IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

RP.No. 997 of 2015 IN WP(C).12443/2005
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AGAINST THE JUDGMENT IN WP(C) 12443/2005 of HIGH COURT OF KERALA DATED 15-09-2015

REVIEW PETITIONER/PETITIONER:
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K M JOSEPH AGED 62 YEARS
S/O MATHAI, RETIRED HSA (MALAYALAM), GKM HIGH SCHOOL KANIYARAM, RESIDING AT KAKKATTIL HOSUE, KANIYARAM POST MANANTHAVADI, WAYANAD DISTRICT.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENTS/RESPONDENTS:
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1. **STATE OF KERALA**
   REPRESENTED BY SECRETARY TO GOVERNMENT
   DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT
   THIRUVANANTHAPURAM-695001.

2. **THE DIRECTOR OF EDUCATION**
   OFFICE OF THE DIRECTOR OF EDUCATION
   THIRUVANANTHAPURAM-695001.

3. **THE ACCOUNTANT GENERAL (AUDIT)**
   THIRUVANANTHAPURAM-695001.

4. **THE DISTRICT EDUCATIONAL OFIFCER**
   WAYANAD-673121.

5. **THE HEADMASTER**
   GKM HIGH SCHOOL, KANIYARAM, WAYANAD DISTRICT-673121.

R1 TO R4 BY GOVERNMENT PLEADER SRI T.R. RAJESH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJJ

K. VINOD CHANDRAN, J.

R.P. No. 997 of 2015

in

W.P.(C) No.12443 of 2005 (F)

Dated this the 1st day of December, 2015

<u>O R D E R</u>

The Review Petition is allowed and the judgment in W.P.(C) No.12443 of 2005 dated 15.09.2015 is recalled.

<u>W.P.(C) No.12443/2005</u>

The petitioner is aggrieved with the fact that the payment of arrears to the petitioner as per Ext.P1 re-option has been directed to be refunded and the consequential increments and pay fixation having not been made, due to the pendency of the above writ petition. The petitioner, admittedly, is now retired. The entire controversy revolves around Ext.P1 and the date of effect of re-option as per the said order.

2. The petitioner was appointed as HSA (Malayalam) in the 5th respondent in July, 1992 and was granted higher Grade on 01.07.1993. By Ext.P1 G.O. of the year 1997, the Government employees and teachers, who got time bound higher grade on or after 01.03.1992, were permitted to re-opt for the time bound higher grade, on the date of their choice and to continue in the pre-revised scale, till the date of option. The petitioner made a re-option and also paid the excess pay drawn in the pre-revised scale, which is evidenced at Ext.P2. The petitioner was fixed in accordance with the re-option and was granted the arrears of pay due as per the re-option, which came to Rs.9,310/-.

3. An objection was raised on audit, on the basis of the date of effect of re-option and the nature of the

objection is reflected in paragraph 4 of the Counter affidavit of the State, which reads as under:-

> "4. Audit observation is that monetary benefit of re-fixation of pay consequent on re-option exercised by the petitioner as per GO(P).615/(188)Fin. dated 28.06.1994 is admissible with effect from 28.06.1997 Government have emphasized in Government Circular No.43/97/Fin dated 23.05.1997 that arrears of pay on account of re-option of pay revision will be payable only from the date of filing of re-option and not from the date of effect of re-option. In paragraph 4(11) of G.O.(P)1062/01/Fin dated 25.09.2001 Government have clarified that arrears consequent on re-option of higher grade are admissible only from the date of filing of option and adjustment can be made only against these arrears. In GO(P). 206/03/Fin dated 05.04.2003 Government have reiterated that arrears due to re-option as per dated 28.06.1997 was admissible with effect from date of filing of re-option only."

4. The essential contention raised in the Counter Affidavit is that the arrears of pay on account of the re-option will be payable only from the date of filing of the re-option and not from the date of effect of the re-option.

5. The Government in its Counter Affidavit, have relied on a number of Government Orders to contend that the arrears of pay on account of the re-option would be only from the date of filing of the re-option and not from the date of effect of the re-option.

6. The specific wording in Ext.P1 is as under:

> "3. The excess salary drawn consequent on fixation of pay in the revised scale of the lower post or time bound higher grade on the basis of option already exercised will be adjusted against the arrears due to revised option and the balance, if any, will be refunded in lump. The State Government employees and teachers desirous of exercising option/re-option based on this order will be permitted to do so within a period of three months from the date of orders."

In such circumstances, the option having been exercised as per Ext.P1, the objection of the Government cannot be sustained and no refund can be made from the petitioner.

7. The issue is covered in favour of the petitioner by **State of Kerala & others v. Lissy Joseph M. - 2006 (1) KLJ 566**, in which the Division Bench clearly upheld the proposition that the date of effect of re-option is the relevant date for granting benefit subject to the restriction that if there is excess amount after adjustment, it would be refunded only with effect from the date of filing re-option. Hence, the issue is not alive for consideration.

The writ petition is allowed. There shall be no refund effected from the petitioner, if the amounts have already been paid and if not, he shall be entitled to it. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj 2/12/15