

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**MONDAY, THE 31ST DAY OF DECEMBER 2012/10TH POUSHA 1934**

**WP(C).No. 28239 of 2010 (D)**  
-----

**PETITIONER(S):**  
-----

**THE SECRETARY TO GOVERNMENT, LOCAL SELF  
GOVERNMENT (RD-EA) DEPARTMENT,  
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

**BY ADV. GOVERNMENT PLEADER**

**RESPONDENT(S):**  
-----

**K.K.UNNITHAN,  
RETIRED VILLAGE EXTENSION OFFICER, KALLULATHIL  
VEEDU, PAZHAKULAM.P.O., ADOOR.**

**BY ADV. SRI.C.B.SREEKUMAR  
BY ADV. SRI.K.K.SETHUKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-12-2012,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C).No. 28239 of 2010 (D)**

**APPENDIX**

**PETITIONER'S EXHIBITS**

- EXT.P1: COPY OF THE COMPLAINT DATED 11.05.2009.**
- EXT.P2: COPY OF GOVERNMENT ORDER PRODUCED BY RESPONDENT IN LOK AYUKTA.**
- EXT.P3: COPY OF THE STATEMENT OF FACTS PRODUCED BEFORE TH HONOURABLE LOK AYUKTA.**
- EXT.P4: COPY OF THE ORDER DATED 24.05.2010.**

**RESPONDENT'S EXHIBITS: NIL**

**//TRUE COPY//**

**P.A. TO JUDGE**

**LSN**

A.M.SHAFFIQUE, J.

-----  
W.P.(C) No. 28239 of 2010 - D  
-----

Dated this the 31<sup>st</sup> day of December, 2012

**J U D G M E N T**

This writ petition is filed challenging the order passed by the Lok Ayukta in a complaint filed by the respondent herein.

2. The grievance of the respondent was that he retired from service as a Village Extension Officer on 31.3.1980. He was in service from 29.1.1952 to 31.1.1960 as Social Education Organiser which period also ought to have been considered as qualifying service for the purpose of pension. In Ext.P1 complaint filed before Lok Ayukta, it is contended that as per G.O.(MS) No. 83/78/G. Edn. dated 22.6.1978, the said post was treated as Full-time contingent service and therefore the said service can be counted for pension. The petitioner also submits that he had taken up the matter with the concerned authorities, but no orders have been passed and that he had furnished all the documents to the DPI and other authorities.

3. The appellant had filed a statement before the Lok Ayukta, inter alia contending that since the complainant had

retired from service on 31.3.1980 about 30 years back, no details pertaining to his service as Village Extension Officer in Rural Development Department is available and when his service book is not available for verification, it is not possible to come to a conclusion as to whether he had undergone pre-service training for Grama Sevaks in the Extension Pre-training service. According to them the documents relating to Pre-service Training of the complainant could not be traced out. Hence it was contended that in a matter relating to delay of about 29 years in approaching the Lok Ayukta, no orders could be passed. Further it is stated that as per G.O.(Rt) No. 96/71/DD dated 21.01.1971 it was ordered that pre-service training period of Village Extension Officer could be counted for increment, pension and gratuity, but the position was subsequently changed as per G.O.(P) No. 88/77/DD dated 30.6.1977 wherein it was inter alia ordered that the period of pre-service training would not count for pension, increment or other service benefits as the period does not come under the purview of duty

as defined in Rule 12(7) of Part I of the Kerala Service Rules. The Lok Ayukta, however, relying upon the G.O. (Rt) No. 96/71/DD dated 21.1.1971 opined that the complainant was entitled for computing the period of training prescribed for Grama Sevak as qualifying service for the purpose of pension as well. According to the Lok Ayukta, the 1977 G.O. does not anywhere indicate that it supercedes the 1971 G.O.

4. In respect of the delay in filing the complaint, the Lok Ayukta had come to the conclusion that since Section 8 (2) (c) of the Kerala Lok Ayukta Act, 1999 (hereinafter referred to as the Act) refers only to complaint involving an allegation, the bar of limitation will not apply since the petitioner has set forth a "grievance" for which no limitation is prescribed under Section 8(1) of the Act.

5. Taking into consideration the factual circumstances, the Lok Ayukta held that the complainant is entitled to reckon the period from 29.01.1952 to 31.01.1958 for fixing his monthly pension

and the respondents are directed to refix the monthly pension taking into account the said period as service. Ext.P4 order is impugned by the State.

6. Heard learned Government Pleader and also learned counsel appearing for the respondents.

7. It was argued by the Government Pleader that the Lok Ayukta should not have exercised jurisdiction in this matter by giving a positive direction in a case where pension had been fixed and paid when the petitioner retired from service in the year 1980 and in a matter where the complaint is filed after 29 years, there was no justification on the part of the Lok Ayukta to have adjudicated the claim.

8. On the other hand, learned counsel for the respondent submits that the petitioner is entitled for the benefit of considering the period during which the respondent was working as Grama Sevak and during the training period as well, for the purpose of computing pension on the basis of the 1971 G.O. and failure to compute the said period as qualifying service, is clearly

bad in law and therefore Lok Ayukta was justified in issuing directions as per Ext.P4. Further it is contended that the respondent had filed necessary representation before the competent authorities and despite the fact that the documents are not available with the respondent, it is for the authorities to have considered his claim and having failed to do so, Lok Ayukta is justified in coming to the conclusion that the grievance of the complainant is not barred by limitation.

9. Learned Government Pleader had also relied upon the judgment in **State of Kerala and Others v. Sheela S. and others** (2009(2) ILR 660) to contend for the position that directions cannot be issued by the Lok Ayukta and it can only file a report as provided under S. 12 of the Act.

10. The question that evolves to be considered in the present writ petition is whether the Lok Ayukta can issue a direction in the form of Ext.P4 in relation to a matter when the respondent had retired from service in the year 1980, without proper verification of the service

records of the petitioner.

11. Apparently, the service book of the petitioner is not available or rather, it is not traceable. The Government had clearly indicated in the statement that by virtue of 1977 G.O. the benefit of pre-service training was taken away from the purview of duty as defined under Rule 12(7) of Part I K.S.R. That being the situation at no stretch of imagination it can be considered that the period of service claimed by the petitioner can be treated as service of duty for the purpose of computing the pension.

12. That apart, the Lok Ayukta can only file a report if at all it is found that there is any mal administration or grievance for the complainant and cannot issue positive directions as held by this Court in *State of Kerala and Others v. Sheela S. and others* (Supra).

13. In regard to the delay in filing the complaint a reference to the provisions of the Act will be useful. Going by the provisions of S.8(1) of the Act, it is clear that the Lok Ayukta has no jurisdiction to conduct any



investigation under the Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule. Sub section (2) imposed a restriction on the Lok Ayukta to investigate into the matters covered by sub-clause (a) to (c) and sub-clause (c) indicates that any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place and proviso further indicates that such a complaint can be entertained after the expiry of the period if the complainant satisfies that he has got sufficient cause.

The word “allegation” is defined under S.2(b) as under:

“(b) “allegation” in relation to a public servant, means any affirmation that such public servant,-

(i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant;

xx

xx

xx

The word “grievance” is defined under S.2(h) as under:

“(h) “grievance” means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;”

No doubt, grievance is a claim by a person that he has sustained injustice or undue hardship in consequence of mal-administration.

Mal-administration is defined under S.2(k) as under:

“mal-administration” means action taken or purporting to have been taken in the exercise of administrative functions in any case where.-

- (i) such action or the administrative procedure or practice adopted in such action is unreasonable, unjust, oppressive or improperly discriminatory; or
- (ii) there has been wilful negligence or undue delay in taking such action or the administrative procedure or practice adopted in such action involves undue delay;”

14. Therefore, complaint of grievance should be as a consequence of mal-administration. In the present case, there is no allegation in the complaint that there was any mal-administration on the part of the officers concerned. Even going by the meaning of “allegation” or “grievance” as defined under the Act, I do not find any such complaint. The only complaint is that certain period of his service was not computed for the

purpose of “qualifying service” and despite having submitted certain representations, the same had not been considered. Therefore even going by the allegations in the complaint, the same should not have been entertained by the Lok Ayukta.

15. Even if a view is taken that there is no bar of limitation for a complaint of “grievance”, still the complaint should not have been entertained, if there is delay and laches on the part of the complainant. Admittedly, the respondent retired from service in the year 1980 and going by the records he had submitted an application in the year 1994. Thereafter also he had kept quiet. It might be a case where sympathy has to be shown, but in a case where there is a delay of about 29 years, the Court's or Tribunal's or statutory authorities cannot permit persons who had slept over their rights to agitate a claim which had become stale.

In such circumstances, I am of the view that the Lok Ayukta was not justified in passing Ext.P4 order. In the result, the writ petition is allowed and Ext.P4 is set aside.

**A.M.SHAFFIQUE, JUDGE.**

rka