

(2014) 06 KL CK 0114

In the High Court Of Kerala

Case No : W.A. No. 1525 of 2013 in WP(C). 37143/2004

State of Kerala

APPELLANT

Vs

V. Priyadarsini

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0114

Hon'ble Judges : Antony Dominic, J; Alexander Thomas, J

Bench : Division Bench

Advocate : S. Jamal, Government Pleader, Advocate for the Appellant; Aysha Youseff and Sri V.A. Muhammed, Advocate for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—The 1st respondent filed W.P.(C).No.37143/2004 claiming, inter alia, that she should be paid pay and allowances for the period from 15.7.1998 to 28.9.1999 in view of Exts.P5 and P6 Government orders. The learned Single Judge having allowed the writ petition, this appeal is filed.

2. We heard the learned Government Pleader appearing for the appellants and also the learned counsel appearing for the respondents.

3. Briefly stated the case was that the 1st respondent was working as a H.S.A. (Hindi) in the school of which, the 2nd respondent is the manager and the 3rd respondent is the headmaster. Such appointment was from 5.6.1995 and the same was approved by the D.E.O. Punalur. Subsequently, due to reduction of post, she was retrenched from service from 15.7.1998. According to the 1st respondent, in view of Exts.P4, P5 and P6, she was entitled to get salary for the aforesaid period. It is the correctness of this claim, which was accepted by the learned Single Judge, that arises for our consideration.

4. The main plank of argument raised by the 1st respondent was that in Ext.P4, as modified by Ext.P6, the Government ordered that all aided school teachers, who were in service as on 14.7.1997 will be given protection by retaining them in

the respective schools and that salary will be continued to be paid to them. On this basis, the claim is raised by the 1st respondent. However, what we find is that in Ext.P4 benefit of protection was extended all aided teachers who were in service as on 14.7.1996. That Government order issued on 26.7.1999 was clarified by the Government by G.O(P) No. 240/99/G.Edn. dated 29.9.1999. In that Government order, referring to Ext.P4 dated 26.7.1999, the Government clarified in para 2(i) that all the aided school teachers who were in service as on 14.7.1996 and those, who are appointed in aided school against regular vacancies during 1996-97 and upto 14.7.1997 would be eligible for protection. It was also ordered that sub para 3 thereof that those who are eligible for protection as per para 2(i) referred to above and if retrenched during the subsequent orders due to division fall, they will be reinstated in service in their parent schools and that the period during which they are out of service will be regularised as eligible leave or leave without allowance.

5. As we have already stated by G.O(P) No. 240/99/G.Edn. dated 29.9.1999 the Government have thus clarified Ext.P4 and therefore any teacher covered by Ext.P4 as clarified by G.O(P) No. 240/99/G.Edn dated 29.9.1999, if retrenched, the period of such retrenchment is to be regularised as eligible leave or leave without allowance. In other words, this order did not provide that such retrenched teacher will be eligible for salary.

6. However, insofar as Ext.P6 relied on by the 1st respondent is concerned, that was issued only on 10.6.2003 and by this order, the Government had relaxed the additional economy measures which were imposed by it on account of the financial crisis faced by the State. This order, in other words, provided that the protected teachers will be continued to be paid salary. This order being a relaxation of the restrictions that were imposed, can operate only with prospective effect and cannot govern the claim of the 1st respondent raised for the period from 15.7.1998 to 28.9.1999.

In other words, the conclusion of the learned Single Judge that in view of Exts.P5 and P6, the 1st respondent is entitled to get salary for the aforesaid period cannot be sustained. For the aforesaid reasons, the judgment of the learned Single Judge is untenable and is set aside and the Writ Petition stands dismissed. The Writ Appeal will stand allowed as above.