

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WA.No. 585 of 2010 () IN WP(C).22761/2007

**AGAINST THE ORDER/JUDGMENT IN WP(C) 22761/2007 of HIGH COURT OF KERALA
DATED 21-10-2009**

APPELLANT(S)/RESPONDENTS:

- 1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT
PUBLIC WORKS (A) DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE CHIEF ENGINEER,
P.W.D.(ADMINISTRATION), THIRUVANANTHAPURAM.**

BY ADV. SR GOVERNMENT PLEADER SRI.P.I.DAVIS

RESPONDENT(S)/PETITIONERS:

- 1. A.MOIDEEN,
RETIRED 3RD GRADE OVERSEER, P.W.D.BUILDING SECTION
MANJERI (RESIDING AT ATHIMANNIL HOUSE, 28TH MILE
NARUKARA P.O., MANJERI VIA., MALAPPURAM-676 122).**
- 2. M.BALAKRISHNAN, RETIRED 3RD GRADE
OVERSEER, P.W.D. BRIDGES SECTION, SHORNUR
(RESIDING AT PARAMMEL HOUSE, KARUVAMBRAM, WEST
MANJERI, MALAPPURAM-676 123).**

**R,R1 & 2 BY ADV. DR.K.P.SATHEESAN
R,R1 & 2 BY ADV. SRI.K.K.GOPINATHAN NAIR
R,R1 & 2 BY ADV. SRI.M.R.JAYAPRASAD**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 585 of 2010

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Dated this, the 23rd day of July, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard the learned counsel for the appellants as well as the learned counsel appearing for the respondents/writ petitioners.

2. This writ appeal has been filed against judgment dated 21st October 2009 passed by the learned Single Judge in WP(C) No.22761/2007. Two petitioners who had retired as Illrd Grade Overseers in the Public Works Department on 30th June 2006 had filed the writ petition seeking the benefit of the Government Order dated 30th January, 2006 by which the Government has sanctioned the higher grade in the scale of pay of ₹4000-6090, 4600-7125 and 6675-10550 on 10, 18 and 23 years of service.

3. Petitioners filed the writ petition claiming the above benefit and they further claimed that they should be granted the benefit w.e.f. 1/11/1998. Learned Single Judge relying on an earlier judgment of another learned Single Judge in WP(C)

No.25874/2008 decided on 17th September, 2009, disposed of the writ petition extending the benefit of Ext.P1 w.e.f. 1/11/1998 against which judgment, this writ appeal has been filed.

4. Learned Senior Government Pleader Sri.P.I.Davis in support of the writ appeal contended that Ext.P1 Government Order dated 30th January 2006 does not indicate that Government decided to implement the higher grade scales with effect from any retrospective effect. He submits that normally the Government Order had to be treated only as prospective operation and there was nothing in the Government Order on the basis of which petitioners could have claimed any benefit prior to issuance of the Government Order. Learned counsel appearing for the writ petitioners refuting the submission of the appellants contends that the same argument which is being raised by the learned counsel for the appellants has been considered and turned down by the Division Bench of this Court in WA No.92/2010 dated 4th February, 2010, which writ appeal was filed against the judgment of the learned Single Judge dated 17th September, 2009 in WP(C) No.25874/2008 on the basis of which learned Single Judge has disposed of the writ petition filed by the petitioners.

5. We have perused the Division Bench judgment of this Court in WA No.92/2010 (State of Kerala v. P.K.Rajendran & Ors.). In 2nd paragraph of the judgment, Division Bench stated as follows;

“2. We heard the learned Government, who appeared for the appellants. It is submitted that since Ext.P1 does not specify with effect from which date, the benefits could be granted, the auditors rightly objected to it, saying that it could be given only prospectively. But, having regard to the nature of Ex.tP1, the said contention cannot be countenanced. The respondents/writ petitioners claimed that they should be given higher grades, on completion of 10 years, 18 years and 23 years respectively. That means, the benefits should be granted retrospectively. That claim was upheld by the Government, by Ext.P1. Therefore, they are entitled to get the up-gradation, with effect from the date on which the higher grades became due to them. Therefore, we find nothing wrong with the decision taken by the learned Single Judge. Accordingly, the Writ Appeal is dismissed”.

6. In the judgment, Division Bench has held that petitioners of that writ petition were entitled for the benefit of Ext.P1 Government Order retrospectively. That is, on the date when they completed 10 years, 18 years and 23 years of service.

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The Division Bench having already taken the aforesaid view, we see no reason to take a different view in this writ appeal. The judgment of the learned Single Judge on the basis of which the writ petition was disposed of having been confirmed by the Division Bench judgment dated 4th February, 2010, we find ourselves bound by the aforesaid Division Bench judgment.

Writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge