



GOVERNMENT OF KERALA

Abstract

Higher Education Department – Private Aided Colleges-Judgment dated 1.9.2022 in WP(C) 28596/2022 filed by Sri.Muhammed Nasar AV-Complied with- orders issued.

HIGHER EDUCATION (D) DEPARTMENT

G.O.(Rt)No.1842/2022/HEDN Dated,Thiruvananthapuram, 14-12-2022

Read 1 Representation dated 08.08.2022 from Sri.Muhammed Nasar.A.V

2 Judgment dated 1.9.2022 in WP(C) 28596/2022 filed by Sri Muhammed Nasar AV

3 Letter G2/7314/2018 dated 12.10.2022 from the Deputy Director of Collegiate Education, Kozhikkode.

ORDER

Sri.Muhammed Nasar.A.V, Retired Head Accountant, Sir Syed College, Taliparamba filed WP(C) 28596/2022 before the Honourable High Court of Kerala praying to reckon his period of temporary service on leave vacancy for pensionary benefits.

As per the Judgment read as 2 nd paper above, the Honourable Court directed the Secretary, Higher Education Department, (first respondent) to take up Ext P7 ie representation dated 8.8.2022, and dispose it of, after hearing the petitioner, as also the 4th respondent, ie the Manager, Sir Syed College, Thaliparamba, thus culminating in an appropriate order and necessary action thereon, as expeditiously as possible but not later than four months from the date of receipt of a copy of the Judgment. Accordingly the petitioner was heard on 13.10.2022. The official from the Office of the Director of Collegiate Education also attended the hearing. Even though the Manager was called for the hearing neither the Manager or his representative attended the hearing .

Petitioner was appointed as Lower Division Clerk on temporary basis with effect from 17.3.1983 in a promotion vacancy that has arised due to promotion given to Sri.Habeeb Koya Thangal who was promoted as UD Clerk against a leave vacancy. Later the incumbent was given permanent appointment wef 22.4.1991 and have retired from service on 31.3.2019 as Head Accountant. The petitioner's request is for reckoning the period of temporary service from 17.3.1983 to 21.4.1991 for pensionary benefits.

Sri.Muhammed Nasar A V has informed that he was given permanent appointment w.e.f. 22.4.1991 ie without any break of the temporary service from 17.3.1983 to 21.4.1991. The petitioner stated that his appointment cannot be deemed as one in leave vacancy since he was appointed in a promotion vacancy

of Shri.Habeeb Koya Thangal who was promoted as UD Clerk in the LWA Vacancy of Shri. Musthafa. It was also informed that Shri. Musthafa had not rejoined duty after LWA and Shri.Habeeb Koya Thangal who was promoted as UD Clerk in the LWA Vacancy of Shri. Musthafa also got all service benefits including the pensionary benefits. It was also informed by the petitioner that his period of temporary service has already been reckoned for increment and Higher Grade and requested to issue orders reckoning his period of temporary service from 17.3.1983 to 21.4.1991 as qualifying service for pension and to revise his pensionary benefits accordingly.

The Director of Collegiate Education reported that the request of the petitioner to reckon the period of temporary service in leave vacancy as qualifying service cannot be considered favourably.

Government have examined the matter in detail in consultation with the Finance Department in Government, & with respect to prevailing Rules and Judgments by Honourable High Court of Kerala in similar cases. Rule 14E(b) i of Part III KSRs, stipulated that the actual period of regular full time service rendered from the date of actual introduction of Direct Payment System in the Aided private College shall be counted for pensionary benefits. In the judgment dated 16.09.2017 in WP (C)No. 28988/17 filed by Sri. Alexander V George, an Aided College teacher, the Hon'ble court clarified that "the broken spells of provisional service rendered by them in leave vacancies in the private colleges prior to their entry in regular service cannot be reckoned as qualifying service as per clause b to Rule 14E of Part III KSRs, which has already come into force with effect from 30.07.1979"

In the Writ Appeal W.A No 2089/2017 filed by Sri. Shameer Ali against the order of W.P (C) No.29356/2016 , the Hon'ble High Court in the judgment dated 25.05.2018 ordered that " In such view of the matter, we are certain in our opinion that the judgment of the learned Single, impugned before us, does not suffer from any infirmity or error in jurisdiction and we are, therefore are compelled to dismiss these appeals, confirming the same".

Thus vide clause (iii) of para 4 of G.O (P) No: 21/2018/Fin dated 16.02.2018 it was clarified that the broken spells of provisional service/leave vacancy service rendered by regular Aided College staff or regular aided school staff/Government employees in aided colleges prior to their entry in regular service shall not be reckoned as qualifying service w.e.f. 30.07.1979 as per clause (b) of Rule 14E Part III KSRs.

In this case as per the appointment order dated 14/01/1983, Sri Muhammed Nasar A.V was appointed on leave vacancy. As per clause (b) of Rule 14E Part III KSRs, the leave vacancy service of the petitioner in Aided College cannot be considered as eligible service for pensionary benefits. Hence the request of Sri Muhammed Nasar.AV for reckoning the period of temporary service from 17.3.1983 to 21.4.1991 for pensionary benefits is hereby rejected.

Thus, the directions of the Honourable High Court of Kerala in the Judgment dated 1.9.2022 in WP(C) 28596/2022 filed by Sri Muhammed Nasar.AV is

complied herewith within the time limit stipulated by the Honourable Court.

(By order of the Governor)

HARI KUMAR G

ADDITIONAL SECRETARY

- To: 1) The Director of Collegiate Education, Thiruvananthapuram
2) The Deputy Director of Collegiate Education, Kozhikkode
3) The Advocate General, Kerala, Ernakulam (with Covering letter)
4) Sri.Muhammed Nasar.A.V, Chemban House, Near Kaniyil Palam,
Payyambalam, Kannur 670001
5) The Manager, Sir Syed College, Thaliparamba
6) www.highereducation.kerala.gov.in
7) Stock File/Office (D3/279/2022/HEDN)

Forwarded /By order



Section Officer