

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 23RD DAY OF NOVEMBER 2021 / 2ND AGRAHAYANA, 1943

WA NO. 1409 OF 2021

AGAINST THE JUDGMENT IN WP(C) 27593/2019 OF HIGH COURT OF
KERALA, ERNAKULAM

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION (T) DEPARTMENT,
THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR, HIGHER SECONDARY EDUCATION,
CORPORATION BUILDING, PALAYAM,
THIRUVANANTHAPURAM-695001
- 3 REGIONAL DEPUTY DIRECTOR,
HIGHER SECONDARY EDUCATION,
CORPORATION BUILDING, PALAYAM,
THIRUVANANTHAPURAM-695001
- 4 THE PRINCIPAL,
V.V.HIGHER SECONDARY SCHOOL, THAMARAKKULAM,
CHARUMMOODU.P.O,MAVELIKKARA TALUK-690504.

BY SR. GOVERNMENT PLEADER SRI.A.J.VARGHESE

RESPONDENT/PETITIONER:

- 1 SHYLAJA K. UNNITHAN, AGED 48 YEARS,
HIGHER SECONDARY SCHOOL TEACHER,
V.V.HIGHER SECONDARY SCHOOL,
THAMARAKKULAM, CHARUMMOODU.P.O,
ALAPPUZHA DISTRICT, PIN-690505.

BY ADVS.
K.SASIKUMAR
P.S.RAGHUKUMAR
S.ARAVIND
K.JANARDHANA SHENOY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
23.11.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T**A.K.Jayasankaran Nambiar, J**

The State is in appeal before us, aggrieved by the judgment dated 19.11.2020 of the learned Single Judge in WP(C)No. 27593 of 2019. The brief facts necessary for the disposal of the writ appeal are as follows:-

The writ petitioner, a Higher Secondary School Teacher in the G V Higher Secondary School, Thamarakkulam, had met with an accident on 17.08.2012 at 9 a.m., while she was riding her scooter on her way to school from her residence. The scooter which she was riding met with an accident and the petitioner sustained serious injuries. It is not in dispute that pursuant to the accident, she was hospitalised and was under treatment during the period from 17.08.2012 to 16.12.2012. It would appear that the writ petitioner claimed the benefit of special disability leave in terms of Rules 97 and 98 of Part I of the Kerala Service Rules [KSR], but her claim was rejected by the Regional Deputy Director, Higher Secondary Education by Ext.P8 order. The petitioner, therefore, preferred an appeal before the Government, which too was rejected by Ext.P11 on

the same ground. The petitioner, then impugned the said Government Order before this Court, when by Ext.P12 judgment this Court quashed the earlier orders and directed the competent authority to take up the application of the petitioner again and pass a fresh order thereon. It is pursuant to the said direction of the learned Single Judge that Ext.P13 order came to be passed, once again rejecting the claim of the petitioner on the ground that the accident that occurred in the course of travel of the petitioner from her residence to the school could not be considered as one that occurred during the performance of her official duties. W.P.(C).No.27593 of 2019 was preferred by the writ petitioner impugning Ext.P13 order.

2. The learned Single Judge, who considered the matter took note of the provisions of Rules 97 and 98 of Part I KSR as also the decisions of the Supreme Court and the Division Bench of this Court that was cited by the learned counsel for the writ petitioner and found that the injury suffered by the petitioner while she was admittedly, on her way to work had to be seen as an injury suffered consequent on her employment. The learned Judge, therefore, directed the respondents to sanction the special disability leave applied for by the petitioner for the period from 17.08.2012 to 16.12.2012, as claimed by her.

3. Before us, it is the submission of the learned

Government Pleader, referring to Rules 97 and 98 of Part I KSR that the injury suffered by the petitioner could not be seen as either caused in, or in consequence of the due performance of her official duties or in consequence of her official position. It is essentially stated that the travel from her residence to the school could not be seen as a travel in connection with her employment.

4. We find ourselves unable to accept the said contention of the learned Government Pleader. A mere perusal of the provisions of Part I KSR which deal with various kinds of leave would reveal the underlying scheme therein which is that the sanction of various kinds of leave are contemplated only once it is established that the employee - employer relationship continues to exist without interruption. The difference in the kinds of leave sanctioned are only in respect of the periods for which an employee can remain absent from work and the monetary benefits, if any, that will be paid to the employee during the said period. Thus, when the provisions of Rules 97 and 98 of Part I KSR that prescribe the conditions for the grant of leave are interpreted, the interpretation to be placed must be one that recognizes the above scheme and its intent, and furthers such intent. In our view, on such interpretation, the phrase "caused in, or in consequence of due performance of his official duties or in consequence of his official position", which appear in both the Rules aforementioned, cannot be construed in a narrow and pedantic

fashion so as to exclude a person who was admittedly an employee, who was travelling from her residence to the place of work at the time when the accident took place.

We, therefore, see no reason to interfere with the liberal view taken by the learned Single Judge and as a consequence, we dismiss this Writ Appeal.

Sd/-

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

Sd/-

**MOHAMMED NIAS C.P
JUDGE**