

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 1926 of 2005 (D)

PETITIONERS:

1. SUBHADRA KUMARI. S., HEAD MISTRESS,
KUDUMON HIGH SCHOOL, KUDUMON POST.
2. SUSHAMA DEVI. B., SENIOR GRADE H.S.A.,
KUDUMON HIGH SCHOOL, KUDUMON.
3. R. JAYASREE, SENIOR GRADE H.S.A.,
KUDUMON HIGH SCHOOL, KUDUMON.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION (A) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.
3. THE ACCOUNTANT GENERAL (AUDIT)
THIRUVANANTHAPURAM.
4. DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.

BY GOVERNMENT PLEADER SRI. S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2015,
THE COURT ON 16.10.2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS :-

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|------------|---|--|
| EXT.P1 | - | G.O.(P) 615/96/(110)/FIN. DATED 03.10.1996. |
| EXT.P2(A) | - | CHALAN RECEIPT DATED 16.05.97 OF THE 1ST PETITIONER. |
| EXT.P2 (B) | - | CHALAN RECEIPT DATED 15.05.97 OF THE 2ND PETITIONER. |
| EXT.P2(C) | - | CHALAN RECEIPT DATED 16.05.97 OF THE 3RD PETITIONER. |
| EXT.P3(A) | - | PAY FIXATION OF 1ST PETITIONER DATED 20.05.96. |
| EXT.P3(B) | - | PAY FIXATION OF 2ND PETITIONER DATED 20.05.96. |
| EXT.P3(C) | - | PAY FIXATION OF 3RD PETITIONER DATED 20.05.96. |
| EXT.P4 | - | PAY FIXATION OF 1ST PETITIONER IN POST OF H.M. DATED 25.03.2002. |
| EXT.P5 | - | PAY FIXATION OF 2ND PETITIONER IN SENIOR GRADE DATED 22.08.2001. |
| EXT.P6 | - | PAY FIXATION OF THE 3RD PETITIONER DATED 17.07.2001. |
| EXT.P7 | - | ENTRY REGARDING AUDIT OBJECTION IN THE SERVICE BOOK OF 2ND PETITIONER. |
| EXT.P8 | - | ENTRY REGARDING AUDIT OBJECTION IN THE SERVICE BOOK OF 3RD PETITIONER. |
| EXT.P9 | - | AUDIT OBJECTION REGARDING EXT.P4,P5, P6 PAY OF THE PETITIONERS DATED 07.02.2003. |
| EXT.P10(A) | - | CHALAN RECEIPT DATED 15.12.2003 OF THE 1ST PETITIONER. |
| EXT.P10(B) | - | CHALAN RECEIPT DATED 15.12.2003 OF THE 2ND PETITIONER. |
| EXT.P10(C) | - | CHALAN RECEIPT DATED 15.12.2003 OF THE 3RD PETITIONER. |
| EXT.P11 | - | ORDER DATED 22.08.2004. |
| EXT.P12 | - | COPY OF THE GOVERNMENT ORDER DATED 08.12.1993. |
| EXT.P13 | - | COPY OF THE GOVERNMENT ORDER DATED 02.02.2004. |
| EXT.P14 | - | COPY OF THE GOVERNMENT ORDER DATED 09.06.1994. |
| EXT.P15 | - | COPY OF THE GOVERNMENT ORDER DATED 05.12.1995. |

(CONTD...)

EXT.P16 - COPY OF THE GOVERNMENT ORDER DATED 05.02.1999.

EXT.P17 - COPY OF THE JUDGMENT IN WP(C) NO.20280/2001
DATED 11.03.2002.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.1926 of 2005

Dated this the 16th of October, 2015.

JUDGMENT

The petitioners are respectively a Headmistress and Senior Grade HSAs. The petitioners are concerned with the option for Higher Grade with reference to the pay revision of 1992, which the Government employees were entitled to exercise a re-option, as per Ext.P1. The petitioners were all entitled to Higher Grade as on 01.07.1992, ie. After 01.03.1992. On a re-option being permitted as per Ext.P1, the petitioners chose to remain in the pre-revised scale till 01.07.1993 and then move on to the 1992 revision.

2. A reading of Ext.P7 would indicate that if the petitioners had not re-opted as indicated, the petitioners would have a pay of Rs.1,700/- as on 01.07.1993, while the re-option in the pre-revised scale from 01.07.1993 enabled the basic pay of

Rs.1,750/-. Though the petitioners were fixed in accordance with that, as indicated in Exts.P3,P4 and P5 subsequently an audit objection was raised. The petitioners were asked to refund the excess amounts drawn, for reason of they being entitled to arrears only from the date on which re-option was filed. They refunded the amounts as per Exts.P10(a) to P10(c). The petitioners have filed the above writ petition claiming that, they are entitled to draw pay on the fixation as per Exts.P4,P5 and P6 and that the amounts directed to be paid to the Government and so paid as per Exts.P10(a) to P10(c) are to be refunded with interest.

3. The Government has filed a Counter Affidavit, in which it is indicated that the petitioners had re-opted the 1992 pay revision and Higher Grade with effect from 01.07.1993 as per Ext.P1 G.O. and the date of re-option was 03.10.1996. The monetary benefit paid as per the re-option from 01.07.1993 was objected to, since the arrears on account of such re-option would be payable only from the date of exercise of re-option. So much is clear from Ext.P1 order, which reads as follows:

"1. Arrears on account of such re-option will be payable only from the date of exercise of re-option."

Hence, the petitioners, on the basis of the re-option exercised, cannot claim the arrears of monetary benefits from the date of re-option and could claim monetary benefit only from the date on which the re-option is filed. This Court does not find anything wrong in the refund ordered.

4. As to the objection with respect to the fixation of pay itself, it is stated in paragraph 7 of the Counter Affidavit dated 03.10.2005 as hereunder:

"7. On review of the Inspection Report, the audit objection raised against fixation of pay of petitioners were not pursued further subject to the condition that the excess pay drawn by the teachers due to re-option of 1992 pay revision and grade promotions has to be regulated by the Department based on the final judgment in WP No.11858 of 2004 filed by the petitioners. Intimation to this effect was given to the Department as per letter No.Spl.Cell.(HQ)II/VI/8-9(17)/524 dated 21.03.2005."

Hence, the fixation would remain undisturbed. However, the refund made is found to be in order.

The writ petition is partly allowed, recording the aforesaid

statement of the Government in the Counter Affidavit as to the objection to the pay fixation not having been pursued. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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//True Copy//

P.A. to Judge.