



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946

RP NO. 270 OF 2020

AGAINST THE JUDGMENT DATED 12.03.2019 IN OP(KAT) NO.101 OF
2019 OF HIGH COURT OF KERALA

REVIEW PETITIONER/PETITIONER:

DR.ARUVI T.P,
W/O. SWAMMI RAJ, SARASMRITHI, OPP.SKYLINE FLATS,
N.F GATE, THRIPIUNITHURA, ERNAKULAM-682 301

BY ADV P.C.SASIDHARAN

RESPONDENT/RESPONDENTS:

- 1 ADDITIONAL CHIEF SECRETARY
HEALTH AND FAMILY WELFARE, DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM-695 001
- 3 THE ACCOUNTANT GENERAL OF KERALA,
M.G.ROAD, THIRUVANANTHAPURAM-695 001

THIS REVIEW PETITION HAVING COME UP FOR HEARING ON
06.02.2025, THE COURT ON 28.02.2025 PASSED THE FOLLOWING:

**ORDER****P. Krishna Kumar, J.**

This review petition is preferred against the judgment passed by this court on 12.3.2019 in O.P. (KAT)No.101/2019. In the said judgment, this court found that the review petitioner, who availed leave without allowance for study purposes under Appendix XIIB, Part I of the Kerala Service Rules ('KSR', for short) before completion of her probation, is not eligible for getting increments during the leave period, despite the issuance of Annexure A5 Government Order. In paragraph 2 of the judgment, the court further observed that leave without allowance as per Rule 91A of Part I of KSR can be granted only to those officers who have completed five years of service while entering on leave and that Ext.P4 judgment in



W.A.No.1978/2006 could not be cited as a precedent in favour of the petitioner as there is nothing in the said judgment to show that the case under consideration was in respect of availing of leave without allowance before completing probation.

2. In the present review petition it is contended that the observation made by this court in paragraph 2 suffers an error apparent on the face of the record. Some of the grounds raised by the petitioner are quoted herein below:

“A. It is submitted that the findings and observations of this Hon'ble Court in Paragraph 2 of the judgment suffers an error apparent on the face of the records which requires review of the judgment.

B. It is submitted that at the time when the petitioner was granted leave, ie on 24/12/1998, the rigour of five years officiating or continuous service was mandated for extending the benefit of Rule 91A of Part I KSR. But the hardships caused to the tutors working in the Medical Colleges who were appointed with the basic qualification of MBBS was brought to the notice of the Government by way of



representation and the Government in relaxation of the rigour of five years continuous or officiating service, was pleased to grant exemption of that rigour and ordered to reckon their period of the course for the purpose of granting increments. In fact, there was no corresponding appendix to Rule 91A since it was newly introduced Rule with a specific purpose. In fact, before the introduction of Rule 91A, Rule 99 was available in the Rules, which reads:

"99. Leave may be granted to officers on such terms as the Government may by general order prescribe to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. The detailed rules framed under this rule are given in Appendix-Vocational Instructor.

Note: For rule regarding the grant of leave without allowance for study purposes in the case of officers not in permanent employ, see Rule 91".

Appendix VI governed the field with reference to the leave granted under Rule 99. Going by the terms of Appendix VI, a person who has availed leave under that Rule is entitled for all service benefits including salary, for that period. Clause 19 of the Appendix says that, study leave shall count as service for promotion, pension and seniority. It shall also count as service for increments in the post in which the Government servant would have continued but for going on study leave. It is replacing Rule 99 that Rule 91A was inserted as an



independent clause and that since the only enabling provision to grant study leave is Rule 91A for undergoing P.G Course like Teachers, Engineers and Doctors. Quoting of Appendix XII B in the leave granting order has no relevance at all since it deals with the grant of leave under Rule 88 or 91. Rule 91 does not cover the area covered by Rule 91A so also Rule 88. Rule 88 deals with leave without allowance when no leave is available. It is submitted that it is with reference to the Medical Officers and Teaching Staff in the Medical Colleges that executive orders are issued and that the benefit cannot be denied."

Thus the petitioner contends that the observation of the court that Rule 91A applies only to a person who has put in five years of continuous service is erroneous since it is in relaxation of the above Rule Annexure A5 order was issued by the Government.

3. Heard the learned counsel appearing for the petitioner and the learned Senior Government Pleader.

4. After considering the submissions made at the Bar and the challenges raised in the review petition,



we find no reason to review the impugned judgment. The contention stated as Ground B in the review petition was not raised while submitting the original petition challenging the order passed by the Kerala Administrative Tribunal. We find no reason to entertain a new contention for challenging the impugned order which was not raised at the first instance.

5. That apart, Annexure A1 order granting leave itself was issued by the Government in the following lines:

“Dr.T.P.Aruvi, Assistant Surgeon is granted leave without allowance for study purpose for the period from 10.4.1997 to 9.4.1999 **subject to the conditions laid down in Appendix XIIB, Part I, Kerala Service Rules.**”

(emphasis supplied)

In view of Annexure A1, the petitioner should be governed by the provisions of Appendix XIIB, and not



Rule 91A. In that case, we fail to understand the contention that the Annexure A5 Government order would be helpful to the petitioner. Though it is contended that the reference to Appendix XIIB in Annexure A1 was a mistake, we find no material to supplement that contention. This is also a contention newly introduced at the time of filing the review petition. In addition to that, when the leave itself was granted subject to the conditions mentioned in Appendix XIIB, the petitioner is bound by clause 2 of Appendix XIIB which states that in the case of employees who have not completed probation in the entry grade, they shall be deemed as new entrants to the Government service on return from leave without allowance granted for study purpose. The petitioner has never challenged Annexure A1 inasmuch as it imposes the above conditions.

6. At any rate, it is the admitted case of the petitioner that at the time of granting leave (1998), Rule 91A mandated that a leave under that provision



could be given only to a person who has completed five years of service and the petitioner had not completed five years. Annexure A5 order also was not in force then. In that case, there is nothing wrong in granting leave invoking Appendix XIIB.

As a result, we find no reason to review the impugned judgment for any of the grounds raised in the review petition. The Review Petition is dismissed.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE



APPENDIX OF RP 270/2020

PETITIONER'S ANNEXURES

ANNEXURE-A1

**TRUE COPY OF THE JUDGMENT DATED 29/06/2006
IN WPC 36439 OF 2003**