

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WA.No. 619 of 2011 IN WP(C).31927/2010

AGAINST THE JUDGMENT IN WP(C) 31927/2010 DATED 07-01-2011

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APPELLANTS/RESPONDENTS 1 TO 4 IN WPC :

1. STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, HOME DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. THE DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM-695001.
3. THE SUPERINTENDENT OF POLICE, ALAPPUZHA-688001.
4. THE SUPERINTENDENT OF POLICE, PATHANAMTHITTA-689645.

BY SPL. GOVERNMENT PLEADER, SMT. GIRIJA GOPAL

RESPONDENTS/PETITIONERS 1 TO 21 IN WPC :

1. P.B.RAMESAN, MECHANIC,
H.C.NO.4998, H.Q.COMPANY, A.R.CAMP.,
ALAPPUZHA - 688 001.
2. SASI.K., FITTER, H.C.NO.4999,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
3. SABU B., DRIVER P.C.NO.5931,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
4. SIVAPRASAD B., DRIVER P.C.NO.5736,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
5. VIDYADHARAN P.V., DRIVER, P.C.NO.5844,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
6. VIJAYA KUMAR P.G., DRIVER, P.C.NO.5845,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.

7. RAJENDRAN G., DRIVER, P.C.NO.5947,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
8. RADHAKRISHNAN R., DRIVER P.C.NO.5850,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
9. R.VIJAYAN, DRIVER H.C.NO.4857,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
10. SURESH KUMAR V., DRIVER, P.C.NO.5629,
H.Q.COMPANY, A.R.CAMP,ALAPPUZHA - 688 001.
11. VENU S., DRIVER, P.C.NO.5950,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
12. SREEKUMARA KURUP S., DRIVER P.C.NO.5563,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
13. SATHYAPRASAD N.K., DRIVER, P.C.NO.5946,
H.Q.COMPANY, A.R.CAMP,ALAPPUZHA - 688 001.
14. JANARDHANAN PILLAI R., DRIVER
H.C.NO.3996, H.Q.COMPANY, A.R.CAMP., ALAPPUZHA - 688 001.
15. BASHEER KUTTY A., DRIVER P.C.NO.5239,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
16. SREEKUMAR P., DRIVER H.C.NO.4875,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
17. RADHAKRISHNAN NAIR P.R., DRIVER,
H.C.NO.5289, H.Q.COMPANY, A.R.CAMP
ALAPPUZHA - 688 001.
18. MOHANAN C., RETIRED CF 177(BARBER),(DIED)
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
RESIDING AT, PALATHINKAL HOUSE, VARANAM P.O.
VIA MUHAMMA, CHERTHALA, ALAPPUZHA.
19. CHARLEY MENDEZ A., COOK CF 265,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
20. SUBASH D., DRIVER P.C.5636,
H.Q.COMPANY, A.R.CAMP, ALAPPUZHA - 688 001.
21. RAVINDRAN M., DRIVER P.C.NO.5931,
H.Q.COMPANY, A.R.CAMP, PATHANAMTHITTA- 689 645.
- ADDL 22. SMT.KARTHYAYANI, PALATHINKAL HOUSE, VARANAM P.O.
CHERTHALA, PIN - 688 555.

23. SMT.M. DHANYA, PALATHINKAL HOUSE, VARANAM P.O.
CHERTHALA, PIN - 688 555.
24. SRI.M. DHANESH, PALATHINKAL HOUSE, VARANAM P.O.
CHERTHALA, PIN - 688 555.
(ADDL. R22 TO R24 ARE IMPEADED AS LEGAL HEIRS
OF THE DECEASED 18TH RESPONDENT AS PER ORDER
DATED 24.07.2015 IN I.A. NO.388/2013 IN WA No.619/2011).

BY ADV. SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANTS' EXHIBITS :

ANNEXURE A1 : TRUE COPY OF THE JUDGMENT IN W.P.(C) No.6643/2006
DATED 24.10.2007.

RESPONDENTS' EXHIBITS:

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 619 OF 2011

Dated this the 31st day of July, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned Special Government Pleader appearing for the appellants as well as learned counsel appearing for the respondent/writ petitioners.

2. This writ appeal has been filed against the judgment dated 24.10.2007 in W.P.(C) No. 6643 of 2006 by which the writ petition was allowed. The issue which had arisen in the writ petition was as to whether the higher grade which were sanctioned to the petitioners in their civil services after the military service was required to be retained or they were not entitled for higher grade. Learned counsel for the respondent/writ petitioners has brought to the notice of the Court that the issue has already been decided by the Apex Court in Civil Appeal No.3136 of 2015 (Baburaj and others v. State of Kerala and another), where the appeal filed against the Division Bench judgment of this Court was dismissed and

the Apex Court has held that Rule 8(c) cannot be applied with regard to the grant of appropriate higher grade of pay to the petitioners in civil services. Paragraph 22 of the Apex Court judgment is to the following effect:

"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.”

In view of the law laid down by the Apex Court as above, this Writ Appeal is liable to be dismissed. Hence this Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**