

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY,THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

R.P.No. 418 of 2015 IN OP(KAT).1837/2013

AGAINST THE JUDGMENT IN OP(KAT) 1837/2013 of HIGH COURT OF KERALA DATED 11.12.2014

REVIEW PETITIONERS/RESPONDENTS 2&3:

1. C.L.SAJU, AGED 42 YEARS
S/O SHRI C.VLONA, FOREST GUARD
DIVISIONAL FOREST OFFICE
THRISSUR DIVISION AYYANTHOL, THRISSUR 680 003
(ON DEPUTATION TO KERALA FOREST SCHOOL, VALAYAR, PALAKKAD DIST.)
2. SURESH M.R., AGED 49 YEARS,
SHRI V. RAGHAVAN PILLAI, FOREST GUARD
DIVISIONAL FOREST OFFICE
THRISSUR DIVISION AYYANTHOL, THRISSUR 680 003

BY ADVS.SRI.T.R.JAGADEESH
SRI.V.A.VINOD

RESPONDENTS/PETITIONERS IN OP (KAT) & RESPONDENT NO.1:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT DEPARTMENT OF FOREST & WILD LIFE
SECRETARIAT, THIRUVANANTHAPURAM
2. CHIEF CONSERVATOR OF FORESTS
CENTRE CIRCLE, THRISSUR 680 005
3. THE DIVISIONAL FOREST OFFICER
DIVISIONAL FOREST OFFICE, THRISSUR DIVISION
AYYANTHOLE THRISSUR 680 003
4. KERALA ADMINISTRATIVE TRIBUNAL
THIRUVANANTHAPURA BENCH, VANCHIYOOR
THIRUVANANTHAPURAM REPRESENTED BY ITS REGISTRAR

R BY SR. GOVERNMENT PLEADER SMT.REKHA VASUDEVAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

R.P.No. 418 of 2015 IN OP(KAT).1837/2013

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: CERTIFIED COPY OF THE JUDGMENT DATED 11.12.2014 IN OP (KAT)
1837 OF 2013.

ANNEXURE II: TRUE COPY OF JUDGMENT DATED 25.3.2015 IN CIVIL APPEAL
NO.3136/2015.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

R.P.No.418 of 2015 in O.P.(KAT)No.1837 of 2013

&

O.P.(KAT)No.1837 of 2013

Dated this the 23rd day of November, 2015

ORDER

Anil K. Narendran, J.

This review petition is filed seeking to review the judgment of this Court dated 11.12.2014 in O.P.(KAT)No.1837 of 2013, on the ground that there is an error apparent on the face of the record.

2. By judgment dated 11.12.2014, O.P.(KAT)No.1837 of 2013 was disposed of following the judgment of a Division Bench of this Court in **State of Kerala v. Baburaj (2012 (4) KLT 550)**. Now, it is pointed out by the review petitioners that, the Apex Court by Annexure II order dated 25.3.2015 in Civil Appeal No.3136 of 2015 set aside the judgment of the Division Bench in **Baburaj's case (supra)** and the Government have issued G.O.(P)No.408/2015/Fin. dated 14.9.2015 clarifying that, the ex-servicemen who were under war/military service and got appointment in the State civil service in Gazetted or Non-gazetted posts are eligible to get the benefit of first time-bound higher grade by counting their military service without refunding their mustering out benefits. The Government

have also clarified that, the civilian service under military will not be counted for granting higher grade.

3. We heard the arguments of the learned counsel for the review petitioners and also the learned Government Pleader appearing for the respondents 1 to 3.

4. The review petitioners approached the Kerala Administrative Tribunal in O.A.No.784 of 2012 seeking an order to set aside Annexures A9, A10 and A14 orders issued by the 3rd respondent and seeking an order directing respondents 1 to 3 to grant them higher grade and fixation of pay, reckoning their prior military service as qualifying service for higher grade. The Tribunal by order dated 22.8.2012 allowed the O.A., setting aside Annexures A9, A10 and A14 orders issued by the 3rd respondent, relying on Annexure A3 judgment of this Court dated 30.1.2008 in W.P(C).No.25304 of 2006, which was confirmed by Annexure A4 judgment dated 1.3.2010 in W.A.No.1308 of 2008. The Tribunal by order dated 22.8.2012 directed respondents 1 to 3 to consider the claim of the petitioners for first higher grade, counting their military service also, in the light of the observations made in the

order and release the benefit found due to them within three months from the date of receipt of a copy of the order.

5. Aggrieved by the order of the Tribunal dated 22.8.2012, respondents 1 to 3 filed O.P.(KAT)No.1837 of 2013 before this Court, mainly contending that the issue is covered against the petitioners by the judgment of this Court in **Baburaj's case (supra)**. Since the issue was squarely covered by the judgment in **Baburaj's case (supra)**, we allowed O.P.(KAT)No.1837 of 2013 by judgment dated 11.12.2014, by setting aside the order of the Tribunal dated 22.8.2012 in O.A.No.784 of 2012, thereby rejecting the challenge made against Annexures A9, A10 and A14 orders in the O.A.

6. However, the Apex Court by Annexure II order dated 25.3.2015 in Civil Appeal No.3136 of 2015 set aside the judgment of the Division Bench in **Baburaj's case (supra)** and Para.22 of the judgment reads thus;

“22. Therefore, what can be deduced from the above discussion is that the Government Order and the Rule 8(c) of the Rules operate in different fields, that is, grant of higher grade of pay and grant of pensionary benefits. While Rule 8(c) applies to computation of pension on retirement from civil services in the State and does not bar grant of an appropriate higher grade of

pay to a re-employed ex-serviceman in civil services, the Government Order operates with respect to grant of higher grade of pay alone and does not contemplate conditions for grant of pension. Thus in principle the said Rule postulates that an employee, being an ex-serviceman, should not avail the benefit of pension from both the military and the civil services. The Government Order does not overlap on the domains of principles embodied in the said Rule and thus cannot be read with the Rule to erroneously conclude that unless the retiral benefits from military service are refunded to the respondent-State, the military service of such ex-servicemen would not be considered as qualifying for grant of higher grade. The stipulations contained in Rule 8(c) cannot be read with the eligibility conditions for grant of higher grade of pay in the absence of any specific incorporation in the Government Order."

7. In compliance of Annexure II order of the Apex Court dated 25.3.2015 in Civil Appeal No.3136 of 2015, the Government have issued G.O.(P)No.408/2015/Fin. dated 14.9.2015 clarifying that, the ex-servicemen who were under war/military service and got appointment in the State civil service in Gazetted or Non-gazetted posts are eligible to get the benefit of first time-bound higher grade by counting their military service without refunding their mustering out benefits. Paragraphs 3 and 4 of the Government Order reads thus;

"3. Hon'ble Supreme Court in its judgment dated 25.3.2015 has observed that the Government Orders and the Rule 8(C) operate in different fields, i.e. grant of higher grade and grant of pensionary benefits. While Rule 8(C) applies to computation of pension on retirement from civil service in the state and does not

bar grant of an appropriate higher grade of pay to a re-employed ex-serviceman in civil service, whereas the Government Orders operate with respect to grant of higher grade of pay alone and does not contemplate condition for grant of pension. The Government Orders cannot be read with the rule to erroneously conclude that unless the retiral benefits from military service are refunded, the military service of such ex-serviceman would not be considered as qualifying for grant of higher grade. Thus the stipulation contained in Rule 8(C) cannot be read with the eligibility condition for grant of higher grade of pay in the absence of any specific incorporations in the GO(P) No.622/03/Fin. Dated 26.11.2003.

4. Government have examined the matter in detail and are pleased to clarify that the ex-servicemen who were under war/military service got appointment in the state civil service in Gazetted and Non-gazetted posts are eligible to get the benefit of first time-bound higher grade by counting their war/military service without refunding their mustering out benefits. The civilian service under military will not be counted for granting higher grade.”

8. In view of the law laid down by the Apex Court in Annexure II order dated 25.3.2015 in Civil Appeal No.3136 of 2015, the ex-servicemen like the petitioners, who were under war/military service and got appointment in the State civil service in Gazetted or Non-gazetted posts are eligible to get the benefit of first time-bound higher grade by counting their military service without refunding their mustering out benefits. The Government have also clarified the above aspect in G.O.(P)No.408/2015/Fin. dated 14.9.2015. In that view of the

matter, we deem it appropriate to recall our judgment dated 11.12.2014 in O.P.(KAT)No.1837 of 2013.

9. In the result, R.P.No.418 of 2015 is allowed recalling our judgment dated 11.12.2014 in O.P.(KAT)No.1837 of 2013.

10. In view of the law laid down by the Apex Court in Annexure II order dated 25.3.2015 in Civil Appeal No.3136 of 2015, we dismiss O.P.(KAT)1837 of 2013 filed by respondents 1 to 3, thereby upholding the order dated 22.8.2012 of the Kerala Administrative Tribunal in O.A.No.784 of 2012.

Respondents 1 to 3 shall consider the claim of the petitioners for first time-bound higher grade by counting their military service without refunding their mustering out benefits, in the light of G.O.(P) No.408/2015/Fin. dated 14.9.2015 and release the benefits found due to them, within three months from the date of receipt of a copy of the order.

**SD/-
ANTONY DOMINIC
JUDGE**

**SD/-
ANIL K.NARENDRA
JUDGE**

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