the view that Ext.P2 order is liable to be quashed. Accordingly, Ext.P2 is quashed. The additional fourth respondent shall consider the application afresh after affording an opportunity of being heard to the petitioner. If any clarification is required, the petitioner shall explain the same and he shall produce such other documents or materials as are necessary for the proper disposal of the application. The application shall be considered by the additional fourth respondent within a period of two months from the date of receipt of a copy of the judgment. The petitioner shall produce a copy of the Writ Petition, copies of I.A. Nos. 13428 and 13429 of 2010 and also a certified copy of the judgment before the additional fourth respondent.

The Writ Petition is disposed of as above.