

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 248/2004

Thursday this the 18th day of January, 2007

CORAM

Hon'ble Mr. N.Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member

V.Gopalan,
aged 61 years, S/o late K.Raman Nair,
retired Vice Principal,
Kendriya Vidyalaya, Purannattukara, Thrissur,
residing at 31/21 1/4, Gokulam, Panamana Lane,
Guruvayoor Road, Poonkunnam PO, Thrissur.2.Applicant

(By Advocate Mr. R.Sreeraj)

V.

- 1 Commissioner, Kendriya Vidyalaya Sangathan,
18-Institutional Area,
Shaheed Jeet Singh Marg
New Delhi-16.
- 2 State of Kerala represented by the
Secretary, General Education Department,
Secretariat, Thiruvananthapuram.
- 3 Director of Public Instructions,
Thiruvananthapuram.
- 4 Union of India, represented by its Secretary to
the Government of India,
Ministry of Human Resources Development,
New Delhi.Respondents

(By Advocate M/s Iyer & Iyer (through Ms.Lakshmi) -R.1

Mr.K.Thavamony, G.P. for R2&3

Mr.TPM Ibrahim Khan, SCGSC for R.4

The application having been finally heard on 3.1.2007, the Tribunal
on 18.1.2007 delivered the following:



ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant seeks a direction to the Commissioner, Kendriya Vidyalaya Sangathan which is the 1st respondent in this case to reckon the aided school service rendered by him from 3.7.1967 to 8.7.1975 as qualifying service for pensionary benefits from the KVS, to revise his pension and other terminal benefits accordingly and to grant him all consequential benefits including arrears with 18% interest per annum. His Annexure.A3 representation dated 23.10.2003 in this regard was rejected by the 1st respondent vide impugned Annexure A1 order dated 9.12.2003 on the ground that it does not come within the purview of the DOPT letter dated 29.8.1984. The contention of the applicant in the OA is that the said letter dated 29.8.84 of DOPT was not the relevant instructions in his case as he had joined KVS as a fresh appointee and not on transfer from the aided school. According to him, his claim for counting the past service as qualifying service for pension in the KVS is based on Rule 14(vi) of the CCS (Pension) Rules, according to which the pensionable service under the State Government should be taken into account for computing the qualifying service in Central Services. Since the Malabar Christian College High School, Calicut where he rendered service from 3.7.1967 to 8.7.1975 was an aided school, and the said service was pensionable, he sought counting of the same for determining his pensionary benefits. The applicant submitted that the respondents without considering this aspect wrongly relied upon the said DOPT letter dated 29.8.84 to reject his rightful claim.

2 The respondents resisted the claim of the applicant mainly on the ground that the services rendered in State Government, Central



Government Autonomous Bodies and State established Autonomous bodies having reciprocal arrangements with the Central Government are only countable for pensionary benefits as per the aforesaid letter of the DOPT dated 29.8.84. Further, the service rendered in an aided school which is a privately managed institution cannot be reckoned as qualifying service for pensionary benefits under the KVS as clarified by the respondents in Annexure.R.3 letter dated 17.11.99. Lastly, the the applicant did not submit the option to reckon the past service as qualifying service for pensionary benefits under th KVS in time as required under the Annexure.R2 letter dated 22.10.99.


3 We have heard Shri R.Sreeraj, counsel for the applicant, Ms. Lakshmi, Advocate appearing for Respondent No.1 and Shri TPM Ibrahim Khan, SCGSC for Respondent No.4. The respondents 2&3, namely, State of Kerala and the Director of Public Instructions, Thiruvananthapuram have informed through their counsel Shri Thavamony, G.P on the previous occasion that they were only formal and passive respondents as no State Government Orders have been challenged in the OA and it was for the Kendriya Vidyalaya Sangathan to decide whether the service rendered by the applicant from 3.7.67 to 8.7.75 in an aided school should be reckoned for pensionary benefits and the State Government has no role to play in the matter. The applicant's counsel Shri Sreeraj has relied upon the judgment of the Hon'ble High Court of Kerala in **Jacob Kutty V. State of Kerala, 2004(2) KLT 190** where the question of clubbing of pensionable service in non-pensionable establishment with service in Central Sector for pension has been considered. The petitioner in the said case prior to his joining the State Government was an aided school teacher from 4.9.61 to 12.2.73. His prayer was for a declaration that the service rendered by him as an aided school teacher was liable to be counted for the purpose of pension.

2

The admitted position was the petitioner had 11 years 1 month and 23 days service in the aided school and the aforesaid period of service was pensionable. But the service in the aided school was not considered as government service as the appointing authority in the aided school was the Manager of the School and not the Government. The Hon'ble High Court after considering the rival contentions held that the employees of the aided schools will be entitled to count the service rendered by them either before entering Government service or after leaving government service for the purpose of pension. The service in pensionable establishments and autonomous bodies prior to entering central government service will be liable to be counted for the purpose of pension subject to the condition that the pro-rata pension liability will be borne by the State Government. That being the position, the Hon'ble High Court held that there was no justification in denying the benefit to aided school service for the purpose of pension for the only reason that after the aided school service which is pensionable an employee had joined the Government of India/Autonomous Body in the Central Sector. The essential and crucial question according to the High Court was whether the service is pensionable and not whether the service is in a pensionable establishment. The aided school service admittedly being a pensionable service, there was absolutely no justification in denying the benefit thereof for the purpose of pension clubbing it with the Central Government service or service in autonomous bodies under the Central Sector. The Hon'ble High Court has therefore, directed the respondents to discharge its liability of remission of pro-rata pension and to count the aided school service of the petitioner for pensionary purpose.

4 In the face of the above judgment of the Hon'ble High Court, no doubt, the service rendered by the applicant in the aided school prior to his

appointment in K.V.S is liable to be counted for pension. However, the question now arises is whether the respondents are bound to accept the request of the applicant to count his past service at this belated stage. Admittedly, the applicant was in the aided school for the period from 3.7.67 to 8.7.75. He joined the Kendriya Vidyalaya on 14.7.75 and took voluntary retirement from 5.10.96. The applicant has received all the retirement benefits for the service rendered by him in the KVS for the aforesaid period. He did not make any claim for counting the past service rendered by him in the aided school to compute his pension and other terminal benefits at the time he applied for pension on his retirement from KVS. It was only on 23.10.2003 that he made a representation to the respondents requesting to count his aided school service as qualifying service for pension in the KVS. This was 23 years after he left his previous service and after 7 years he took voluntary retirement from KVS. The qualifying service, according to Rule 3(q) of the CCS (Pension) Rules, 1972 is the service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. The entire period of service from its commencement to the date of its termination is not automatically counted. Rules 21,22,23,24,25 and 26 deal with various occurrences in service which disentitle a government servant from counting the period of interruptions. Rule 27 deals with the effect of interruption in service and Rule 28 deals with condonation of interruption in service. It is on the basis of the entries in service book of the concerned Government employees that the department verifies the service rendered by him for the purpose of pensionary benefits. In the absence of any service record of the applicant before the KVS, it would not be possible for them to verify whether the service rendered by the applicant in the said department is qualify for pension or not. Therefore, it



is very significant that the government servant should have opted or pensionary benefits within a reasonable time after he left the previous service. It is not the case of the applicant that he applied for the post in KVS through his previous employer. He has never taken any steps at any point of time to get the service records of his past employment from his former employer. As has been stated by the respondents in the reply, the employees in the KVS were granted time upto 31.12.90 to exercise their option as a very special case for counting their past service for the purpose of computing pension, even though the general rule for exercising of the option was one year from the date of appointment. The applicant has admittedly not made any application to the respondents during his entire service to count the period rendered by him in the aided school for the purpose of pension. Admittedly it was only after 7 years from his retirement he made the Annexure.A3 representation requesting the respondents to count his aided school service as qualifying service. Virtually the applicant is expecting the respondents to do what is impossible for them at this late stage. Such inordinate delay on the part of the applicant even in making a representation to the respondents cannot be condoned. Since the applicant has not made any option during his service period for counting the service rendered by him in the previous establishment for the purpose of pension and no documents were made available to the answering respondents, the belated claim of the applicant cannot be sustained. In this view of the matter, the OA has to fail and therefore, the same is dismissed. There shall be no order as to costs.

Dated this the 18th day of January, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER