
(2021) 01 KL CK 0043
In the High Court Of Kerala
Case No : Writ AppealNo. 1783 Of 2020

Sunil Kumar C.K	Vs	APPELLANT
State Of Kerala And Ors		RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0043

Hon'ble Judges : A.M. Shaffique, J;Gopinath P, J

Bench : Division Bench

Advocate : M.A. Abdul Hakhim, Joseph George, A. J. Varghese

Final Decision : Dismissed

Judgement

A.M. Shaffique, J

1. Petitioner in WP(C) No. 26801/2019 has preferred this appeal challenging judgment of the learned Single Judge by which the writ petition had been dismissed.
2. Petitioner/appellant challenged Exts.P6 and P7 orders and sought for a direction to respondents 1 to 6 to approve the service of the petitioner as HSA(Malayalam) in the school managed by the 5th respondent from 15/7/2014 to 3/3/2017 in continuation of his earlier service.
3. Petitioner was appointed as HSA(Malayalam) on 6/6/2012 in a promotion vacancy. His appointment was approved from 6/6/2012 to 14/7/2014. However, due to division fall, his service was not approved from 15/7/2014 onwards. According to him, though he was working in the school, he was not paid salary and he was redeployed to another post on 3/3/2017.
4. The 7th respondent was appointed as HSA (Malayalam) in the very same school on 5/7/2005. He submitted a letter of resignation dated 18/6/2013 and he had withdrawn the said letter on 1/10/2013. In the meantime, Manager appointed the 8th respondent in the vacancy of resignation of the 7th respondent

on 17/8/2013. Though the resignation of the 7th respondent was submitted for approval, the same was not approved and the 7th respondent was directed to rejoin duty. The period of service during which the 7th respondent was remaining outside was directed to be treated as non-duty. The Manager preferred an appeal, which resulted in Ext.P7 order confirming the directions in Ext.P6 order passed by the District Educational Officer. In Exts.P6 and P7, direction had been issued to disburse salary and other benefits to the 8th respondent for the period from the date of his appointment till the date of resumption of duty by the 7th respondent.

5. Contention urged by the petitioner was that since he was senior to the 8th respondent, he should have been paid the salary and other benefits for the period from 15/7/2014 to 3/3/2017. The learned Single Judge after considering the respective contentions of the parties observed that as the petitioner had accepted Ext.P1 order granting approval from 6/6/2012 to 14/7/2014, which is not under challenge, he cannot complain against any decision taken on the request of the 7th respondent to revoke the letter of resignation.

6. Apparently this is a case in which petitioner's appointment was approved only from 6/6/2012 to 14/7/2014. Thereafter, there was a division fall and consequently, petitioner is not entitled for continuing in service. Though he has alleged that he was working during the relevant time, in the absence of a definite post to accommodate the petitioner, he cannot claim salary during the subsequent period until he was redeployed.

7. As far as the 7th respondent is concerned, he submitted a letter of resignation on 18/6/2013 when the petitioner was having valid service. Thereafter, he sought for withdrawing the letter of resignation, which was not permitted by the Manager and the 8th respondent was appointed in that post on 17/8/2013. Therefore, as on 17/8/2013, petitioner was in regular service. It is later, due to division fall, the petitioner had to be retrenched from service. The contention of the petitioner is that, instead of appointing the 8th respondent, Manager should have appointed the petitioner, but, as already stated, at the relevant time, petitioner was in regular service and was retrenched only subsequently. Of course, there is some justification on the part of the petitioner in contending that when the 8th respondent was appointed and, later on, on account of division fall, petitioner was retrenched, in his place, the 8th respondent should have been retrenched. But it is relevant to note that during the relevant time, the issue regarding acceptance of resignation and withdrawal of resignation were under consideration before this Court and the educational authorities, which ultimately became final only by the issuance of Exts.P6 and P7 orders. The rights of the petitioner could not have been adjudicated in the proceedings at Exts.P6 and P7. Under such circumstances, the learned Single Judge was justified in not interfering with Exts.P6 and P7.

As far as the claim for salary during the relevant period is concerned, petitioner claims that he was working during the relevant period, but without approval. The

8th respondent also was working in the place of 7th respondent and there is nothing wrong in the educational authorities deciding that the 8th respondent should be paid the salary during the interregnum period. We, therefore, do not find any ground to interfere with the judgment of the learned Single Judge. Writ appeal is dismissed.