

(2015) 09 KL CK 0117

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24720 of 2015 (L)

Sajeesh S. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 09 KL CK 0117

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.T. Shyamkumar and Harish R. Menon, for the Appellant; M.J. Rajasree, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—The issue raised in the above writ petition with respect to eligibility for vacation salary is squarely covered by the decision of this Court in Exhibit P20, wherein it was held so:--

"5. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that in the orders issued by the 3rd respondent, approving the appointments of the petitioners to posts of HSST Junior in the respective Colleges, there is a condition inserted which qualified their approval by stating that the petitioners would not be entitled to vacation salary in the year of their appointment. The orders passed by the 3rd respondent would indicate that the stand taken by the 3rd respondent was on account of Rule 49 of Chapter XIVA of KER which deals with the nonpayment of vacation salary to teachers appointed in terms of that Chapter under certain specified circumstances. While no provision has been brought to my notice that would suggest that there is a similar Rule applicable in respect of persons appointed as HSSTs in Higher Secondary Schools covered by Chapter XXXII of the KER, I note that by way of Ext.P22 order of the Government and Ext.P23 clarification issued by the Directorate of Higher Secondary Education, it has been made clear that persons such as the petitioners, who were appointed to permanent vacancies in

Higher Secondary Schools, would be entitled to vacation salary so long as the appointment persisted even for the period subsequent to 31st March of the calendar year. In the light of Ext.P23 clarification, I do not see any reason why the petitioners should be denied the benefit of vacation salary, more so when there is no statutory provision that is brought to my notice which would indicate that the petitioners are not entitled to such vacation salary. It might also be relevant to refer to the judgment of the Division Bench of this Court in Pathanapuram Taluk Samajam Corporate Management Schools Vs. Sreelatha, (2006) 3 KLT 867 , which was rendered in the context of a case where the applicability of Rule 51B of Chapter XIVA of the KER to appointments effected under Chapter XXXII of the KER, came up for consideration, and it was held that unless a similar provision, as contained in Rule 51B, was incorporated in Chapter XXXII, it was not possible to contend that the benefits of employment assistance available to dependents of aided High School and Primary School teachers could be extended to vacancies available in Higher Secondary Section. Drawing analogy from the said decision, and also noticing that there is no provision similar to Rule 49A of Chapter XIVA in Chapter XXXII of the KER, I am of the view that the condition impugned in the orders passed by the 3rd respondent cannot be legally sustained. Accordingly, I quash Exts.P3 to P21 in W.P.(C). No. 15651/2014 and Exts.P3 and P4 in W.P.(C). No. 11048/2014, to the extent they impose a condition that the candidate in question is not entitled to vacation salary in the year 2012 in terms of Rule 49 of Chapter XIVA of the KER. The respondents shall take immediate steps to disburse the vacation salary that is due and payable to the petitioners in the writ petitions within a period of three months from the date of receipt of copy of this judgment".

2. Accordingly, the above writ petition would stand allowed. The conditions in Exhibits P3 to P16 that the respective petitioners would not be entitled to salary during vacation of the year 2012 would stand set aside. The directions in the aforecited judgment shall apply to the petitioners herein also.