

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944

WA NO. 1149 OF 2022

AGAINST THE JUDGMENT DATED 30.06.2022 IN WP(C) 15391/2021

OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

BABY LETHA.K,
AGED 63 YEARS, W/O.MOHANAN, RESIDING AT
'MANJEERAM', KOTTAYAM MALABAR P.O.,
KOOHUPARAMBA, KANNUR,, PIN - 670643

BY ADVS.
R.SURENDRAN
S.MAYUKHA

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE ASSISTANT EDUCATIONAL OFFICER,
THALASSERY NORTH, KANNUR DISTRICT-670101
SRI.A.J.VARGHESE SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Writ Appeal No.1149 of 2022

Dated this the 31st day of August, 2022.

JUDGMENT

P.B.Suresh Kumar, J.

The short question that arises for consideration in this appeal is as to whether a Headmistress in an aided Lower Primary School who was re-appointed as Lower Primary School Teacher in a Government school on account of the closure of the school, is entitled to the pay and allowances of the Headmistress in terms of Rule 52 of Chapter XIVA of the Kerala Education Rules (the Rules).

2. The appeal arises from the judgment in W.P.(C) No.15391 of 2021. The appellant was the petitioner in the writ petition. Parties are referred to in this judgment, as they appear in the writ petition.

3. The petitioner while working as Lower Primary School Teacher in the Eranholi East L.P. School was promoted as

the Headmistress of the school on 01.04.2010. By order dated 08.02.2012, as the school was uneconomic, the Government ordered to close down the school. When the school was closed down, the petitioner was re-appointed in Government High School, Aralam Farm as Lower Primary School Teacher. The petitioner retired from the said school on superannuation on 31.05.2015. On re-appointment, according to the petitioner, in the light of Rule 52 of Chapter XIVA of the Rules, she was entitled to pay and allowances as is applicable to the post of Headmistress. She was however not disbursed the same. The claim made by the petitioner in this regard was rejected by the Educational Officer in terms of Ext.P4 order, placing reliance on Ext.P5 circular issued by the Government. The writ petition was one instituted challenging Ext.P4 order of the Educational Officer as also Ext.P5 Government circular. The petitioner also sought a direction to the official respondents to extend her the pay and allowances as is applicable to the post of Headmistress, and consequential retirement benefits. The learned Single Judge repelled the challenge against Ext.P4 order as also Ext.P5 circular and dismissed the writ petition. The petitioner is aggrieved by the decision of the learned

Single Judge and hence, this appeal.

4. Heard the learned counsel for the petitioner as also the learned Government Pleader.

5. The learned counsel for the petitioner argued that in terms of Rule 52 of Chapter XIVA of the Rules, teachers of aided schools thrown out from service on account of the closure of the school are eligible to draw the pay which they were getting at the time of such closure of the school, on being re-appointed. It was argued by the learned counsel that the said statutory provision has, however, been diluted by the Government by Ext.P5 circular. According to the learned counsel, Ext.P5 circular is bad inasmuch as the Government cannot modify or dilute the statutory provision contained in Rule 52 of Chapter XIVA of the Rules. It was submitted by the learned counsel that insofar as the petitioner is denied the benefit claimed by her on the strength of Ext.P5 circular which is bad, she is entitled to the relief claimed in the writ petition.

6. Per contra, the learned Government Pleader contended that the petitioner was re-appointed only as a Lower Primary School Teacher, and the petitioner, having accepted the said appointment, cannot be heard to contend that she is

entitled to the pay and allowances as is applicable to the post of Headmistress. It was also pointed out by the learned Government Pleader that Ext.P5 circular does not, in any manner, dilute the statutory provision contained in Rule 52 of Chapter XIVA of the Rules as it was issued only with a view to explain the scope of Rule 52 and there is no impediment in law for the Government in issuing such clarificatory circulars. In short, the submission made by the learned Government Pleader is that the challenge against Ext.P4 order and Ext.P5 circular is without any basis and that the decision of the learned Single Judge is in order.

7. We have examined the arguments advanced by the learned counsel for the parties on either side.

8. There is no dispute on essential facts. The question is as to whether the petitioner, on re-appointment, was entitled to the pay and allowances as is applicable to the post of Headmistress. According to the petitioner, in the light of Rule 52 of Chapter XIVA of the Rules, she was indeed entitled to such pay and allowances. Rule 52 of Chapter XIVA of the Rules reads thus:

“52. (1) Teachers who are relieved on account of any

reduction in the number of posts under orders of the department shall on reappointment in the same school or in another school under the same management or a different management start on the same pay as they were getting at the time of relief, whether the new appointment is permanent or not

(2) Teachers thrown out from service due to the withdrawal of recognition of schools by the Department shall also be eligible to draw the pay which they were getting at the time of withdrawal of recognition of the school on re-appointment in another school.”

As evident from the extracted provision, sub-rule (1) of Rule 52 does not have any application to the case on hand inasmuch as the petitioner was not a teacher who was relieved on account of any reduction in the number of posts and she was not a teacher who was re-appointed in the same school or in another school under the same management or a different management. Of course, sub-rule (2) provides that teachers thrown out from service due to the withdrawal of recognition of schools by the Department shall also be eligible to draw the pay which they were getting at the time of such withdrawal of recognition of school on re-appointment in another school. According to the learned counsel for the petitioner, the case of the petitioner would fall under sub-rule (2) of Rule 52 inasmuch

as the decision of the Government to close down the school would amount to withdrawal of the recognition of the school as well.

9. Let us assume that sub-rule (2) of Rule 52 applies to the case of the petitioner. A combined reading of the provisions contained in sub-rules (1) and (2) of Rule 52 would indicate that the purpose of the Rule is only that when teachers are re-appointed in situations covered by the Rule, they shall start on the same pay as they were getting at the time of relief or withdrawal of recognition, as the case may be. In other words, the purpose of the Rule is only to ensure that the re-appointment shall not be treated as a fresh appointment, for if re-appointment is treated as a fresh one, the teacher would be entitled to receive only the pay and allowances applicable to the fresh appointee. We are fortified in the said view by the expression "start on the same pay as they were getting" contained in sub-rule (1) of Rule 52. In other words, the Rule is intended only for granting pay protection to retrenched teachers on re-appointment in the same cadre and the same scale of pay and it does not enable a teacher who is relieved on account of reduction in the number of posts and re-appointed

in a lower category to claim the pay and allowances applicable to the higher category in which he/she was earlier working. The contention of the petitioner that the petitioner is entitled to the pay and allowances applicable to the Headmistress for the period during which she was working as Lower Primary School Teacher on re-appointment in terms of Rule 52 of Chapter XIVA of the Rules is, therefore, unsustainable. Ext.P5 circular only explains the said position and the challenge against the same is also without any substance.

The writ appeal is therefore, devoid of merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.