

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
THE HONOURABLE MR. JUSTICE K. RAMAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDHAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WA.No. 645 of 2010 () IN WP(C).24546/2004

AGAINST THE JUDGMENT IN WP(C) 24546/2004 of HIGH COURT OF KERALA
DATED 09-10-2009

APPELLANT(S)/RESPONDENTS 1 TO 3 IN THE WPC:

1. STATE OF KERALA, REP. BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE PRINCIPAL SECRETARY,
FINANCE(PENSION B) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOLLAM.

BY SR. GOVERNMENT PLEADER SRI T.R. RAJESH

RESPONDENT(S)/PETITIONERS & 4TH RESPONDENT IN THE WPC:

1. PHARIDASAN, LECTURER,
SELECTION GRADE(RETIRED), DEPARTMENT OF COMMERCE
S.N.COLLEGE, KOLLAM, RESIDING AT "BHAVANA
(PADMA NIVAS), KILIKOLLOOR P.O., KOLLAM.
2. S.SUSEELA, LECTURER,
SELECTION GRADE(RETIRED), DEPARTMENT OF CHEMISTRY
S.N.COLLEGE FOR WOMEN, KOLLAM, RESIDING AT
"ASWATHY" KC 38/392, AMRUTHAKULAM, MUNDACKAL EAST
KOLLAM.
3. P.N.NARAYANAN, LECTURER,
SELECTION GRADE(RETIRED), DEPARTMENT OF CHEMISTRY
T.K.M.COLLEGE OF ARTS AND SCIENCE, KOLLAM
RESIDING AT "BINDU NIVAS", CHANDANATHOPPU, KOLLAM-11.
4. UNIVERSITY OF KERALA, REP. BY ITS REGISTRAR,
THIRUVANANTHAPURAM.

R1 -R 3 BY ADV. SRI.S.MUHAMMED HANEEFF
R4 BY SRI BECHU KURIAN THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.11.2014, ALONG
WITH W.A.NO.1124/10, THE COURT ON 05-02-2015, DELIVERED THE FOLLOWING:

APPENDIX IN W.A.NO.1059/14

APPELLANT'S ANNEXURE:

ANNEXURE R1(A): COPY OF GO(P)NO.367/87/FIN. DT.31.3.1987 ISSUED BY THE
ADDL.SECRETARY, FINANCE DEPARTMENT.

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.S.TO JUDGE

dsn

"CR"

**ANTONY DOMINIC, K.RAMAKRISHNAN
& ANIL K.NARENDRA, JJJ.**

Writ Appeal Nos.645 & 1124 of 2010

DATED THIS THE 5th DAY OF FEBRUARY, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellant in W.A.No.1124/2010 is the petitioner in W.P.(C) No.8797/2010. The appellant, who retired from service on 31/5/2006, while working as a Selection Grade Lecturer at St. John's College, Anchal, an Aided College affiliated to the University of Kerala, has filed the said Writ Petition seeking a writ of certiorari to quash Ext.P6 letter dated 7/4/2007 of the Director of Collegiate Education, Thiruvananthapuram, the 3rd respondent herein, addressed to the Deputy Director of Collegiate Education, Kollam, the 4th respondent herein, by which his request for reckoning the prior Central Government service as Auditor in the office of the Accountant General, Kerala, for the period from 17/7/1974 to 13/6/1977, for the purpose of fixing his pension and other pensionary benefits, was rejected by the 3rd respondent, stating that, Aided College teachers are not Government Servants, and hence Ext.P5 Government order dated 6/12/2003 has no application in their case. The learned Single Judge, by judgment dated 19/3/2010 dismissed W.P.

(C)No.8797/2010 *in limine*, holding that the question is squarely covered against the writ petitioner by a Division Bench decision of this Court in W.A.No.2445/2009. Aggrieved by the said judgment, the appellant filed W.A.No.1124/2010.

2. When the said Writ Appeal came up for consideration, the Division Bench felt that, going by Clause (1) of Statute 5 of the Kerala University First Statutes, 1976 and also Exts.P4 and P5 Government orders dated 12/11/2002 and 6/12/2003 respectively, the law was not correctly laid down in the Division Bench judgment in W.A.No.2445/2009 and that, the law laid down by a learned Single Judge of this Court in **Haridasan v. State of Kerala (2010 (1) KLT 348)** appears to be correct. The Division Bench has also taken note of the judgment of another Division Bench in **Abdul Jabbar P.M. v. Kerala State Electricity Board and others (2010 (1) KLT 586)**. Therefore, the Division Bench felt that an authoritative decision on the point by a Full Bench is warranted. This is how W.A.No.1124/2010 is placed before the Full Bench, as per the orders of the learned Chief Justice.

3. The question of law that arises for consideration in these matters is as to whether the teachers in Private Aided Colleges

affiliated to the University of Kerala are entitled to reckon their prior service in Central Government as qualifying service, along with their service in Private Aided Colleges, for all pensionary benefits, applying the conditions for grant of these benefits applicable to Government Servants, as laid down in Part III of the Kerala Service Rules, as amended from time to time.

4. The connected writ appeal, i.e., W.A.No.645/2010 arises out of the judgment of the learned Single Judge dated 9/10/2009 in W.P.(C)No.24546/2004. The said Writ Petition was filed by the petitioners therein, who retired from service while working as Lecturers (Selection Grade) in Private Aided Colleges affiliated to the University of Kerala, for reckoning their prior Central Government Service for the purpose of fixing their pensionary benefits. The learned Single Judge allowed the said Writ Petition directing the Government to re-fix the pension and pensionary benefits payable to the petitioners, granting the benefits of Exts.P1 and P2 Government orders dated 12/11/2002 and 6/12/2003 respectively (same as Exts.P4 and P5 in W.P.(C)No.8797/2010), read in the light of Section 60 of the Kerala University Act, 1974 and Clause (1) of Statute 5 of the Kerala University First Statutes, 1976, notified by the Government vide

Exts.P7 and P8 notifications, respectively, and disburse them all the arrears payable thereunder, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of the judgment. It is aggrieved by the said judgment, the official respondents filed W.A.No.645/2010. When W.A.No.645/2010 came up for admission before a Division Bench of this Court, taking note of the fact that the same issue has already been referred to the Full Bench in W.A.No.1124/2010, posted the case along with the said Writ Appeal, and this is how W.A.No.645/2010 is placed before the Full Bench.

5. We heard the arguments of the learned counsel appearing for the appellant in W.A.No.1124/2010 and also for respondents 1 to 3 in W.A.No.645/2010, the learned Standing Counsel for the University of Kerala and the learned Senior Government Pleader appearing for the official respondents in W.A.No.1124/2010 and also for the appellants in W.A.No.645/2010.

6. Brief facts in W.A.No.1124/2010, necessary for deciding the question of law that arises for consideration of the Full Bench and for the disposal of the cases, are as follows; The appellant who entered service on 13/6/1977 as Lecturer in the Department of Chemistry in the St.John's College, Anchal, a Private Aided College affiliated to the

University of Kerala, 5th respondent herein, retired from service on 31/5/2006, while working as Lecturer (Selection Grade). Prior to that, the appellant was working as Lower Division Clerk in the General Education Department, Government of Kerala, for the period from 30/7/1973 to 12/7/1974 and thereafter, as Auditor in the Office of the Accountant General, Kerala, which is a Central Government Service, for the period from 17/7/1974 to 13/6/1977. While working as Auditor in the Office of the Accountant General, Kerala, the appellant left the Central Government Service on his own volition and joined as a Lecturer in an Aided College. After excluding the period from 1/6/1982 to 31/5/1985, the period during which the appellant was on Leave Without Allowance for seeking employment abroad, he had 11 months and 12 days service as L.D. Clerk in the General Education Department; 2 years, 10 months and 27 days service as Auditor in the office of the Accountant General; and 25 years, 11 months and 19 days service in the Private Aided College. The service rendered by the appellant as L.D. Clerk in the General Education Department has already been reckoned for the purpose of fixing his pensionary benefits. The issue that fell for consideration before the learned Single Judge was as to whether the 2 years, 10 months and 27 days service

of the appellant as Auditor in the office of the Accountant General, Kerala, which is a Central Government Service, can be reckoned for the purpose of fixing his pensionary benefits, on his retirement as a Lecturer in the Private Aided College. The request in this regard made in Ext.P2 representation dated 4/10/2006 was turned down by the 3rd respondent in Ext.P6 letter dated 7/4/2007 addressed to the 4th respondent, stating that, Aided College teachers are not Government Servants, and hence Ext.P5 Government order dated 6/12/2003 has no application in their case.

7. Chapter VIII of the Kerala University Act, 1974 (hereinafter referred to as 'the Act') deals with Private Colleges and Affiliated Colleges under the University. Section 57 of the Act deals with appointment of teachers in Private Colleges. As per Sub-section (1) of Section 57, appointment to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorised by the Government. Going by Sub-section (1A) of Section 57, appointments to the lowest grade of teachers in each department of a Private College shall be made by the Educational Agency by direct recruitment on the basis of merit. Sub-section (5) of Section 57 mandates that, for

making appointment by direct recruitment under Section 57, the post shall be advertised in such manner as may be prescribed by the Statutes. Section 60 of the Act deals with conditions of service of teachers of Private Colleges. Sub-section (1) of Section 60 of the Act reads thus;

“60(1) Notwithstanding anything contained in any law or in any contract or other document, the conditions of service of teachers of private colleges, whether appointed before or after the commencement of this Act, including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement, shall be such as may be prescribed by the Statutes.”

8. By virtue of Section 83 of the Act, notwithstanding anything contained in the Act, the First Statutes and the First Ordinances of the University shall be made by the Government. In exercise of the powers conferred by Section 83 of the Act, the Government of Kerala made the Kerala University First Statutes, 1976 (hereinafter referred to as 'the First Statutes, 1976') in respect of pension, provident fund, gratuity, insurance and age of retirement of teachers of Private Colleges. Clause (1) of Statute 5 of the First Statutes, 1976 provides that, the provisions of the Kerala Service

Rules, 1959 (hereinafter referred to as 'the KSR') shall mutatis mutandis apply to teachers who retire at the age of 55 years. Clause (1) of Statute 5 of the First Statutes, 1976 reads thus;

"5(1) The teachers who retire at the age of 55 shall be entitled to receive the same pensionary benefits as are allowed to similar categories of teachers in Government Colleges including family pension and death-cum-retirement gratuity and all the conditions for the grant of these benefits applicable to Government Servants as laid down in Part III of the Kerala Service Rules (as amended from time to time) shall mutatis mutandis apply to such teachers."

9. Therefore, going by Clause (1) of Statute 5 of the First Statutes, 1976, a teacher in a Private College affiliated to the University of Kerala, who retire at the age of 55 years shall be entitled to receive the same pensionary benefits as are applicable to similar categories of teachers in Government Colleges, including family pension and DCRG. Further, all conditions for the grant of these benefits applicable to Government Servants as laid down in Part III of the KSR, as amended from time to time, shall mutatis mutandis apply to the teachers of the Private Colleges affiliated to the University.

10. Chapter II of Part III KSR deals with qualifying service. As

per Rule 10 of Part III KSR, the service of an employee does not qualify for pension unless he is appointed, his duties regulated, and paid by the Government or under conditions determined by the Government. But, going by Rule 11, notwithstanding the provisions of Rule 10, the Government may, declare that any specified kind of service rendered shall qualify for pension; and, in individual cases, and subject to such conditions as they may think fit to impose in each case, allow service rendered by an employee to count for pension.

11. Both the Central Government as well as the State of Kerala have issued Office Memorandums/Government orders, on mobility of personnel between the Central Government/Central Autonomous Bodies to State Government/State Public Sector Undertakings, etc., and sharing of their pensionary liability on pro-rata basis. Now, we shall make reference to some of the Office Memorandums/Government orders issued in this regard by the Central Government and the State of Kerala.

12. By the Government of India O.M.No.28/10/84/Pension Unit dated 29/8/1984, orders have been issued to count the service of the Central Government employees, going over to Central Autonomous Bodies or *vice versa* or between Central Autonomous Bodies for

pension, subject to certain conditions. In Government of India letter No.28/10/84/PA&PW Vol.II dated 17/2/1986, the Central Government has agreed to extend the benefit of the above orders to the employees of Central Government absorbed in the State Government and State Government Autonomous Bodies and *vice versa* and the orders in this respect have to be issued by the respective State Governments. The Government of Kerala, in consultation with the Central Government, ordered in G.O.(P)No.369/87/Fin. dated 31/3/1987 that, where a State Government employee borne on pensionable establishment is allowed to be absorbed in Government of India/Autonomous Body, the service rendered by him under the State Government shall be allowed to be counted towards pension under Government of India/ Autonomous Body irrespective of whether the employee was temporary or permanent in the State Government. The same procedure will be applied in the case of employees of Government of India/Autonomous Bodies who are permanently absorbed under the State Government/State Autonomous Bodies. It was also ordered that, the Government/Autonomous Body will discharge its pension liability by paying in lump sum as an one time payment, the *pro rata* pension/service gratuity/terminal gratuity and death-cum-retirement

gratuity for the service up to the date of absorption in the Autonomous Body/Government as the case may be. Lump sum amount of the *pro rata* pension will be determined with reference to commutation table laid down in Part III of KSR.

13. The Accountant General (A&E), Kerala, vide his letter No.PR1/G1/6-107/88-89/188 dated 17/1/1989, pointed out that, the cases of employees of State Autonomous Bodies getting absorbed under the Central Government have not been covered in G.O.(P) No.369/87/Fin. dated 31/3/1987. Since the said Government order has been issued after accepting the Government of India proposal for reckoning the service in such cases also on a reciprocal basis, the Government of Kerala, vide G.O.(P)No.298/89/Fin. dated 17/6/1989 corrected and modified the second sentence in the second para of G.O. (P)No.369/87/Fin. dated 31/3/1987, as follows; where a State Government employee borne on pensionable establishment 'and employees of State Autonomous Bodies' is allowed to be absorbed in Government of India/Autonomous Body, the service rendered by him under the State Government shall be allowed to be counted towards pension under Government of India/ Autonomous Body irrespective of whether the employee was temporary or permanent in the State

Government. Later, the Government of Kerala has also reissued the orders contained in Government orders dated 31/3/1987 and 17/6/1989, vide G.O.(P)No.383/89/Fin. dated 29/8/1989.

14. Vide Circular No.74/99/Fin. dated 4/12/1999, of the Principal Secretary (Finance), Government of Kerala, certain clarifications were issued regarding sharing of pensionary liability on pro-rata basis in relation to mobility of personnel between Central Government/Central Autonomous Bodies to the State Government/ State Public Sector Undertakings, etc. It was clarified in Circular dated 4/12/1999 that, if one gets appointment in a Public Sector Undertaking, Local Body or University while in State service, after applying with reference to the notification, the role of the employer is very limited. He issues only a no-objection certificate to the effect that the Department has no objection in sparing the service of the employee, if selected and the application is routed through the Head of the Office. That does not mean and purport to the effect that Government will share the pensionary benefits for the period spent in State Service. Similar is the case when one comes from Government of India Service or *vice versa* as a fresh recruit to State Services or Autonomous Bodies. It cannot be taken as an appointment by transfer

and mobility of such personnel is guided purely by personal considerations and convenience and no public interest is involved. If appointment is made based on notifications issued and the employee applies for one's own convenience, then for the past service in Central or the State Service, it is not obligatory on the part of the former employer to share the pro-rata pensionary liability of such employer.

15. The Government of Kerala noticed that, the Government order dated 29/8/1989 and Circular dated 4/12/1999 covers only cases of permanent absorption after deputation. There are no rules for reckoning the prior service of an employee in Government of India/Central Public Sector Undertakings followed by fresh appointment in the State Service, based on recruitment methods for new appointments. In letter No.3(20)/Pen.A/79 dated 31/3/1982, the Central Government had earlier communicated their concurrence to share proportionate liability on service share basis for counting the service under them for pensionary benefits under State Government. But this has not been adopted in the State. Therefore, the Government of Kerala by G.O.(P)No.703/2002/Fin. dated 12/11/2002 ordered that, the employees of the State Government Departments, who left the former service in Central Government/Central Public Sector

Undertakings on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in the State Government Departments, if the former employer remits the pro-rata pensionary liability on a service-share basis. It is specifically stated in Government order dated 12/11/2002 that, these orders will take effect, including monetary benefits, only from the date of the order, i.e., from 12/11/2002, and individual cases otherwise settled will not be re-opened. The relevant paragraph of G.O.(P)No.703/2002/Fin. Dated 12/11/2002 reads thus;

“Government have examined the matter in detail and are pleased to order that the employees of the State Government Departments, who left the former service in Central Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in the State Government Departments, if the former employer remits the pro-rata pensionary liability on a service-share basis.”

16. The Accountant General (A&E), Kerala, in his letter No.P1/6-44/02-03/22 dated 29/11/2002 has pointed out to the

Government of Kerala the contradiction in Government orders dated 31/3/1987 and 12/11/2002 and requested the Government to modify Government order dated 12/11/2002 in tune with G.O.(P) No.367/87/Fin. dated 31/3/1987. A reading of the aforesaid Government order dated 31/3/1987 would show that, the Government of India have in consultation with the State Governments decided to dispense with the system of allocation of leave salary and pension between Central Government and State Government and among departments of various State Governments. The Accountant General, Kerala, in his letter No.Co-ord. III/12-2/152/964 dtd 9/1/1987 has requested Government of Kerala to issue reciprocal orders. Therefore, the Government of Kerala reiterated the decision of the Government of India dispensing with the system of allocation of leave salary and pension between Central and State Governments as specified in the aforesaid Government order dated 31/3/1987. Clause (b) of the aforesaid Government order provides that, the liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central/State Government under which he had served. It was made

clear in the aforesaid Government order that, the provisions contained therein are also extended to the exchange of officers between two State Governments and that, these orders will take effect from 1/4/1987 and apply to all cases of leave salaries and pension sanctioned on or after that date. Therefore, based on the request made by the Accountant General (A&E), Kerala, in his letter No.P1/6-44/02-03/22 dated 29/11/2002, the Government of Kerala by G.O.(P) No.651/2003/Fin. dated 6/12/2003 ordered that, in the case of prior service rendered by Central Government employees in State Government and vice versa, the liability of pension including gratuity, will be borne in full by the Central Government/State Government to which the Government Servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government/State Government under whom he had served. But in the case of employees who left the former service in the Central Public Sector Undertakings, the orders in Government order dated 12/11/2002 will stand.

17. Pursuant to this, by G.O.(P)No.39/2006/Fin. dated 23/1/2006, the second sentence in Note 2 to Rule 11 of Part III KSR was substituted, with effect from 12/11/2002, which reads thus;

"Employees of State Government Departments who left the former service in Central Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in State Government Departments. In case of prior service rendered by the Central Government employee in State Government and vice versa, the liability of pension including gratuity, will be borne in full by the Central Government/State Government to which the Government Servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government/State Government under whom he had served. But, in the case of employees who left the former service in Central Public Sector Undertakings, this benefit will be available only if the former employer remits the share of proportionate pro-rata pension liability on a service share basis."

18. Later, by G.O.(P)No.608/2010/Fin. dated 22/11/2010, the symbol and words *"/Central Public Sector Undertakings"* and the last sentence *"But, in the case of employees who left the former service in Central Public Sector Undertakings, this benefit will be available only if the former employer remits the share of proportionate pro-rata pension liability on a service share basis."* in Note 2 to Rule 11 of Part

III KSR were omitted, with effect from 12/11/2002.

19. The Office Memorandums/Government orders, issued by the Central Government/State of Kerala on mobility of personnel between the Central Government/Central Autonomous Bodies to State Government/State Public Sector Undertakings, etc., which we have dealt with in extenso in the previous paragraphs of this Judgment, were issued for reckoning the service rendered in Government of India Departments/Central Autonomous Bodies for counting pensionary benefits consequent on permanent absorption in State Government Departments/State Autonomous Bodies and *vice versa*. The question of sharing pro-rata pension/service gratuity arises only when persons are deputed to these organisation in public interest and the foreign employer is willing to absorb the employee permanently. In Circular No.74/99/Fin. dated 4/12/1999 issued by the Principal Secretary (Finance), Government of Kerala, it was clarified that, if one gets appointment in a Public Sector Undertaking, Local Body or University while in State Service, after applying with reference to the notification, the role of the employer is very limited to the extent of issuing a no-objection certificate to the effect that the Department has no objection in sparing the service if selected. That does not mean and purport to

the effect that Government will share the pensionary benefits for the period spent in State Service. Similar is the case when one comes from Government of India Service or *vice versa* as a fresh recruit to State Services or Autonomous Bodies. It cannot be taken as an appointment by transfer or mobility of personnel and is guided purely by personal considerations and convenience and no public interest is involved.

20. But, the Government of Kerala in Government order dated 12/11/2002 ordered that, the employees of the State Government Departments, who left the former service in Central Government/Central Public Sector Undertakings, on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service of the State Government Departments, if the former employer remits the share of proportionate pro-rata pensionary liability on a service-share basis. This was further modified by issuing Government order dated 6/12/2003, in which it was ordered that, in the case of prior service rendered by Central Government employees in State Government and vice versa, the liability of pension including gratuity will be borne in full by the Central Government/State

Government to which the Government servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government/State Government under whom he had served. Pursuant to this, by Government order dated 23/1/2006, the second sentence in Note 2 to Rule 11 of Part III KSR was substituted, which was further amended, with effect from 12/11/2002, by Government dated 22/11/2010. The Explanatory Note to G.O.(P) No.39/2006/Fin. dated 23/1/2006 reads thus;

“Government vide G.O.(P)No.703/2002/Fin. dated 12/11/2002, as modified by G.O.(P)No.651/2003/Fin. dated 6/12/2003, issued orders to the effect that the employees of State Government Departments who left the former service in Central Government/Central Public Sector Undertakings on their volition for taking up appointment in State Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in State Government Departments. In order to give statutory validity to the above orders, necessary modifications have to be made in Note 2 to Rule 11 of the Kerala Service Rules.”

Therefore, with effect from 12/11/2002, the employees of State Government Departments who left their former service in Central Government on their own volition for taking up appointment in State

Government Departments are allowed to reckon their prior Central Government Service for all pensionary benefits, along with their service in State Government Departments. In case of prior service rendered by the Central Government employee in State Government and vice versa, the liability of pension including gratuity, will be borne in full by the Central Government/State Government to which the Government Servant permanently belongs at the time of retirement and no recovery of proportionate pension will be made from Central Government/State Government under whom he had served.

21. As we have already noticed, going by Sub-section (1) of Section 60 of the Act, the conditions of service of teachers of Private Colleges, including conditions relating to pay, pension, etc., and age of retirement, shall be such as may be prescribed by the Statutes. Clause (1) of Statute 5 of the First Statutes, 1976, makes it abundantly clear that, the teachers who retire at the age of 55 shall be entitled to receive the same pensionary benefits as are allowed to similar categories of teachers in Government Colleges including family pension and DCRG and all the conditions for the grant of these benefits applicable to Government Servants as laid down in Part III of the KSR, as amended from time to time, shall mutatis mutandis apply to such

teachers.

22. The meaning of the phrase 'mutatis mutandis' is no longer *res integra*. In the case of **Ashok Service Centre v. State of Orissa (1983 (2) SCC 82)** the Apex Court held that, 'mutatis mutandis' is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Extension of an earlier Act mutatis mutandis to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. Paragraph 17 of the judgment reads thus;

“**17.** Section 3 (2) of the Act which makes the provisions of the Principal Act mutatis mutandis applicable to the levy of additional tax is a part of the charging provision of the Act and it does not say that only those provisions of the Principal Act which relate to assessment and collection of tax will be applicable to the proceedings under the Act. Before considering what provisions of the Principal Act should be read as part of the Act, we have to understand the meaning of the expression 'mutatis mutandis'. Earl Jowitt's 'The Dictionary of English Law (1959)' defines 'mutatis mutandis' as 'with the necessary changes in points

of detail'. Black's Law Dictionary (Revised 4th Edn.,1968) defines 'mutatis mutandis' as 'with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. Housman v. Waterhouse (191 App Div 850; 182 NYS 249, 251). In Bouvier's Law Dictionary (3rd Revision, Vol. II), the expression 'mutatis mutandis' is defined as "the necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like." Extension of an earlier Act 'mutatis mutandis' to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. Section 3(2) of the Act shows that the State Legislature intended not to depart substantially from the Principal Act except with regard to matters in respect of which express provision had been made in the Act. The assumption made by the High Court that the Act was an independent Act having nothing to do with the Principal Act is not correct. The Act only levied some extra sales tax in addition to what had been levied by the Principal Act. The nature of the taxes levied under the Act and under the Principal Act was the same and the Legislature expressly made the provisions of the Principal Act mutatis mutandis applicable

to the levy under the Act. The additional sales tax was in the nature of a surcharge over and above what was due and payable by assessee under the Principal Act. The Act, though it had a long title, a short title and other usual features of every statute, could not be considered as an independent statute. It had to be read together with the Principal Act to be effective. In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that, it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act.”

23. In **Prahlad Sharma v. State of U.P. (2004 (4) SCC 113)** the Apex Court held that, the expression 'mutatis mutandis' itself implies applicability of any provision with necessary changes in points of detail. Therefore, the revisional power which has been vested in the State in respect of the employees of the State may be exercisable by an authority parallel or corresponding thereto in the Corporation in regard to employees of the Corporation. Paragraph 11 of the judgment reads thus;

“**11.** The expression 'mutatis-mutandis', itself implies

applicability of any provision with necessary changes in points of detail. The rules which are adopted, as has been done in the present case, make the principles embodied in the rules applicable and not the details pertaining to particular authority or the things of that nature. In the present case, we find that the High Court has found that the U. P. Rules of 1999 have been adopted *mutatis-mutandis*. Therefore, in our view, the revisional power which has been vested in the State Government in respect of the employees of the State may be exercisable by an authority parallel or corresponding thereto in the Corporation in regard to employees of the Corporation.”

24. In **Rajasthan State Industrial Development and Investment Corporation v. Diamond and Gem Development Corporation Ltd. (2013 (5) SCC 470)** the Apex Court, relying on Ashok Service Centre's case (*supra*) and Prahlad Sharma's case (*supra*) has reiterated that, the phrase '*mutatis mutandis*' implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail.

25. In **Abdul Jabbar v. K.S.E.B (2010 (1) KLT 586)** the issue which came up for consideration before the Division Bench is whether an Aided School teacher, who later joined the Kerala State Electricity Board (KSEB) can count his past Aided School service, for

the purpose of pensionary benefits, on retirement from the KSEB. As per Rule 14E of Part III of KSR, Aided School service put by Government Employees prior to entry in Government service qualifies for pension. The provisions of the KSR are adopted by the KSEB, invoking its power to make regulations under Section 79(c) of the Electricity (Supply) Act, 1948. So the Division Bench held that, wherever the 'Government' is used in the Rules, the same has to be understood as KSEB. If that be so, Rule 14E of Part III of KSR when adopted by the KSEB should be read as "aided school service put by KSEB employees prior to entry in KSEB service qualifies for pension." Accordingly, the Division Bench allowed the Writ Appeal and the KSEB was directed to reckon the past service of the appellant in aided school, for the purpose of granting pensionary benefits.

26. In **Haridasan v. State of Kerala (2010 (1) KLT 348)** (judgment which is under challenge in W.A.No.645/2010) the petitioners therein retired from service while working as Lecturers (Selection Grade) in Aided Colleges affiliated to the University of Kerala. The issue which came up for consideration before this Court was as to whether the prior Central Government Service rendered by the petitioners can be reckoned for the purpose of pension and

pensionary benefits. The petitioners claimed the benefit of Government orders dated 12/11/2002 and 6/12/2003 and also relied on Sub-section (1) of Section 60 of the Act and also Clause (1) of Statute 5 of the First Statutes, 1976. The learned Government Pleader contended that, the aforesaid Government orders are applicable only in respect of the State Government employees and the petitioners who rendered service in Private Aided Colleges cannot be considered as State Government employees under any circumstances. The learned Government Pleader has also relied on a Division Bench judgment of this Court in **T.K.Prathapan v. State of Kerala and others** (judgment dated 23/7/2009 in W.A.No.1521/2009). The learned Single Judge, after adverting to the Government orders and the statutory provisions referred to above allowed the Writ Petition and directed the Government to refix the pension and pensinary benefits payable to the petitioners therein, granting the benefit of the Government orders dated 12/11/2002 and 6/12/2003, read in the light of Sub-section (1) of Section 60 of the Act and Clause (1) of Statute 5 of the First Statutes, 1976.

27. Now, we shall make reference to some of the decisions relied on by the learned Senior Government Pleader in support of his

contention that, the teachers of Private Aided Colleges are not entitled to reckon their prior Central Government Service for granting pensionary benefits.

28. In **T.K.Prathapan v. State of Kerala and others** (judgment dated 23/7/2009 in W.A.No.1521/2009) a Division Bench of this Court repelled the claim made by a Lecturer in an aided college affiliated to the Mahatma Gandhi University for reckoning his prior Central Government Service as Scientific Assistant in the Institute of Armament Technology under the Defence Department, for computing his pensionary benefits. But, a reading of the said judgment makes it clear that, the Division Bench repelled the said claim as the petitioner was not able to show any rule or order which binds the Government of Kerala to count such service under the Central Government also for granting pensionary benefits.

29. In **Secretary to Government, Higher Education Department v. Marykutty Sebastian** (judgment dated 7/1/2010 in W.A.No.2445 of 2009) a Division Bench of this Court repelled the claim made by another Lecturer in an aided college affiliated to the Mahatma Gandhi University for reckoning his prior Central Government service as Instructor Grade-I in National Discipline Scheme (NDS) for

computing his pensionary benefits. But, a reading of the said judgment makes it clear that, the Division Bench repelled the said claim as the petitioner was not able to show that the claim is covered by any provisions of KSR or any orders which bind the Government of Kerala to count such service under the Central Government also for granting pensionary benefits.

30. In **Prof. C. V. Simon and another v. Secretary to Government and others (2012 (1) KLT 947)** a Division Bench of this Court repelled the claim made by two Lecturers in Aided Colleges affiliated to the Calicut University for reckoning their prior Central Government Service for computing their pensionary benefits. But, a reading of the said judgment makes it clear that, the Division Bench repelled the said claim as the appellants were not able to show that their claim was covered by any provisions of KSR or Government orders to count such service under the Central Government also for granting pensionary benefits.

31. In **Kunju Mohammed v. KSRTC (2009 (3) KLT 391)** a Division Bench of this Court repelled the claim made by an employee of the Kerala Road Transport Corporation (KSRTC) for reckoning his prior Central Government Service in the Central Reserve Police Force

(CRPF) for computing his pensionary benefits. But, a reading of the said judgment makes it clear that, the Division Bench repelled the said claim on a finding that, the KSRTC has not adopted the provisions under Rule 11 of Part III KSR to its employees and as such the appellant is not entitled for reckoning his prior Central Government Service in CRPF for computing his pensionary benefits.

32. Similarly, in **Principal Secretary to Government of Kerala v. M. Achuthan** (judgment dated 5/8/2014 in WA.No.1420/2010) the issue which came up for consideration before the Division Bench is whether an Upper Division Clerk in the Forest Department is entitled for reckoning his prior service as an Upper Division Clerk in the Panchayat Common Service for the purpose of fixing the qualifying service for pension. The Division Bench noticed that, the Note added to Rule 20 of Part III KSR, making eligible the Government servants to reckon their prior service in the Panchayat/Municipal Common Service as qualifying service for pension and DCRG, is applicable only to cases in which retirement was on or after 2/2/2001. Therefore, the Division Bench held that, as the appellant in that case retired from service in the year 1997, he could not have been extended the benefit of reckoning the period of his

Panchayat Service for the purpose of pensionary benefits.

33. In our view, the aforesaid decisions relied on by the learned Senior Government Pleader do not in any manner support the contention put forth by him that, the teachers of Private Aided Colleges affiliated to the University of Kerala, who are governed by Clause (1) of Statute 5 of the First Statutes, 1976, are not entitled to reckon their prior Central Government Service for granting pensionary benefits. Moreover, in T.K.Prathapan's case (supra), Marykutty Sebastian's case (supra) and Prof. C. V. Simon's case (supra), this Court turned down the claim made by the Lecturers in Private Aided Colleges affiliated to the Mahatma Gandhi University and the University of Calicut, only on the ground that the appellants therein were not able to show that their claim was covered by any statutory provisions.

34. The learned Senior Government Pleader, relying on the judgment of the Apex Court in **Khandesh College Education Society, Jalgaon v. Arjun Hari Narkhede (2011 (7) SCC 172)** and that of a Full Bench of this Court in **State of Kerala v. E.C. Elsy and others (1987 (2) KLT 882)** contended that, the Lecturers or teachers working in Private Aided Colleges are not Government Servants. Relying on the judgment of the Apex Court in **Dr.**

Gurjeewan Garewal v. Dr. Sumitra Dash and others (2004 (5) SCC 263) it was contended that, such teachers are not holding a 'civil post'. Relying on the Apex Court judgment in **Raja Bahadur K. C. Deo Bhanj v. Raghunath Misra and others (AIR 1959 SC 589)** it was contended that, there is wide distinction between the teachers in Government Colleges and those in private aided colleges. Relying on the judgments of the Apex Court in **State of Punjab and Others v. Om Parkash Kaushal and Others (1996 (5) SCC 325)** and **State of Haryana v. Champa Devi (2002 (10) SCC 78)** it was contended that, all the benefits given to Government College teachers cannot be claimed as a matter of right by Private Aided College teachers, as that would not be within the expression 'parity in employment'. Relying on the judgment of the Apex Court in **Confederation of Ex-Servicemen Associations v. Union of India (2006 (8) SCC 399)** it was contended that, classification between Government College teachers and Private Aided College teachers is a valid and reasonable classification. Relying on the judgment of the Apex Court in **State of Kerala and another v. Naveena Prabhu and other (2009 (3) SCC 649)** it was contended that, the policy of the Government to exclude Private Aided College teachers from the purview of Note 2 to Rule 11

of Part III KSR cannot be interfered by this Court under Article 226 of the Constitution of India.

35. As we have already noticed, it was in exercise of the powers conferred under Section 83 of the Act, the Government of Kerala made the First Statutes, 1976, in respect of pension, provident fund, gratuity, insurance and age of retirement of teachers of Private Colleges affiliated to the University of Kerala. Clause (1) of Statute 5 makes it abundantly clear that Private Aided College teachers are entitled to receive the same pensionary benefits as are allowed to similar categories of teachers in Government Colleges and that all the conditions for the grant of these benefits applicable to Government servants as laid down in Part III KSR shall mutatis mutandis apply to such teachers. Though, the Office Memorandums/Government Orders issued by the Central Government/State of Kerala, which we have already referred to, were issued on mobility of personnel between the Central Government/Central Autonomous Bodies to the State Government/State Public Service Undertakings, the Government of Kerala itself has diluted the rigor of the conditions in those orders, by issuing Government orders dated 12/11/2002 and 6/12/2003. By the aforesaid Government order dated 12/11/2002, as modified by

Government order dated 6/12/2003, it was ordered that the employees of State Government Departments who left the former service in Central Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in State Government Departments. In order to give statutory validity to the above orders, necessary amendments were made in Note 2 to Rule 11 of Part III KSR, with effect from 12/11/2002, by Government order dated 23/1/2006, followed by Government order dated 21/11/2010. Therefore, with effect from 12/11/2002, the employees of State Government Departments who left the former service in Central Government on their own volition for taking up appointment in State Government Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in State Government Departments. In view of Clause (1) of Statute 5 of the First Statutes, 1976, the teachers in the Private Aided Colleges affiliated to the University of Kerala, who left the former service in Central Government on their own volition for taking up appointment in the Private Aided Colleges affiliated to the University, are also entitled to reckon their prior Central Government Service for

all pensionary benefits, under Note 2 to Rule 11 of Part III KSR, with effect from 12/11/2002. Therefore, the various contentions raised by the learned Senior Government Pleader, relying on the judgments of the Apex Court and this Court referred to above, have no relevance at all in resolving the issue raised in these cases.

36. In the case on hand, it is not in dispute that, with effect from 12/11/2002, the teachers in Government Colleges who left the former service in Central Government on their own volition for taking up such appointment in Government Colleges are allowed to reckon their prior service in Central Government for all pensionary benefits, along with their service in State Government Department, and all the conditions for the grant of these benefits applicable to Government Servants, as laid down in Part III of the KSR, as amended from time to time, are made applicable to such teachers in Government Colleges. In the case of teachers of Private Aided Colleges affiliated to the University of Kerala, going by Clause (1) of Statute 5 of the First Statutes, 1976, such teachers who retire at the age of 55 shall be entitled to receive the same pensionary benefits as are allowed to similar categories of teachers in Government Colleges including family pension and DCRG and all the conditions for the grant of these benefits

applicable to Government Servants as laid down in Part III of the KSR, as amended from time to time, shall mutatis mutandis apply to such teachers. If that be so, in relation to teachers of Private Aided Colleges affiliated to the University of Kerala, who are governed by Clause (1) of Statute 5 of the First Statutes, 1976, Note 2 to Rule 11 of Part III KSR, as substituted with effect from 12/11/2002 by Government order dated 23/1/2006, with the necessary changes in points of detail, has to be understood to mean that, the teachers of Private Aided Colleges who left their prior Central Government Service on their own volition for taking up appointment in Private Aided Colleges will be allowed to reckon their prior Central Government Service for all pensionary benefits along with their service in Private Aided Colleges and the liability of pension including gratuity will be borne in full by the State Government. Therefore, we affirm the view taken by this Court in Abdul Jabbar's case (*supra*).

37. The learned counsel appearing for respondents 1 to 3 in W.A.No.645/2010 contended that, since it has been specified in G.O(P) No.367/87/Fin. dated 31/3/1987 that the provisions contained therein takes effect from 1/4/1987 and apply to all cases of leave salaries and pensions sanctioned on or after that date, the provisions contained in

G.O.(P)No.703/2002/Fin. dated 12/11/2002 and G.O.(P) No.651/2003/Fin. dated 6/12/2002, which were given statutory validity G.O.(P)No.39/2006/Fin. dated 23/1/2006, by substituting the second sentence in Note 2 to Rule 11 of Part III of KSR, should also take effect from 1/4/1987, instead of 12/11/2002. The learned counsel has also pointed out that, the Government has already granted the benefit of these orders to two Private Aided College Lecturers who retired from service on 31/3/2002. We are unable to agree with the above contention taken by the learned counsel. As we have already noticed, going by Sub-sections (1A) and (5) of Section 57 of the Act, appointments to the post of Lecturers in a Private Aided College affiliated to the University of Kerala can be made by the Educational Agency only by direct recruitment, on the basis of merit, after advertising the posts in the manner prescribed by the Statutes. Till the issuance of G.O.(P)No.703/2002/Fin. dated 12/11/2002, there were no rules regarding the reckoning of prior service in Government of India/Central Public Sector Undertakings followed by fresh appointment in the State Service based on the recruitment methods for new appointment, since the Government orders then in force covered only cases of permanent absorption after deputation. It was in

such circumstances, by the aforesaid Government order dated 12/11/2002, it was ordered that, the employees of State Government Departments who left the former service in Central Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Departments will be allowed to reckon their prior service for all pensionary benefits along with the service in State Government Departments. It is specifically stated in the aforesaid Government order dated 12/11/2002 that, these orders will take effect, including monetary benefits, only from the date of the order, i.e., from 12/11/2002, and individual cases otherwise settled will not be re-opened. Accordingly, when statutory validity was given to these provisions by Government order dated 23/1/2006, by substituting the second sentence in Note 2 to Rule 11 of Part III of KSR, it was made applicable only with effect from 12/11/2002. In such circumstances, the teachers in the Private Aided Colleges affiliated to the University of Kerala, governed by Clause (1) of Statute 5 of the First Statutes, 1976, who left the former service in Central Government on their own volition for taking up appointment in the Private Aided Colleges affiliated to the University, are entitled to reckon their prior Central Government Service for all pensionary

benefits, under Note 2 to Rule 11 of Part III KSR, along with their service in Private Aided Colleges, only with effect from 12/11/2002.

38. Therefore, we hold that, the teachers in the Private Aided Colleges affiliated to the University of Kerala, governed by Clause (1) of Statute 5 of the First Statutes, 1976, who left the former service in Central Government on their own volition for taking up appointment in the Private Aided Colleges affiliated to the University, are entitled to reckon their prior Central Government Service for all pensionary benefits, under Note 2 to Rule 11 of Part III KSR, along with their service in Private Aided Colleges, with effect from 12/11/2002, and all conditions for the grant of these benefits applicable to Government Servants as laid down in Part III of the KSR, as amended from time to time, shall mutatis mutandis apply to the such teachers. The question of law referred to the Full Bench is answered accordingly.

39. Now, we shall revert to the facts of these Writ Appeals. It is not in dispute that, the appellant in W.A.No.1124/2010 is having prior Central Government Service as Auditor in the office of the Accountant General, Kerala, for the period from 17/7/1974 to 13/6/1977. On 13/6/1977 he entered service as Lecturer in a Private Aided College affiliated to the University of Kerala and retired from

service on 31/5/2006, while working as Selection Grade Lecturer. He was on Leave Without Allowance for seeking employment abroad from 1/6/1982 to 31/5/1985. Prior to his entry in Central Government Service, the appellant in W.A.No.1124/2010 was working as Lower Division Clerk in the General Education Department, Government of Kerala, for the period from 30/7/1973 to 12/7/1974 and the said service rendered by him has already been reckoned for the purpose of fixing his pensionary benefits. Similarly, the 1st respondent in W.A.No.645/2010 is having prior Central Government Service as Auditor in the office of the Accountant General, Kerala, for the period from 29/5/1970 to 13/12/1980. On 15/12/1980 he entered service as Lecturer in a Private Aided College affiliated to the University of Kerala and retired from service on 31/3/2002, while working as Selection Grade Lecturer. The 2nd respondent in W.A.No.645/2010 is having prior Central Government Service as Clerk in the Telecom Department for the period from 26/5/1973 to 8/10/1980. On 9/10/1980 she entered service as Lecturer in a Private Aided College affiliated to the University of Kerala and retired from service on 31/3/2004, while working as Selection Grade Lecturer. The 3rd respondent in W.A.No.645/2010 is having prior Central Government Service as

Auditor in the office of the Accountant General, Kerala, for the period from 8/9/1972 to 7/12/1976 and thereafter in the Central Excise Department from 8/12/1976 to 28/1/1978. On 30/1/1978 he entered service as Lecturer in a Private Aided College affiliated to the University of Kerala and retired from service on 31/5/2002, while working as Selection Grade Lecturer. In view of our finding that, the teachers in the Private Aided Colleges affiliated to the University of Kerala, governed by Clause (1) of Statute 5 of the First Statutes, 1976, who left the former service in Central Government on their own volition for taking up appointment in the Private Aided Colleges affiliated to the University, are entitled to reckon their prior Central Government Service for all pensionary benefits, under Note 2 to Rule 11 of Part III KSR, along with their service in Private Aided Colleges, with effect from 12/11/2002, the appellant in W.A.No.1124/2010 and the 2nd respondent in W.A.No.645/2010, who retired from service after 12/11/2002, are legally entitled to reckon their prior Central Government Service for all pensionary benefits, along with their service in Private Aided College. But, the 1st and 3rd respondents in W.A.No.645/2010, who retired from service before 12/11/2002, are not entitled to reckon their prior Central Government Service for

pensionary benefits, along with their service in Private Aided College.

40. In the result, the judgment of the learned Single Judge dated 19/3/2010 in W.P.(C)No.8797/2010 is set aside and W.P.(C) No.8797/2010 is allowed, setting aside Ext.P6 letter dated 7.4.2007 of the 3rd respondent. The respondents in W.A.No.1124/2010 are directed to re-fix pension and other pensionary benefits due to the appellant in that case, after reckoning his prior Central Government Service, along with his service in Private Aided College and necessary orders in this regard shall be passed by them, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment. W.A.No.1124/2010 is allowed, as above.

41. In view of our aforesaid findings on the question of law, the 2nd respondent in W.A.No.645/2010, who retired from service after 12/11/2002, is also entitled to reckon her prior Central Government Service for all pensionary benefits, along with her service in Private Aided College. But, the 1st and 3rd respondents in W.A.No.645/2010, who retired from service before 12/11/2002, are not entitled to reckon their prior Central Government Service for pensionary benefits, along with their service in Private Aided College. It is settled law that this

Court sitting under Article 226 of the Constitution of India will not perpetuate illegality. Therefore, the plea of discrimination raised by the 1st and 3rd respondents, relying on certain irregular orders granting such benefits to those who retired prior to 12/11/2002, can only be repelled and we do so.

42. In the result, the judgment of the learned Single Judge dated 9/10/2009 in W.P.(C)No.24546/2004 is modified, holding that the 2nd respondent in W.A.No.645/2010, who retired from service after 12/11/2002, alone is entitled to reckon her prior Central Government Service for all pensionary benefits, along with her service in Private Aided College and that the 1st and 3rd respondents in W.A.No.645/2010, who retired from service before 12/11/2002, are not entitled to reckon their prior Central Government Service for pensionary benefits.

43. Consequently, the appellants in W.A.No.645/2010 shall refix pension and other pensionary benefits due to the 2nd respondent, after reckoning her prior Central Government Service, along with her service in Private Aided College and necessary orders in this regard shall be passed, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of

this judgment. W.A.No.645/2010 is disposed of as above.

No order as to costs.

Sd/-
ANTONY DOMINIC,
JUDGE

Sd/-
K.RAMAKRISHNAN,
JUDGE

Sd/-
ANIL K.NARENDHAN,
JUDGE

dsn