

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/26TH KARTHIKA, 1937

WA.No. 1007 of 2015 () IN WP(C).5707/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 5707/2013 of HIGH COURT OF KERALA
DATED 18-03-2015

APPELLANT(S)/RESPONDENTS 1, 2 & 4 IN WPC:

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF HOME, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF FINANCE (ANOMALY RECTIFICATION CELL-B),
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

3. ACCOUNTANT GENERAL (AE), THIRUVANANTHAPURAM-695 001.

BY SR. GOVERNMENT PLEADER SRI.MANILAL

RESPONDENT(S)/PETITIONER & 3RD RESPONDENT IN WPC:

1. T.K.SADANANDAN, AGED 56 YEARS,
S/O.KORAN, THIRUTHIPARA HOUSE, POOPATHY,
POYYA VILLAGE,
THRISSUR DISTRICT-680 733 (RETIRED DISTRICT COURT SHERISTADAR).

2. HIGH COURT OF KERALA,
ERNAKULAM, PIN-682 031,
REPRESENTED BY REGISTRAR (SUBORDINATE ORDINATE JUDICIARY).

ADDL. 3. THE KERALA JUDICIAL MINISTERIAL GAZETTED OFFICERS
ASSOCIATION, VEENA BHAVAN, SMITHA LANE, SOUTH CHITTOOR,
KOCHI-682 027, REPRESENTED BY ITS SECRETARY,
C.P.SARATH MOHAN, S/O.P.P.BALAKRISHNAKURUP,
SMRITHI, 25/729, POOKUNNU POST, KOZHICODE-67307.

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ADDL. 4. REMESAN VADAVATHY,
RESIDING AT VISHANAV HOUSE,
POOKODU POST, PATTIYAM, (VIA) ,
PATHIYAKUNNU, KANNUR-670 691.

R2 BY ADV. SRI.ELVIN PETER P.J.
ADDL R3 AND R4 BY ADV. SRI.B.KRISHNA MANI
BY SMT.P.R.REENA
BY SRI.RENJITH THAMPAN (SR.)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

W.A.No. 1007 of 2015

Dated this the 8th November, 2015

JUDGMENT

Anu Sivaraman, J.

This appeal by the State of Kerala is directed against the judgment of the learned single Judge quashing Exhibits P7 and P9 orders of the Government by which the Government had modified the revised scale of pay of Sheristadars of 14 Principal District Courts as Rs.21240-37040.

2. The writ petitioner is a retired Sheristadar. It was the case of the writ petitioner that the First National Judicial Pay Commission had recommended higher scale of pay to Sheristadars of Principal District Courts as distinct from Sheristadars of Additional District Courts, Special Courts and Tribunals. This recommendation had not been implemented by the State Government in spite of repeated reminders by

the High Court. The 9th Pay Commission for the State Government employees had also recommended higher pay scale of Rs.24040-36140 to Sheristadars of Principal District Courts while those of Special Courts were placed on a scale of Rs.21240-34500. However, this was modified and the scale of pay of Rs.22360-37940 was allowed based on the decision of the Council of Ministers, by Exhibit P6 pay revision order. When Exhibit P7 order dated 25.6.2012 reducing the scale of pay already granted and bringing all the posts of Sheristadars under the same scale of pay was issued, the Kerala Judicial Ministerial Gazetted Officers Association had earlier approached this Court challenging the same. This Court had directed the Government to consider the representation preferred by the Association after giving them an opportunity of being heard. By Exhibit P9 order, the Government considered the contentions of the Association and held that the National Judicial Pay Commission had recommended the scale of pay of Rs.7800-12975 to Sheristadars of District Courts with effect from

1.4.2003. It is stated that in the recommendation, there was no specific stipulation regarding assigning of corresponding scale of pay to the above category in successive pay revisions. It was also stated that the 9th Pay Commission had recommended the scale of pay of Rs.24040-38840 against the pre-revised scale of pay of Rs.11910-19350 to Sheristadars of Principal District Courts. However, this was scaled down and only the scale of pay of Rs.22360-37940 was allowed based on the decision of the Council of Ministers. The Government also stated that the Sheristadars of Principal District Courts were not entitled to higher scale of pay and the scaling down of scale of pay to Rs.21240-37940 to be equivalent to that of Sheristadars of Additional District Courts, Special Courts, MACTs, CJM Courts etc. was perfectly in order. These orders were under challenge in the Writ Petition.

3. The learned single Judge held, after hearing the contentions and considering the materials on record, that the National Judicial Pay Commission had recommended

grant of higher pay scale to Sheristadars of Principal District Courts. The scale of pay was higher than what was granted to Sheristadars of Additional District Courts, Sub Courts, MACTs and CJM Courts. The Apex Court accepted the recommendations of the National Judicial Pay Commission and directed the implementation with effect from 1.4.2003. However, this was not done in full by the State of Kerala. The 9th Pay Commission also recommended a higher scale of pay of Rs.24040-36140 to Sheristadars of 14 Principal District Courts. This was in tune with the National Judicial Pay Commission recommendations. However, even this was not granted by the Government while enhanced pay scales were granted to other categories of employees in the Government. Thereafter, by Exhibit P7 order dated 25.6.2012, the Finance (Anomaly Rectification Cell) Department ordered that the pay scale of Sheristadars of Principal District Courts should be brought down to Rs.21240-37040 at par with the scale of pay of Sheristadars of Additional District Courts, Special Courts etc. The learned

single Judge found that there was no rationale or justification in the action of the Government in departing from the recommendations of the National Judicial Pay Commission and in lowering the scale of pay already granted in respect of Sheristadars of 14 Principal District Courts as had been recommended by the First National Judicial Pay Commission. In the above view of the matter, Exhibits P7 and P9 were quashed and it was declared that the Sheristadars of all Principal District Courts in the State of Kerala are entitled to higher pay in view of Exhibit P1 recommendation approved by the Honourable Supreme Court as per Exhibits P2 and P3 orders. The respondents were directed to restore the pay scale fixed as per Exhibit P6 pay revision order.

4. This judgment is assailed by the State on the ground that all that was done was to equalise the pay scale of posts having identical nature of duties and responsibilities and therefore, interference by the learned single Judge was not justified.

5. Heard learned Senior Government Pleader Sri.C.S.Manilal and the learned counsel appearing for the respondents.

6. It is contended that Exhibits P7 and P9 orders are protected against judicial review in the sense that they are passed in consonance with the policy decision taken by the Government. It was contended that change in pay scale includes fiscal policy and financial commitment and in such matters the decision of the Government has to be declared as beyond judicial review. It was further contended that in view of the Government order dated 21.1.2006, all posts of Sheristadars were included in the same category and the recommendation of the 9th Pay Commission for granting different scales of pay to Sheristadars of Principal District Courts alone was uncalled for. Equalisation of pay among same class and category of persons is what was sought to be achieved by Exhibits P7 and P9 orders , it is contended.

7. After considering the contentions advanced by the Learned Senior Government Pleader at considerable length,

we are of the opinion that the Government, which was bound to implement the recommendations of the First National Judicial Pay Commission in letter and spirit, have not only failed to do so, but have gone against the said recommendations in the issuance of Exhibit P7 order. The National Judicial Pay Commission had specifically provided for a higher scale of pay for Sheristadars of Principal District Courts. Though this was to be implemented with effect from 1.4.2003, the said recommendation was not implemented by the State. By Exhibit P5, the 9th Pay Commission had also recommended higher scale of pay for the 14 posts of Sheristadars of the Principal District Courts. This scale of pay was modified and by Exhibit P6 order, while implementing the pay revision, the Sheristadars of Principal District Courts were placed in the scale of pay of Rs.22360-37940, which was lower than the scale of pay recommended by the Pay Commission, but higher than the scale granted to Sheristadars of Additional District Courts, Special Courts, Tribunals and CJM Courts. However, by Exhibit P7 order, the

Government noticed that Sheristadars of District Courts are given a higher scale of pay than the Sheristadars of STATs, though the posts are included in the same category as per the Special Rules. Therefore, the benefit granted by Exhibit P6 order was taken away and all Sheristadars of District Courts were placed in the lower scale of pay of Rs.21240-37040.

8. It was the contention of the petitioner in the Writ Petition that wherever such anomalies existed in other departments in the Government, such anomalies were rectified by raising the scale of pay to the higher scale to remove the anomaly. However, in the case of Judicial Service alone, a reverse method was adopted and the scale of pay of Sheristadars of Principal District Courts was brought down on the plea that one post of Sheristadar of State Transport Appellate Tribunals carries a lower time scale of pay. It is not in dispute that the National Judicial Pay Commission as well as the 9th Pay Commission had recommended the grant of higher scale to Sheristadars of all Principal District Courts. It is also not in dispute that the

post of Sheristadar of STATs is an equivalent post to the post of Sheristadars of Principal District Courts. In the above circumstances, all that have to be done was to raise the scale of pay wrongly granted to the solitary post of Sheristadar of STATs to make it on par with the scale of pay of Sheristadars of Principal District Courts.

9. The learned single Judge found that the First National Judicial Commission had specifically recommended a higher pay scale for Sheristadars of Principal District Courts. This recommendation was directed to be implemented with effect from 1.4.2003 by Exhibits P2 and P3 orders of the Honourable Supreme Court. The High Court had, therefore, addressed Exhibit P4 letter to the Government seeking proper implementation of the recommendations. It was thereafter that Exhibit P6 Pay Revision Order had been issued granting higher scale of pay to Sheristadars of Principal District Courts. Therefore, the contention of the State that Exhibits P7 and P9 orders taking away the said benefit is a part of the fiscal policy of the State, can

have no application in view of the specific directions in Exhibits P2 and P3 orders. Moreover, it is not open to the State to contend financial stringency as a ground justifying Exhibit P7 in view of the admitted fact that anomalies in other posts had been rectified by Exhibit P8 series of orders by raising the scale of pay.

10. In the case of judicial staff alone, a different approach cannot be accepted by the Government. The argument that fixation of scales of pay is an administrative function of the State Government also does not hold good in view of the binding nature of Exhibit P1 recommendations as accepted by the Central Government and in the light of Exhibits P2 and P3 orders of the Honourable Supreme Court directing compliance with the same.

In any view of the matter, we are not inclined to hold that the judgment of the learned single Judge suffers from any illegality which requires interference in the appellate jurisdiction of this Court under Section 5 of the Kerala High Court Act.

In the above circumstances, the writ appeal fails and accordingly the same is dismissed.

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

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