

Kerala High Court

P.K. Lalitha Bai vs The Principal Secretary To Govt. ... on 11 December, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 29721 of 2007(L)

1. P.K. LALITHA BAI, AGED 62 YEARS,
... Petitioner

Vs

1. THE PRINCIPAL SECRETARY TO GOVT. OF
... Respondent

2. STATE OF KERALA,

3. DISTRICT EDUCATIONAL OFFICER, KOLLAM.

For Petitioner :SRI.C.UNNIKRISHNAN (KOLLAM)

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :11/12/2008

O R D E R

ANTONY DOMINIC, J.

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W.P.(C) NO. 29721 OF 2007 (L)

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Dated this the 11thday of December, 2008

J U D G M E N T

Petitioner seeks to quash Exts. P4 and P8 to the extent it imposes the condition that the period of leave without allowances will not count for any service benefits. She also seeks a declaration that the break in service of the petitioner from 14/7/95 to 21/7/96 and 26/3/96 to 1/6/97 is liable to be counted for pension and that she is entitled to be granted minimum pension on that basis.

2. Petitioner submits that after rendering service as HSA in S.V.H.S.S., Clappana, in a short term vacancy, from 1/11/1977, she was relieved on 31/1/78. Subsequently, she was reappointed as a Lower Grade Hindi Teacher w.e.f. 24/9/81 and that while working as such w.e.f. 14/7/91 to 30/6/92, she was reassigned as a Lower Grade Hindi Teacher. She continued as such till 14/7/95 and was retrenched for want of vacancy consequent on the staff fixation order for the academic year. She had only less than 7 years service as on the date of retrenchment and hence was not entitled to protection. Again she was reappointed w.e.f. 22/1/96 and for want of vacancy was relieved w.e.f. 25/3/96. She was reappointed w.e.f. 1/6/97 and continued till her retirement on 30/6/99 with a total WPC 29721/07 service of 8 years, 5 months and 8 days.

3. As she did not have the minimum qualifying service of 10 years, she was not eligible for minimum pension. On 26/3/2001, the Government issued Ext.P1 order directing that all aided school teachers appointed prior to 14/7/96 who did not complete 7 years on or before 15/7/95 and who were not in service as on 14/7/96 will be given protection and will be absorbed in future vacancy. It was also ordered that the period during which they were out of service till date of deployment of protection will be regularised as eligible leave or leave without allowance. Claiming the benefit of Ext.P1 Government Order, petitioner represented to the 1st respondent on 23/4/2001 and the 1st respondent directed the DEO to take necessary steps to regularise the break in service of the petitioner as stipulated in Ext.P1. Subsequently, pursuant to Ext.P3 judgment of this Court in OP No.7637/02, the DEO issued Ext.P4 order regularising the period 14/7/95 to 21/1/96 and from 26/3/96 to 1/6/97 as leave without allowances subject to the condition that the period will not count for any service benefit.

4. Objecting to the aforesaid condition in Ext.P4, petitioner submitted Ext.P5 representation to the 1st respondent. Though she pursued the matter, there was no progress and therefore Ext.P6 WPC 29721/07 representation was also submitted. Still later, complaining of inaction on Exts.P5 and P6, petitioner approached this Court and filed WP(C) No.16447/06 which was disposed of by Ext.P7 judgment directing consideration of the representations. Accordingly, the 1st respondent issued Ext.P8, rejecting the claim of the petitioner in the following words.

Since Leave Without Allowance will not count for any pensionary benefits, the petitioner had only a total qualifying service of 8 years 5 months and 10 days and it does not allow to give minimum pension. Hence, the request of the petitioner for minimum pension cannot be considered. She is sanctioned ex-gratia pension as per G.O(P) No.1851/99/Fin dated 18.9.1999.

5. It is in these circumstances, writ petition is filed with the prayers referred to above. Counsel for the petitioner contended that Ext.P1 is the enabling order issued by the Government for regularisation of the break in service and that so long as Ext.P1 does not contain a provision enabling the 3rd respondent to incorporate a condition for the exclusion of the period for service benefits, the aforesaid condition incorporated in Ext.P4 was illegal and without jurisdiction. It was further contended that Rule 26 or Rule 88 of Part III KSR also did not empower the imposition of a condition as has been done in Ext.P4. Counsel also placed reliance on the judgments of this court in Elizabeth v. Director of Health Services WPC 29721/07 (1998(2) KLT S.N Case NO.82) and State of Kerala v. Dr.V.M.Kurshid (ILR (2000 (1) Kerala 535).

6. In the counter affidavit filed, the respondents seek to justify Ext.P4. They are also relying on Ext.R1(a) Circular No.38/02/Fin dated 3/6/02 issued in pursuance to Rule 26 of Part III KSR. It is also stated that circular No.72/05/Fin dated 30th of December, 2005 has been issued by the Government clarifying that leave without allowance other than on medical certificate will not count for any pensionary benefits.

7. The break in service in so far as the petitioner is concerned is during the period 14/7/95 to 21/7/96 and from 26/3/96 to 1/6/97. The order which enabled the regularisation of the aforesaid period is Ext.P1, GO(P) No.112/2001/G.Edn dated 26/3/2001. This order did not contain a condition that if the break is regularised as leave without allowance, the said period will not count for any service benefit. Therefore if Ext.P4 has been issued on the basis of Ext.P1 Government order, so long as the condition contained in Ext.P4 does not find a place in Ext.P1, the said condition in Ext.P4 is erroneous.

8. True, as contended by the learned Government Pleader, in terms of the provisions contained in Rule 26 of Part III KSR, time passed on leave of all kinds with or without allowances will count as qualifying WPC 29721/07 service unless otherwise specified as provided in Rule 26.

9. Though in the counter affidavit filed, the respondents are relying on Ext.R1(a) circular dated 3/6/02 and the circular No.72/05/Fin dated 30th of December, 2005, in Ext.R1(a), it has been provided that leave without allowance granted under Rule 91 Part I KSR for study purpose and leave without allowance granted under Rule 88 Part I KSR will not count for any service benefits including pension except the cases mentioned therein which include leave without allowance granted on medical certificate. The circular dated 30th of December, 2005 referred to above also is of the same effect.

10. However, what is important to be noticed is that Ext.P4 was issued by the 3rd respondent on 4/6/02 incorporating the objectionable condition, in implementation of Ext.P2, the Government letter dated 27/12/2001. At the time when Ext.P2 Government letter directing regularisation of the petitioner's break in service was ordered, neither Ext.R1(a) nor the Government circular of 30th of December 2005 were in existence. If that be so, these circulars cannot be relied on against the petitioner. The contention to this effect raised by the petitioner is fully supported by the judgment of the Division Bench in Elizabeth v. Director of Health Services (1998(2) KLT S.N. Case No.82) relied to WPC 29721/07 supra.

11. The further contention that in the absence of any specific provision, a condition similar to what has been incorporated in Ext.P4 is impermissible, is the principle that has been laid down by the Division Bench in State of Kerala v. Dr.V.M.Kurshid (ILR (2000) 1 Kerala

535). Therefore, in the absence of any statutory provision or prescription under Rule 26 of Part III KSR, at the time when Ext.P2 order was issued by the Government directing regularisation of the break in service of the petitioner, the 3rd respondent could not have incorporated a condition in Ext.P4. Consequently, the rejection of the petitioner's representation by Ext.P8 also is erroneous.

12. Accordingly, the condition incorporated in Exts.P4 and P8 will stand set aside and it is directed that the period covered by Exts.P2 and P4 will be counted for granting the petitioner minimum pension.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE Rp