



CNR: KAHC010631222024

NC: 2026:KHC:46035
WP No. 33312 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE ASHOK S.KINAGI
WRIT PETITION NO. 33312 OF 2024 (S-RES)

BETWEEN:

M. RAJENDIRAN
S/O V. MUNISWAMY,
AGED ABOUT 59 YEARS,
DIALYSIS TECHNICIAN ON OOD BASIS,
ATAL BIHARI VAJAPAYEE MEDICAL COLLEGE AND
RESEARCH INSTITUTE,
VICTORIA HOSPITAL,
CITY MARKET,
BENGALURU - 560 001

...PETITIONER

(BY SRI. SHAILENDRA M R, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP BY ITS PRINCIPAL SECRETARY,
MEDICAL EDUCATION DEPARTMENT,
M.S.BUILDING,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.
2. THE DIRECTOR OF
MEDICAL EDUCATION IN KARNATAKA,
OLD BMC BUILDING,
K.R.ROAD,
BENGALURU - 560 002
3. THE DEAN AND DIRECTOR
BANGALORE MEDICAL COLLEGE

Digitally
signed by
SHILPABAI S

Location:
HIGH
COURT OF
KARNATAKA





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AND RESEARCH INSTITUTE (BMCRI),
FORT, KRISHNARAJENDRA ROAD,
BENGALURU - 560 002.

4. THE MEDICAL SUPERINTENDENT
VICTORIA HOSPITAL,
CITY MARKET,
BENGALURU - 560 002

...RESPONDENTS

(BY SRI. G.RAMESH NAIK, AGA FOR R1& R2 (MA NOT FILED);
SRI. SIDHARTH BABU RAO ADVOCATE FOR R3;
SRI. MOHAMMED AYUB ALI ADVOCATE FOR R4)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARATION, DECLARING THE ACTION OF THE RESPONDENTS IN INCLUDING THE PETITIONER UNDER NEW PENSION SCHEME AS BEING ARBITRARY AND ILLEGAL AS BEING VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA DIRECTION AS THE CASE MAY BE, DIRECTING THE RESPONDENTS TO CONTINUE THE PETITIONER UNDER OLD PENSION SCHEME AND TO GRANT ALL CONSEQUENTIAL BENEFITS, INCLUDING MONETARY BENEFITS.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL ORDER

The petitioner has filed this writ petition seeking the following reliefs:

- (a) Issue a writ in the nature of mandamus/declaration, declaring the action of the respondents in including the petitioner under



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New Pension Scheme as being arbitrary and illegal as being violative of Article 14 of the Constitution of India;

- (b) Issue a writ in the nature of mandamus or any other writ order or direction as the case may be, directing the respondents to continue the petitioner under Old Pension Scheme and to grant all consequential benefits, including monetary benefits;
- (c) Pass such other orders just and expedient in the circumstances of the case, including monetary benefits".

2. Brief facts leading rise to the filing of this writ petition are as follows:

The petitioner was appointed as Junior Dialysis Technician on 19.12.1990 on contract basis for a period of one year. The petitioner reported to duty in Victoria Hospital on 27.12.1990. Originally, three posts of Dialysis Technicians were sanctioned to Karnataka Medical College, Hubli vide Government order dated 25.06.1986. The said posts were transferred to Victoria Hospital, Bengaluru vide order dated 25.09.1990. By newspaper advertisement dated 02.11.1990, the applications were invited for the



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post of Dialysis Technicians and after interview, on 19.12.1990, the petitioner was appointed on contract basis for a period of one year. He reported to the duty on 27.12.1990. The petitioner has worked from the year 1990 onwards. The petitioner made a representation to consider his case for regularization. The said request was rejected by the respondents. The petitioner approached this Court in W.P.No.26921/2011. This Court vide order dated 19.03.2012 allowed the writ petition and quashed the endorsement and remanded the matter back to respondent Nos.1 to 3 for reconsideration in accordance with the law laid down by the Hon'ble Apex Court in **M.L.KESARI'S** case. The government vide order dated 31.10.2012 passed an order, wherein the services of the petitioner along with others were regularized with effect from 10.04.2006 and by official memorandum dated 06.08.2013, the petitioner was extended with the pay scale of Rs.7275-175-7800-200-13350 of the post of Dialysis Technician with effect from 10.04.2006 and his



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pay was fixed. The probationary period was not cleared satisfactorily till 2019 and after declaration that the probationary period of the petitioner from 12.06.2013 to 14.03.2019 was satisfactory, the increments which were withheld from 01.04.2015 was also released and the benefit of pay revision was extended. The petitioner was rightly continued under Old Pension Scheme and also extended the benefit of KGID. The petitioner was suddenly brought under New Pension Scheme by opening a permanent retirement account number with effect from 13.07.2021 and deductions are made from the salary of the petitioner. In the meanwhile the State Government notified the New Pension Scheme with effect from 01.04.2006. Though the new scheme was introduced, no deductions were made from the petitioner till 2021. In July 2021 deductions under the New Pension Scheme was effected. The petitioner submits that the representation seeking benefit of Old Pension Scheme as per the notification dated 24.01.2024. The respondents have



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issued an endorsement rejecting the request made by the petitioner. Hence, this writ petition.

3. Respondent No.3 filed a statement of objections contending that the writ petition filed by the petitioner is not maintainable either in law or on facts of the case. It is contended that the petitioner was appointed as Junior Dialysis Technician on 19.12.1990 and his services were regularized with effect from 10.04.2006. Hence, the New Pension Scheme is applicable to the petitioner as the petitioner was appointed before the introduction of New Scheme is not entitled for the pension under the old scheme. Hence, prays to dismiss the writ petition.

4. The petitioner filed a re-joinder to the statement of objections filed by respondent No.3. It is contended that the petitioner was appointed on 19.12.1990 on a contract basis and his services were regularized with effect from 31.10.2012 and official



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memorandum dated 06.08.2013 was issued to the petitioner appointing to the post of Dialysis Technician in the institute with the effect from 10.04.2006. It is contended that the petitioner is not entitled to receive the pension under the Old Scheme. It is contended that past service, contractual basis to be considered. Hence, prays to allow the writ petition.

5. Heard the learned counsel for the petitioner and also learned counsel for respondent Nos.3 and 4.

6. Learned counsel for the petitioner submits that, initially, the petitioner was appointed on a contract basis on 19.12.1990 for a period of one year and on the same, the respondents went on extending the contract period. Finally, in 2011, the petitioner submitted an application for regularization of his service. The said representation was rejected by the respondents. He submits that the petitioner approached this Court in W.P.No.26921/2011.



This Court allowed the writ petition and directed respondent Nos.1 to 3 to consider the representation of the petitioner in terms of the judgment rendered by the Hon'ble Apex Court in **M.L.KESARI'S** case. Pursuant to the order passed by this Court, he submits that the petitioner's service was regularized on 31.10.2012 with effect from 10.04.2006. He submits that the respondents did not count the previous service rendered by the petitioner. He submits that the petitioner is entitled under Old Pension Scheme and not under New Pension Scheme. Hence, the action of the respondents in extending the benefit under New Pension Scheme is arbitrary. Hence, on these grounds, he prays to allow the writ petition.

7. Learned counsel for respondent Nos.3 and 4 submits that the impugned order passed by the respondents under New Pension Scheme is just and proper. He also submits that the service of the petitioner was regularized with effect from 10.04.2006 and the



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Government Notification came into effect in 2006 i.e., from 10.04.2006. Hence, the respondents have rightly extended the benefit under New Pension Scheme. Hence, on these grounds, he prays to dismiss the writ petition.

8. Perused the records and considered the submissions of the learned counsel for the parties.

9. It is an undisputed fact that the petitioner was appointed as Dialysis Technician on 19.12.1990 on a contract basis for the period of one year. The said contract period was extended from time to time. In 2011, the petitioner submitted a representation for regularization of his service. The said application was rejected by the respondents. The petitioner approached this Court in W.P.No.26921/2011. The said writ petition came to be allowed and the impugned endorsement therein was set aside and the matter was remitted to respondent Nos.1 to 3 to re-consider the case of the petitioner was



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regularization in terms of the judgment passed by the Hon'ble Apex Court in the case of **M.L.KESARI**. Pursuant to the order passed by this Court in W.P.No.26921/2011, respondent Nos.1 to 3 have passed an order for regularization of the service of the petitioner along with others vide order dated 31.10.2012 with effect from 10.04.2006. After declaration of the probation period, the petitioner from 12.06.2013 to 14.03.2019 was satisfactory, increments were withheld from 01.04.2015 was released and the benefit of the pay revision was extended. The petitioner was continued under Old Pension Scheme and also extended the benefit of KGID. In 2021, the petitioner was suddenly brought under the New Pension Scheme by opening permanent retirement account number with effect from 13.07.2021 and started deduction under New Pension Scheme in the month of July 2021. The State Government, vide notification dated 24.01.2024, extended the benefit of Old Pension Scheme to that persons, who were appointed pursuant to the



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notification issued prior to 01.04.2004, but were appointed after 01.01.2004. The petitioner submitted a representation to consider the case of the petitioner under Old Pension Scheme. The respondents have refused to consider the case of the petitioner under Old Pension Scheme. Admittedly, the petitioner was appointed on a contract basis vide appointment order dated 19.12.1990. The respondents did not consider the services of the petitioner on a contract basis without counting the services rendered by the petitioner from 1990 has passed an order extending New Pension Scheme.

10. The Hon'ble Apex Court in the case of **VINOD KANJIBHAI BHAGORA VS. STATE OF GUJARAT AND ANOTHER IN SPECIAL LEAVE PETITION (CIVIL No.16030/2018)** **DISPOSED OF ON 02.02.2024**. The Hon'ble Apex Court held in para No.17 to 20, which reads as follows:

17. It is well settled that pension scheme(s) floated by the State Government form a part of delegated beneficial legislation; and ought to be interpreted widely subject to



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such interpretation not running contrary to the express provisions of the Pension Rules¹. Furthermore, it would be relevant to underscore that the State Senior Divisional Manager, LIC v. Shree Lal Meena, (2019) 4 SCC 479 Government is a model employer; and ought to uphold principles of fairness and clarity.

18. In the aforesaid context, we have carefully considered the Pension Rules, and we find that the interpretation sought to be advanced by Ms. Ghildiyal is narrow and restrictive so as to limit the benefit of Rule 25(ix) of the Pension Rules only to such person(s) who may have explicitly been absorbed by the State Government as against persons such as the Appellant herein who has most certainly, implicitly been absorbed by the State Government i.e., the Appellants' participation in the selection process was prefaced by an NOC from the Central Government; and subsequently was followed by the tender of a technical resignation to the Central Government upon securing employment with the State Government. Pertinently, neither can the aforementioned interpretation sought to be advance on behalf of Respondent No. 1 be said to be echoed by any express provision of the Pension Rules nor has any convincing rationale to adopt such an interpretation, been placed before us.

19. We thus find that the High Court erred in its interpretation of Rule 25(ix) of the Pension Rules; and consequently, unfairly deprived the Appellant from seeking inclusion of the period of service rendered to the Central Government as a part of 'qualifying service' under the Pension Rules.



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20. Accordingly, we direct Respondent No. 1 to consider the service rendered by the Appellant to the Central Government in his capacity as Postal Assistant in the Gandhinagar Postal Division to be considered as qualifying service; and thereafter (i) re-calculate the terminal benefits / pensionary benefits accruing in favour of the Appellant; and (ii) transmit the arrears (if any) of such terminal benefits / pensionary benefits to the Appellant within 6 (six) weeks from today i.e., 02.02.2024.

11. From the perusal of the judgment passed by the Hon'ble Apex Court, held that fairly declining the appellant therein seeking inclusion of the period of service rendered to the Central Government as a part of qualifying service under the pension rules and directed respondent No.1 therein to consider the service rendered by the appellant for the Central Government in his capacity as Postal Assistance in Gandhinagar Postal Division to be considered as qualifying service and thereafter (i) re-calculate the terminal benefits / pensionary benefits accruing in favour of the Appellant; and (ii) transmit the arrears (if any) of such terminal benefits / pensionary benefits to the Appellant within 6 (six) weeks from today i.e., 02.02.2024.



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12. Considering the mandate laid down by the Hon'ble Apex Court in the case of **VINOD KANJIBHAI BHAGORA** (supra), the petitioner is entitled for the benefit under old pension scheme and not under new pension scheme. Admittedly the said notification was issued on 10.06.2004. The respondents are trying to extend the said benefit with retrospective effect. The action of the respondent in extending the said notification retrospective is arbitrary. Hence, considering the mandate laid down by the Hon'ble Apex Court in the case of **VINOD KANJIBHAI BHAGORA** (supra).

13. Hence, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The respondents are directed to consider the case of the petitioner under Old pension scheme and to continue the petitioner under Old Pension Scheme and grant all consequential benefits including monitory



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benefits from the date of the receipt of the copy of this order.

iii. Pending application/s, if any, shall stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

SSB