

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 13TH DAY OF DECEMBER 2012/22ND AGRAHAYANA 1934

WP(C) .No. 22254 of 2010 (F)

PETITIONER(S) :

T.J.SARADA,
W/O.S.SEETHARAMAN POTTI, AGED 56 YEARS
U.D.CLERK (IST GRADE ASSISTANT) (RETIRED)
OFFICE OF THE KERALA STATE HOUSING BOARD
BRANCH OFFICE, CHERTHALA, (R/AT. DEVI KRIPA
KUMBALAM, ERNAKULAM DISTRICT) .

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENT(S) :

1. THE STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 1.

2. THE SECRETARY TO GOVERNMENT,
HOUSING (A) DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 1.

3. THE SECRETARY,
KERALA STATE HOUSING BOARD, THIRUVANANTHAPURAM - 1.

R1 & 2 BY GOVERNMENT PLEADER SRI.V.K.RAFEEL
R3 BY ADV. SRI.GEORGE BOBAN, SC, K.S.H.B.
SRI.A.JAYASANKAR, SC KSHB, TVM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-12-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS

- EXT. P1 COPY OF THE REQUEST OF THE PETITIONER DT. 2.8.2007.
- EXT. P2 COPY OF THE REQUEST OF THE PETITIONER ADDRESSED THE HONOURABLE MINISTER FOR FINANCE 12.3.2008.
- EXT. P3 COPY OF THE ORDER NO.6666/A1/2007/HSG. OF THE GOVERNMENT DT. 16.05.2008.
- EXT. P4 COPY OF THE G.O.(RT.) NO.75/2003/HSG. OF THE GOVERNMENT DT. 06.09.2003.
- EXT. P5 COPY OF THE G.O. (RT.) NO.82/2007/HSG. OF THE GOVERNMENT DT.13.11.2007
- EXT. P6 COPY OF THE G.O. (RT) NO.29/2005/HSG. OF THE GOVERNMENT DT.22.04.2005.
- EXT. P6 (A) COPY OF THE G.O.(RT.)NO.61/2006/HSG. OF THE GOVERNMENT DT. 28.06.2006.
- EXT. P7 COPY OF THE G.O.(P) NO.39/68/FIN. OF THE GOVERNMENT DT.24.01.1968.
- EXT. P8 COPY OF THE CIRCULAR NO.29/71/FIN. OF THE GOVERNMENT DT.16.04.1971
- EXT. P9 COPY OF THE G.O.(P) NO.103/86/FIN. OF THE GOVERNMENT DT.27.01.1986
- EXT. P10 COPY OF THE G.O.(P) NO.452/2006/FIN. OF THE GOVERNMENT DT.06.11.2006
- EXT. P11 COPY OF THE G.O.(P) NO.188/2008/FIN. OF THE GOVERNMENT DT.25.04.2008
- EXT. P12 COPY OF THE G.O.(P) NO.269/2008/FIN. OF THE GOVERNMENT DT.21.06.2008
- EXT. P13 COPY OF THE G.O,(P) NO.420/08/FIN. OF THE GOVERNMENT DT.18.09.2008
- EXT. P14 COPY OF THE DECISION REPORTED IN 2004 (2) K.L.T.190 DT.18.03.2004
- EXT. P14 (A) COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.A.NO.602/2005 DT. 17.09.2008

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EXT. P15 COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C)
NO.8122/2009 DT. 27.10.2009

EXT. P16 COPY OF THE G.O.(RT) NO. 11/2010/HSG. OF THE GOVERNMENT
DT.01.02.2010

EXT. P17 COPY OF THE DECISION REPORTED IN 2010 (1) K.L.T.586
DT.22.01.2010

EXT. P18 COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.
6429 OF 2010-C DT. 25.05.2010

EXT. P19 COPY OF THE ORDER NO. 23365/PEN.B2/10/FN OF THE GOVERNMENT
DT. 01.07.2010.

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

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C.K. ABDUL REHIM, J.

W.P.(C). No. 22254 of 2010

Dated this the 13th day of December, 2012

JUDGMENT

Issue involved in this writ petition is as to whether the petitioner is entitled for reckoning her previous service rendered in aided school for computing pensionary benefits with respect to service rendered by her in the Kerala State Housing Board.

2. The petitioner joined in the service of the Housing Board on 23.11.1987 and she had retired on 31.12.2007. Prior to her entry in the service of the Housing Board, the petitioner had service in an aided school for the period from 06.06.1979 to 22.11.1987. On that basis the petitioner made claim to reckon her prior service as 'qualifying service' for the purpose of computation of pensionary benefits. The claim was rejected by the Government through Exhibit P3, a totally non-speaking order. Petitioner had challenged Exhibit P3 before this court in a writ petition pointing out that, by virtue of Exhibits P4 and P5 orders the Housing Board had reckoned prior service put in by its employees in the Kerala State Road Transport Corporation. He had also relied on various Government Orders, Exhibits P6 to P9, to show that prior service put in by Government employees under

different establishments has been recognised as qualifying service for the purpose of pensionary benefits. The Housing Board had adopted a contention that the request of the petitioner was declined only by the Government. Government on the other hand took a contention that there is no Rule enabling the petitioner to get her prior service reckoned. According to the Government, orders in individual cases were issued only in exercise of discretionary power and the petitioner had no right to claim parity in treatment. However this court in Exhibit P15 judgment observed that, if benefit has been granted in the case of similarly situated employees, there is no reason as to why such benefit shall not be extended to the petitioner. Therefore Exhibit P3 was directed to be reconsidered by the Government. The proposal submitted by the Housing Board was directed to be taken note and the Government was directed to take a decision within a time limit.

3. Exhibit P16 is the consequential order issued by the Government. It was observed that, as per the regulations of the Kerala State Housing Board, prior service in Government will be reckoned for pensionary benefits. The regulation defines

“Government Service” as service rendered in the State Government or Central Government. Since aided school service was not a 'Government service' as defined, the petitioner is found as not eligible. The precedents quoted by the petitioner was observed as not applicable because of the fact that the petitioner was not a 'Government servant.'

4. Exhibit P16 was again challenged before this court in WP(C) No. 6429/2010. Referring to a Division Bench decision of this court in **Abdul Jabbar V. K.S.E.B. (2010 (1) KLT 586)** it was observed that, this court had already found that service rendered in aided schools can be reckoned for the purpose of pensionary benefits in the Kerala State Electricity Board. This court found that there is no reason to take a different view. Therefore the respondents were directed to revise the pensionary benefits due to the petitioner reckoning her previous service in the aided school, from 06.06.1979 to 22.11.1989, in accordance with law.

5. It is stated in the writ petition that, the Government have not implemented Exhibit P18 judgment within the time stipulated and the petitioner had filed a Contempt Court Case

before this court. During pendency of the Contempt Court Case the Government have issued Exhibit P19 order. In spite of the specific direction issued by this court in Exhibit P18 judgment the benefit was again denied to the petitioner holding that as per the Regulations of the Kerala State Housing Board "Government Service" has been defined and hence service in aided institutions will not come under it. Petitioner is challenging Exhibit P19 order in this writ petition.

6. Learned Government Pleader and standing counsel appearing for the Housing Board contended that, even though provisions contained in Part III of the Kerala Service Rules (K.S.R.) has been adopted by virtue of Regulation 4 of the Kerala State Housing Board employees (Pension and other Retirement Benefits) Regulation 1995, Clause 5 of the said Regulation specifically defined 'qualifying service'. It clarified that notwithstanding Regulation 4 through which provisions of Part III K.S.R. is adopted, 'qualifying service' for the purpose of pension is defined as service rendered under the Board and under the erstwhile 'Thiruvananthapuram City Improvement Trust'. It is further provided that, with respect to employees who served the

Board or the said Trust on deputation from the Central or State Government and subsequently absorbed in the regular establishment, service rendered by them under the Central or State Government prior to such absorption will be treated as qualifying service. On a reading of Regulation 5 of Housing Board Regulations, it is evident that the said Regulation defines 'qualifying service'. But it does not include prior service rendered by the employee of the Board as qualifying service for the purpose of pension. Nor it excludes any prior service put in by the employee in any other establishment from the purview of qualifying service. The stand adopted by the Government in Exhibit P16 that the Regulation had defined "Government Service" as service rendered in State or Central Government alone cannot be accepted. Regulation 5 (iii) only defines that service put in by employees on deputation who were subsequently observed by the Board from State Government or Central Government, will be reckoned as qualifying service for the purpose of pension. Service put in by an employee on deputation is not a prior service but on the other hand it can only be construed as a continuation in service. Therefore stand taken to

the effect that the Housing Board Regulations had excluded prior service in any establishment other than State Government or Central Government, cannot be accepted. It is pertinent to note that in Exhibits P4 and P5 orders with respect to employees of the Housing Board who has got prior service in K.S.R.T.C. was directed to be reckoned for the purpose of pensionary benefits.

7. I am of the considered opinion that a legal issue stands covered through judgment in Abdul Jabbar's case (cited supra). A Division Bench of this court observed that Rule 15 of Part III K.S.R. provides that Aided school service put in by Government employee prior to entry in Government service qualifies for pensionary benefits. This court observed that when the Rules under Part III K.S.R has been adopted by any establishment, the word "Government" contained in Rule 14E need to be understood as establishment which is adopting the Rules. Considered the perspective of the dictum as above, Rule 14E is to be read as, "aided school service put in by Kerala State Housing Board employees prior to entry in the Boards service qualifies". Therefore I am of the view that the stand adopted in Exhibit P16 order is illegal, unsustainable and is opposed to settled legal

principles.

8. Apart from the above aspects it is highly pertinent to note that Exhibit P16 order has already been set aside by this court in Exhibit P18 and specific direction was issued to revise the pensionary benefits of the petitioner, reckoning her previous service in the aided school for the period from 06.06.1979 to 22.11.1987. Exhibit P18 judgment has attained finality in between parties inter-se. Therefore the Government was not authorised to take any different view in the matter, which according to me is a clear disobedience of the judgment of this court and action in this regard may amount to an offence punishable under the Contempt Courts Case Act. Since the Contempt Court Case filed by the petitioner has already been closed, I am not intending to pursue any action in that respect. However, I am of the opinion that the petitioner was unnecessarily dragged on to this court, repeatedly and she had to suffer the agony and loss of continued legal fights, without any jurisdiction. The above situation has to be compensated in terms of costs to be awarded.

9. Under the above mentioned circumstances, the writ

petition is allowed by imposing cost of Rs.10,000/- on the Government to be paid to the petitioner. The 1st respondent is directed to issue necessary orders revising pensionary benefits of the petitioner, by reckoning previous service put in by her in aided school for the period from 06.06.1979 to 22.09.1987. Necessary orders revising the pension as well as orders effecting payment of arrears along with the cost of Rs.10,000/- ordered as above, shall be issued by the 1st respondent at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM, JUDGE

/True copy/

P. A. to Judge

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