

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

RP.No. 1025 of 2014 () IN WP(C).27822/2006

**AGAINST THE JUDGMENT IN WP(C) 27822/2006 OF HIGH COURT OF KERALA
DATED 12-11-2014**

REVIEW PETITIONER(S)/RESPONDENTS 5,6 AND 8 IN WPC:

- 1. G.D.RAJEEV, ON DEPUTATION TO LAKSHA DWEET DEVELOPMENT CORPORATION LTD.
PANAMPILLY NAGAR, COCHIN AS PROJECT OFFICER
FISHERIES (NOW WORKING AS ASSISTANT GENERAL MANAGER
MATSYAFED, KAMALESWARAM, THIRUVANANTHAPURAM
PIN-695009).**
- 2. P.P.SURENDRAN
MANAGER IN CHARGE, MATSYAFED NET FACTORY, ERG ROAD
NEAR HIGH COURT, ERNAKULAM
(NOW WORKING AS DEPUTY GENERAL MANAGER, MATSYAFED
KAMALESWARAM, THIRUVANANTHAPURAM, PIN-695009).**
- 3. K.MOHANAN
MANAGER IN CHARGE, MATSYAFED, CHITIN AND CHITSON PLANT
NEENDAKARA FISHERIES COMPLEX
KOLLAM (NOW WORKING AS ASSISTANT GENERAL MANAGER
MATSYAFED, KAMALESWARAM, THIRUVANANTHAPURAM-695009).**

**BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.PETER JOSE CHRISTO**

RESPONDENT(S)/PETITIONERS AND R1-4 AND 7 IN WPC:

- 1. V.N.RAMAN
MANAGER, MATSYAFED DISTRICT OFFICE, WEST FORT
TRICHUR-4
(NOW WORKING AS DEPUTY GENERAL MANAGER IN CHARGE
EXTENSION AND MASS COMMUNICATION, MATSYAFED
KAMALESWARAM, MANACAUD P.O.
THIRUVANANTHAPURAM-695009).**

CONTD..2..

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2. P.B.MOHAMMED
MANAGER
PRESENTLY ON DEPUTATION TO KUDUMBASREE PROJECT
AYYANTHOLE
THRISSUR (NOW RETIRED AND RESIDING AT PANCHARAYIL
KARATE ROAD, PARAPPANANGADI, MALAPPURAM DISTRICT.
3. A.R.SUTHAN
MANAGER, MATSYAFED DISTRICT OFFICE
ERNAKULAM (NOW WORKING AS SECRETARY
MUNAMBAM FISHERIES HARBOUR MANAGEMENT SOCIETY
MUNAMBAM FISHERIES HARBOUR, PALLIPORT, MUNAMBAM
ERNAKULAM DISTRICT.)
4. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN-695001.
5. THE SECRETARY TO GOVERNMENT
FISHERIES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM
PIN-695001.
6. KERALA STATE CO-OPERATIVE FEDERATION FOR FISHERIES
DEVELOPMENT LTD.(MATSYAFED)
MATSYA BHAVAN, KURAVANKONAM, THIRUVANANTHAPURAM-695003
REPRESENTED BY ITS MANAGING DIRECTOR.
7. THE DIRECTOR OF FISHERIES AND REGISTRAR FOR FISHERIES
CO-OPERATIVE SOCIETIES
VIKAS BHAVAN, THIRUVANANTHAPURAM, PIN-695033.
8. PHELIX ADOLFS MORAISE, MANAGER IN CHARGE
MATSYAFED, FISH MEAL PLANT, AZHEEKODE JETTY P.O
TRHISSUR DISTRICT (NOW RETIRED AND RESIDING AT
MANGALA BHAVAN, KAZHAKOOTTAM P.O., THIRUVANANTHAPURAM
PIN-695582).

R BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR
R BY SMT.K.S.SANTHI
R BY SRI.GEORGE POONTHOTTAM, SC,MATSYAFED

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

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|---------------------|--|
| ANNEXURE-I | COPY OF THE NOTIFICATION ISSUED IN NOVEMBER 1984 FOR RECRUITMENT TO THE POST OF ASSISTANT SECRETARIES AND FISHERIES OFFICERS. |
| ANNEXURE-II | COPY OF THE NOTIFICATION IN 1986 FOR APPOINTMENT TO THE POST OF ASSISTANT SECRETARY IN THE SCALE OF PAY OF RS.750-1450. |
| ANNEXURE-III | COPY OF THE REPRESENTATION DATED 14.3.02 SUBMITTED BY THE 8TH RESPONDENT AND OTHERS BEFORE THE GOVERNMENT. |
| ANNEXURE-IV | COPY OF THE RELEVANT EXTRACT OF G.O(P) NO.515/85/FIN DATED 16.9.1985. |
| ANNEXURE-V | COPY OF THE RELEVANT EXTRACT OF RESOLUTION NO.333 OF THE BOARD OF DIRECTORS OF MATSYAFED. |

RESPONDENTS EXHIBITS: **NIL**

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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R.P No.1025 of 2014

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Dated this the 13th day of January, 2015

ORDER

The review-petitioners were the party respondents in the writ petition and the writ petitioners are the respondents 5 to 8 herein. The review is filed on the ground that, the post of Assistant Secretary, to which the writ petitioners were originally appointed, carried a lesser pay scale, than that found in the judgment and hence, the review-petitioners' fixation of pay which was set aside in the judgment, is to be reviewed.

2. The review-petitioners have filed the above review on the strength of Annexures I to V, which documents, they contend were not available to them, when the writ petition was heard, despite exercise of due diligence. The documents now produced along with the writ petition according to the review-petitioners would

dispel the contention of the writ petitioners, regarding their right to hold a higher post and to get a higher scale of pay than the review-petitioners.

3. At the outset, it is to be noticed that Annexures III and IV are respectively representations filed by the review-petitioners and a recommendation of revision of scales of pay, which the review-petitioners cannot contend to have been not available with them, when the writ petitions were heard. The essential contention raised is that, Annexures I and II would indicate that the claim of the writ petitioners regarding the pay scale is not correct.

4. This Court in the judgment found that the pay scale applicable to the writ petitioners on absorption as evidenced at Ext.P2 produced in the writ petition was Rs.1,250-2,500 (pre-revised). The above scale of pay is noticed as pre-revised on the basis of the revision effected in 1983. In fact, the earlier revision of pay scales were effected in 1978. The pre-revised scales as on 1978 and the

revision effected are evident from the judgment and Annexure-IV.

5. Looking at Annexure-I, which is said to be a notification of 1984, the pay scale of Assistant Secretaries was shown as Rs.570-1070, which is available in the pre-revised scale of 1978. The contention of the review-petitioners is that the revisions when effected in 1978, would only have placed such Assistant Secretaries at Rs.1,050-2,000 and not Rs.1,250-2,500 as contended by them.

6. However, it is to be noticed that, Annexure-II produced by the review-petitioners, is said to be of the year 1986, and calls for appointment to the post of Assistant Secretaries also, wherein, the scale applicable to them is indicated as Rs.750-1,450. Such a scale is available in the pre-revised scale of 1978, which on revision in 1978 would be Rs.1,250-2,500. Hence, going by Annexure-II admittedly of 1986, the Assistant Secretaries were in the pay scale of

Rs.1,250-2,500, which is the scale indicated in Ext.P2. This Court has considered the prayer only since, it was raised, but, it has to be emphasised that, the writ petitioners entitlement to a scale of pay was never in challenge. Annexure-V also is of no consequence since, appointment of the writ petitioners was never challenged.

7. The entire controversy initially arose, when the review-petitioners herein, filed a writ petition, claiming a particular scale of pay on the basis of the regulations. It is pertinent that, the writ petitioners were never made a party in the said writ petition and the fixation subsequently effected, was on the basis of a judgment, which directed consideration of the review-petitioners' representation. Suffice it to say that, the review-petitioners who were the respondents in the writ petition, cannot challenge the appointment of the writ petitioners nor the pay scales allowed to them; in a writ petition filed by the latter.

8. The present controversy arose, when the writ

petitioners sought for a higher fixation or atleast similar fixation, granted to the review-petitioners by the Government. This Court found that the fixation granted to the review-petitioners, by the Government, in disposal of their representation was not proper. The averments raised herein does not commend a review.

9. One another ground raised for review, is that, the judgment of the Hon'ble Supreme Court cited by this Court and relied upon, was a case in which the employer wanted to recover the amounts from the employee and in the present case, there is no such request made. It is to be noticed that, in this case, the employer could not have raised such a demand, since, fixation of pay of the review-petitioners were found to be bad, only in the present judgment. In any event, this Court has specifically noticed the circumstances, in which recovery was directed on the pay fixation granted to the review-petitioners being re-fixed. The public element involved, in the Officers of a

Co-operative society drawing more pay, than that they were actually entitled to was emphasised. Only noticing the public element involved, this Court, directed recovery. The judgment of the Hon'ble Supreme Court was relied upon since, no element of collusion could be found and the review-petitioners cannot be said to have had any role in the fixation, but, for seeking consideration of a representation. The Hon'ble Supreme Court held that, the persons who were paid more, cannot absolve recovery of amounts paid in excess of what is legally due only for reason of having no complicity in the issue. This Court does not find any infirmity in the reliance placed on the aforecited judgment.

For all the above reasons, the review petition is found to be not maintainable and the same is dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge.