

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

OP(KAT).No. 353 of 2014 (Z)

PETITIONER:

**LALITHAKUMARI.B.
RETIRED DISTRICT EDUCATIONAL OFFICER, CHERTHALA
RESIDING AT "JYOTHIS", CMC-11, CHERTHALA P.O.
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN 695001.**
- 2. THE ACCOUNTANT GENERAL (A&E), KERALA
THIRUVANANTHAPURAM, PIN 695039.**
- 3. DEPUTY DIRECTOR OF EDUCATION
ALAPPUZHA, PIN 688001.**
- 4. DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM, PIN 690514.**
- 5. DIRECTOR OF HIGHER SECONDARY EDUCATION
DIRECTORATE OF HIGHER SECONDARY EDUCATION
HOUSING BOARD BUILDING, THIRUVANANTHAPURAM
PIN 695001.**

R1-R5 BY GOVERNMENT PLEADER SRI P.M. SANEER

**THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN
FINALLY HEARD ON 12-06-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

avk

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A1: TRUE COPY OF T.A.NO.7385 OF 2012 (W.P.(C) NO.26472/2008) FILED BY THE PETITIONER BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.

EXHIBIT-P1: TRUE COPY OF ORDER DATED 16.11.2006 HAD SANCTIONED THE PENSION.

EXHIBIT-P2: TRUE COPY OF ORDER OF DIRECTOR OF PUBIC INSTRUCTION ISSUED COMMUNICATION PAYMENT.

EXHIBIT-P3: TRUE COPY OF ORDER DATED 16.11.2006 NO.- 10/AK/G-33723060 SANCTIONED PAY OF GRATUITY.

EXHIBIT-P4: TRUE COPY OF CERTIFICATE ISSUED FROM STATE BANK OF INDIA, ARTHUMKAL UNDER AC.NO.10458072617.

ANNEXURE-A2: TRUE COPY OF THE STATEMENT DATED OCTOBER 2008 FILED BY THE 3RD RESPONDENT AS DIRECTED BY THE HON'BLE HIGH COURT.

ANNEXURE-A3: TRUE COPY OF THE STATEMENT DATED 16.03.2013 FILED ON BEHALF OF THE 3RD RESPONDENT.

ANNEXURE-A4: TRUE COPY OF THE REPLY STATEMENT DATED OCTOBER 2013 FILED ON BEHALF OF THE 1ST RESPONDENT.

ANNEXURE-A5: TRUE COPY OF THE REJOINDER DATED 18.06.2014 AGAINST REPLY STATEMENT FILED BY THE PETITIONER.

ANNEXURE-A1: TRUE COPY OF LETTER DATED 05.03.2013 ALONG WITH FORWARDING LETTER OF DEPUTY DIRECTOR WITH LIABILITY CERTIFICATE.

ANNEXURE-A1(A): TRUE COPY OF TRANSLATION OF ANNEXURE-A1.

ANNEXURE-A6: TRUE COPY OF THE ORDER DATED 28.08.2014 IN T.A.7385/2012 (WP(C)NO.26472/2008) OF THE KERALA ADMINISTRATIVE TRIBUNAL.

ANNEXURE-A7: TRUE COPY OF THE FORWARDING LETTER NO.OA(HQ) III/1/12-81/2004-05/459 DATED 10.06.2004.

ANNEXURE-A8 : TRUE COPY OF THE AUDIT REPORT ENCLOSED WITH ANNEXURE-A7.

(contd.....3)

**ANNEXURE-A9: TRUE COPY OF THE LETTENO.FIN.B5/20815/08/HSE
DATED 03.09.2008 OF THE 5TH RESPONDENT.**

**ANNEXURE-A10: TRUE COPY OF THE REPORT OF THE AUDIT ENCLOSED
ALONG WITH ANNEXURE-A9.**

RESPONDENT(S)' EXHIBITS

**ANNEXURE R5(a) : TRUE COPY OF THE LIABILITY CERTIFICATE DATED
19.9.2009.**

//TRUE COPY//

PA TO JUDGE

avk

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

=====

O.P.(KAT)No. 353 of 2014

=====

Dated this the 12th day of June, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The petitioner has retired from service as District Educational Officer on 31.3.2006. Her retirement benefits, except the DCRG of Rs.3,30,000/-, were disbursed to her. But, her DCRG was not released on the ground that fixing of her liability was pending. Claiming to release the DCRG, the petitioner approached this Court by filing W.P.(C) No. 26472 of 2008 which was subsequently transferred to the Kerala

Administrative Tribunal and numbered as T.A. No. 7385 of 2012. The Tribunal considered the question and dismissed the claim of the petitioner by the impugned order. Challenging the order passed by the learned Tribunal, the petitioner has preferred this Original Petition.

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

3. Learned counsel for the petitioner submits that the petitioner has retired from service on 31.3.2006. A liability, that too without any basis, has been fixed against the petitioner by the establishment only by proceedings dated 19.9.2009, i.e. beyond the period of three years. The liability, if any, has to be fixed by the Government on a retired Government employee within three years of his/her becoming pensioner as provided under Note 3 to Rule 3 of Part III of the Kerala Service Rules. Here, the liability has

been fixed by the Government only after elapsing three years from the date of retirement. Therefore, the liability so fixed is hit by Note 3 to Rule 3 of Part III of the KSR. Such a liability fixed cannot stand in the way of releasing DCRG due to the petitioner. This position is covered by so many decisions of this Court including the one in **Somarajan Nair v. State of Kerala (2015(2)KLT 753)**, submits the learned counsel.

4. The petitioner herein retired from service on 31.3.2006. Admittedly, the liability has been fixed only three years after the petitioner became a pensioner. Therefore, as rightly submitted by the learned counsel for the petitioner, such fixation of liability is hit by Note 3 to Rule 3 of Part III of the KSR. Such fixation of liability cannot stand in the way of releasing the DCRG due to the petitioner. A contention raised by the learned Senior Government Pleader is that the Government have the

authority and power to proceed against the petitioner for recovering the amount of liability fixed by way of filing civil suit. Of course, the Government is free to move against the petitioner by way of filing civil suit. But, as of now, that cannot stand in the way of the petitioner receiving DCRG due to her. The position is covered by many decisions rendered by this Court including the one in **Somarajan Nair v. State of Kerala** (*supra*). In that view of the matter, the concerned respondent among the respondents, is duty bound to release the DCRG due to the petitioner at the earliest. The impugned order passed by the learned Tribunal is liable to be quashed and hence, we do so.

5. In the result, the concerned respondent among the respondents, is directed to release the DCRG due to the petitioner within a period of one month from the date of receipt of a copy of this judgment. The claim for interest raised by the petitioner for the delayed payment of DCRG is

left open.

This Original Petition is disposed of as above.

**Sd/-
P.R. RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

ks.