

(2001) 11 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 25845 of 2000

Samuel John

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Citation : (2002) 2 ILR (Ker) 369

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : V.P. Seemandini, K.R. Krishnakumari and V.B. Hari Narayanan, for the Appellant; Abdul Rasheed, Government Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The challenge in this Original Petition is against Ext. P3 order. Ext. P3 reads as follows:

"The Government Order read as first paper above is hereby cancelled with effect from 17.6.1999. The amount drawn on the strength of the above Government Order shall be recovered."

Government Order dated 17.6.1999 referred to above is Ext. P2. Ext. P2 was happened to be issued taking into account Ext. P1 order. Ext. P1 Government Order provides that the private college service put in by the Government employees other than the Government college teachers shall be counted for pension alone. It was considering that aspect the orders were issued in Ext. P2 to the effect that the approved service put in by the teaching and non-teaching staff of all educational institutions prior to their entry in Government Service will be counted for all service benefits including pension subject to the conditions laid down i n Kerala Service Rules. It is this order, which is cancelled as per Ext. P3. Petitioners submitted that on the basis of Ext. P2 they are entitled to get their service in aided schools protected for the purpose of increments on their joining duty in Government service. By reasons of Ext. P3 that right is taken away.

2. Incremental is something to be governed by Rules 31, 32 and 33 of Part I of

the Kerala Service Rules. Those rules do not provide for reckoning the service put in private colleges or private schools for increment to be drawn on entry in Government service. When something is paid from Government exchequer, it shall be governed by rules. When the rules do not allow counting of such service for increment, the petitioners do not have any entitlement. Even if Ext. P2 is cancelled, it does not in any way affect them as the petitioners do not acquire any right for increment, going by the rules in that regard. The petitioners do not have any right for increment reckoning their service put in private schools. So, even if Ext. P3 is quashed, no benefit can be given to the petitioners.

3. Of course on the strength of Ext. P2 if the petitioners had been granted increments, necessarily whatever amount drawn by the petitioners shall not be recovered. But the erroneously granted increments can be withdrawn and their pay can be scaled down as if fixed on the minimum of the scale on entry in Government service. So, whatever amount the petitioners had drawn earlier due to the wrong understanding of the law by the respondents cannot be recovered from the. This aspect is covered by the decision reported in *Satyapalan v. Deputy Director of Education* 1998 (1) KLT 399). With regard to counting of service for pension it is made clear that even without Ext. P2, an aided school teacher who got subsequent appointment in Government service can on retirement from Government service count the approved service in aided educational institution for pension as per the rules in Part III of the Kerala Service Rules.

4. Original Petition is disposed of accordingly.