

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 442 of 2014 () IN OP.3818/2003

AGAINST THE JUDGMENT IN OP 3818/2003 of HIGH COURT OF KERALA DATED
08-01-2014

APPELLANTS/RESPONDENTS 1-5:

1. MAHATMA GANDHI UNIVERSITY
REPRESENTED BY ITS REGISTRAR
PRIYADARSHINI HILLS P.O., KOTTAYAM.

2. VICE CHANCELLOR
MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

3. PRINCIPAL
UNIVERSITY COLLEGE OF ENGINEERING, THODUPUZHA.

4. DIRECTOR
SCHOOL OF TECHNOLOGY AND APPLIED SCIENCES
MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

5. SYNDICATE OF MAHATMA GANDHI UNIVERSITY
REPRESENTED BY THE VICE CHANCELLOR
THE CHAIRMAN OF THE SYNDICATE, M.G.UNIVERSITY
KOTTAYAM.

BY ADVS.SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH

RESPONDENTS/PETTITIONERS 1-12 AND R6.:

1. ABDUL HAKEEM M.A.
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

2. SIBU P.M.
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

3. BINDU BABY THOMAS
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

4. RAVIKUMAR
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

5. ANANDA RESMI
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
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6. DEEPA P.GOPINATH
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7. SHAILAJA R.
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
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8. NEELAKANDAN P.C.
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
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9. LENY MATHEW
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

10. JOSEPHINE GOERGE
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

11. MARY LUBI C.
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

12. LATHA KUMARI B.
LECTURER, UNIVERSITY COLLEGE OF ENGINEERING
THODUPUZHA-685501.

13. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF HIGHER EDUCATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

R1-R4,R 9,R10 & 12 BY ADV.DR.S.GOPAKUMARAN NAIR (SR.)
R1-R4,R 9,R10 & 12 BY ADV.SRI.A.RAJASIMHAN
R1-R4,R 9,R10 & 12 BY ADV.SRI.B.PRASANTH
SRI.P.FAZIL, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 4-11-2015,
ALONG WITH WA. 339/2015, THE COURT ON 20.11.2015 DELIVERED THE
FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

.....
**W.A.No.442 of 2014 &
W.A.No.339 of 2015**
.....

Dated this the 20th day of November, 2015

JUDGMENT

Asha, J.

The Mahatma Gandhi University (herein after referred to as "the University" for short) has filed these appeals, aggrieved by the judgment in O.P.No.3818 of 2003 declaring that the writ petitioners are regularly appointed permanent teachers of the University against substantive posts created by the University and they are entitled to revision of pay as per the orders already issued and to be issued. Simultaneously Ext.P13 order issued by the University on 23.3.2001 describing the teachers like petitioners as teachers appointed temporarily for a period of 3 or more years and implementing revision of pay with effect from 1.1.2001, as well as the resolutions of the syndicate mentioned therein were also quashed. The Writ petition (C) No.5032 of 2010 was allowed following the judgment in O.P.No.3818 of 2003 with directions to grant them all benefits treating them as regular

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teachers under the University. The parties and documents referred to in this judgment are, as described in O.P.No.3818 of 2003, unless specified otherwise.

2. The writ petitioners are working as Lecturers in the School of Technology and Applied Sciences and in other self financing Colleges under the University. By Ext.P1 notification issued on 15.7.1996, the University invited applications from qualified candidates for appointment against various teaching/technical posts under the School of Technology and Applied Sciences under the University. Serial No.3 therein was that of Lecturer (Two each in Electronics and Communication Engg., Polymer Engg./Polymer Chemistry, Computer Science and Engg.). Serial No.4 was Lecturer in Mathematics. The scale of pay was given as Rs.2200-4000. The qualification for the post was stated to be same as for similar posts in Government/Aided Engineering Colleges in the State. It was further notified that Communal reservation as prescribed in the University Statutes would be observed in filling up the posts. The applications were

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to reach Deputy Registrar, Self Financing Scheme, Mahatma Gandhi University, Kottayam.

3. Ext.P2 is another notification based on which some of the petitioners submitted applications and got appointment. By that notification, styled as instructions to candidates issued on 10.3.1998, applications were invited for various teaching/technical posts under the School of Technology and Applied Sciences in the University. It was stated therein "these posts are inter transferable among the four units of School of Technology and Applied Sciences" viz., University College of Engineering, Thodupuzha, Regional Centre of School of Technology and Applied Sciences at Edappally, Mannanam and Pathanamthitta. The scale of pay of Lecturers was shown as Rs.2200-4000. Serial No.4 in this notification is relevant and the same is extracted below:

*"Lecturer in Mathematics
(On temporary basis for a
period of 3 years,
but likely to be made permanent)*

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(Centres of STAS)”

None of the other posts was described as either temporary or permanent as in the case of serial No.4. Further it was stated that communal reservation as provided in Kerala State and Subordinate Services Rules/M.G. University Statutes would be followed. The applications were directed to be addressed to Deputy Registrar, Self Financing Section, M.G.University.

4. According to the petitioners, they were treated as permanent teachers, granting AICTE pay scale and other service benefits, declaring their probation, granting them protection of pay, reserving their lien while sending them on leave or on deputation or to take up other employment temporarily and they were under the impression that they were regular teachers of the University. In support of their contention they relied on Exts.P1 to P11. Exts.P1 and P2 are notifications already referred to. In Ext.P3 order of appointment issued to one of the petitioners on 12.11.1997, it was stated that his appointment in the University would be governed by the provisions of Mahatma Gandhi

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University Statutes, 1991. Ext.P4 is the order of appointment issued to another candidate on 17.12.1997, in which it was stated that his appointment as Lecturer in Electronics and Communication Engineering was against one of the posts of Lecturers created as per U.O.No.SF.I./STAS/1360/97 dated 17.12.1997. It was further stated that the appointment was governed by provisions of M.G.University Statutes, 1991. The next order they rely, is Ext.P5, by which the Vice Chancellor had accorded sanction for declaration of probation in respect of 7 candidates in that College, on the basis of the proposal forwarded by the Principal, University College of Engineering, Thodupuzha, with effect from the date on which they completed one year period of probation. Ext.P6 is another order by which family pension was granted consequent to the death of one Mr.Thaha who worked as Lecturer in Computer Science for the period from 1.11.1996 to 14.3.1997. It was stated that expenditure for payment of Family Pension would be debited to Part V A (Non-plan) University College of Engineering, Thodupuzha (UCET).

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Ext.P7 is another letter dated 25.4.1998 addressed to the brother of late Thaha informing him that his request for compassionate appointment cannot be considered since late Thaha had not completed probation or 2 years' service in the University prior to his death. Ext.P8 is an order by which one Dr.Jacob K.Daniel, Lecturer in Mathematics, was allowed the benefit of protection of pay with reference to the pay drawn by him as Senior Lecturer in Pondichery Engineering College. Ext.P9 is the order issued on 20.7.1999, by which one Mr.Tide.P.S, Lecturer in Mechanical Engineering in UCET was granted protection of pay which he was drawing from TKM College of Engineering, Kollam. By Ext.P10 order dated 18.6.1999, the Vice Chancellor had accorded sanction to relieve Sri.Tide.P.S. from the post of Lecturer in Mechanical Engineering, UCET with effect from 21.6.1999, in order to enable him to join as Lecturer in the Cochin University of Science and Technology, retaining his lien for a period of two years from the date of relief.

5. Ext.P11 is the order issued by the Government of

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Kerala on 18.5.2000 implementing the revised pay structure under AICTE scheme, as approved by the Government of India in its letter dated 9.10.1998, in the case of the teachers who were brought under the AICTE Scheme 1986, with effect from 1.1.1996. In that order it was stated that, arrears would be paid from 1.1.1996. The copies of this order were forwarded to all the Principals of Engineering Colleges. It is pointed out that the petitioners got their scale of pay revised from Rs.2200-4000 to Rs.8,000-13,500; but only from 1.1.2001 onwards. The petitioners claim the benefit of that order with effect from 1.1.1996. The petitioners further rely on Ext.P12 order issued on 4.8.1999, pointing out that the University had extended the benefit of revision of pay to the Trade Instructors who were also appointed on the basis of the very same notification - Exts.P1/P2, with effect from 1.3.1997, while in their case such extension with effect from 1.1.1996 was not granted. Subsequent to Ext.P11 order issued by the Government, the Syndicate, in its meeting held on 20.1.2001 by resolution No.1655, decided to revise the

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pay scale of qualified teachers appointed temporarily for a period of 3 or more years in Nursing, Pharmacy, University College of Engineering, Thodupuzha, School of Technology and Applied Sciences and UCTE College. Further in its meeting held on 19th and 20th of February 2001, the Syndicate had, by resolution No.1745, decided to implement pay revision of teachers of UCET and teachers of Non Engineering subjects of UCET and STAS appointed temporarily for a period of 3 or more years as per the UGC pay revision orders and to implement the AICTE pay revision orders to teachers of Nursing, Pharmacy, University College of Engineering, Thodupuzha and STAS appointed temporarily for a period of 3 or more years with effect from 1.1.2001. Based on these resolutions, the impugned order Ext P13 was issued. Seeing that the petitioners were referred to and treated as temporary staff for the first time, they submitted representations to the University raising grievances against the denial of benefit of pay revision with effect from 1.1.1996 as well as their description as temporary hands. It is thereafter that they

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approached this Court filing O.P.No.3818 of 2003.

6. The University has filed a detailed counter affidavit raising the following contentions: Government had insisted the University to start self financing Department to cater to the needs of the student community, desirous of getting professional education. There is no grant from the Government or from the All India Councils for such institutions and the only source of the income is the fees collected from the students. There are only 20 Departments under the University, as provided in Chapter 42 of University First Statutes, 1997, which are the only Statutory Departments and the petitioners are not appointed in any of these Departments. The appointments of the petitioners were to the self financing stream and not as teachers of any of the departments of the University. Hence the petitioners are not entitled to get the benefits available to the teachers of the University. Going by the definition given to University Teacher, only a teacher appointed in any of the Statutory Departments can be termed as teacher of the University, the service conditions of

whom are governed by Chapter III of the M.G.University First Statute, 1997. The expenditure in connection with the infrastructure development and payment of salaries of self financing institutions are to be met from the fee collected from the students. This fund does not have any connection with the University fund coming under the statutory provision. The University College of Engineering, Thodupuzha (UCET) is under the School of Technology and Applied Sciences (STAS), a self financing institution. The petitioners were appointed in the self financing institution. University Statutes do not provide for the service conditions of the teaching staff of self financing institutions. Petitioners submitted applications for appointment to the respective posts pursuant to Exts.P1 and P2 notifications, in the UCET, which is a self financing College. The posts were never characterised as permanent; the claim of the petitioners that their appointments were permanent is unsustainable. The posts in these Colleges can be abolished when the institution become financially non viable. The posts against which the petitioners

were appointed were created as per the U.O.note mentioned in Ext.P4. By reason of declaration of probation, the posts held by the incumbents do not become permanent. The notification or the order of their appointments did not mention any period of probation. Referring to the case of M/s.Jacob K.Daniel and Tide P.S., the respondent University stated that those orders also do not indicate that the posts in which they were appointed were permanent. It is further stated that the University only followed a pattern of appointment in order to maintain transparency in the appointments by observing communal reservation. As per the Amendment Act 9 of 1995, an unaided College is a private College which is not entitled to get any financial assistance either from the Government or University and the self financing Colleges under the University are like any other self financing colleges in the State; Principal does not have any authority to state that the posts are permanent. Further it is stated that the University implemented the AICTE Scheme providing better pay scale to the teachers in order to get approval to the course by the

All India Council and to improve the conditions of the teachers, by which also it cannot be said that the posts were made permanent.

7. An affidavit dated 30.10.2011 was filed by the University on the basis of the order passed by this Court on 24.10.2011 in which it was stated that the petitioners were not teachers of any statutory departments of the University as listed in Chapter 42 of the M.G.University Act and they were not appointed against any permanent sanctioned posts in a permanent service. The petitioners are teachers of self financing institution run by the University and at the time of their appointment, there were no rules governing the teachers of self financing institutions. The salary/remuneration of teaching and non teaching staff and all expenses of the institution are met from the income generated from the fees collected from the students. Ext.R1(a) and Ext.R1(b) minutes of the meeting held on 6.7.1996, in which it was decided to conduct degree courses under self financing stream and creating the posts, were also

produced. It was stated that the continuance of the institutions depends upon the number of students available in each year and the reason for making appointments of the Lecturers on temporary basis itself was on account of the fact that, continuance of the institution is subject to financial viability. It is also stated that the self financing institutions are not given any grant or aid from Government or University or UGC, and the posts in these institutions are not approved by Government as in regular University Departments. Special rules governing the self financing institutions and the conditions of service of the teaching and non teaching staff therein were framed only on 16.3.2010, which are produced as Exts.R1(c) and R1(d). Even permanency in an aided institution does not entitle a person to get the service benefits granted to the regular employees.

8. The learned single Judge, relying on the orders Exts.P1 to P11, found that the petitioners were never treated as temporary teaching/non teaching staff. On the other hand, they were, even at the time of appointment, told that they will be

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governed by the provisions contained in the University First Statute. The entries in Ext.P2 against serial No.4 alone, specifically stating that the post was temporary and likely to be made permanent, only indicate that the other posts are permanent. Moreover, the learned Single Judge relied on Ext.P26, which is a copy of the progress profile of the existing approved technical institution, in which the details of teaching faculties were given and the petitioners were shown therein as permanent faculties. In these circumstances, the learned Single Judge found that on account of the conduct of the University, the petitioners were continuing under the bonafide belief that their appointments were against substantive vacancies and they were continuing in service with the legitimate expectation that they will be treated on par with other permanent employees. In those circumstances, the learned Single Judge held that the right accrued to the petitioners was taken away by Ext.P13 and the resolutions mentioned therein were without affording them an opportunity of being heard. Hence the order-Ext.P13 and the resolutions dated

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20.1.2001 and 19th and 20th of February, 2001 were set aside declaring that petitioners are regularly appointed permanent teachers of the University, appointed against substantive posts created by the University. It was also declared that they shall be entitled to subsequent pay revision benefits and University shall issue formal orders extending the pay revision benefits, within three months.

9. It is aggrieved by the above judgment that the University has come in appeal with the main contention that the petitioners, who were appointed in self financing Colleges, cannot be treated on par with the teachers under the University and they cannot be granted the benefits as in the case of the teachers in the University.

10. We heard the learned Senior Advocates M/s O.V.Radhakrishnam for the appellants, Sri. S.Gopakumaran Nair for the respondents and Sri. S.P. Aravindakshan Pillai, the learned counsel for the writ petitioners in W.A. 339 of 2015 and considered the contentions.

11. The contentions of the writ petitioners are that, they are to be treated as permanent teachers of the University, in all respects and are entitled to all benefits available to teachers of the University. In this context, it is necessary for us to examine the definition of teachers, teachers of University, University Fund, etc, as given in the MG University Act and Statutes.

12. As per Section 2(29) of MG University Act, "teacher" means a Principal, Professor, Associate Professor, Assistant Professor, Reader, Lecturer, Instructor, or such other person imparting instruction or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University. Section 2(30) defines 'teacher of the University' as a person employed as a teacher in any of the institutions maintained by the University. An Institution is maintained by the University out of the University Funds. Section 2(33) defines 'University Funds' to mean Mahatma Gandhi University Fund established under section 46(1). Section 46 under Chapter VII of the M.G.University Act, 1985, which

provides for University Fund, reads as follows:

"46. University fund:- (1) All grants and loans received from the State Government, the government of India, the University Grants Commission and from any other source, all revenues of the University, all fees received, all incomes such as rent and profits derived from properties and funds vested in the University, all endowments and donations received from any source whatsoever, all other miscellaneous receipts of the University and all deposits, remittances and service funds, received in connection with the affairs of the University shall from one consolidated fund styled The Mahatma Gandhi University Fund and shall be employed for the purposes, and in the manner laid down in this Act and in the Statutes, Ordinances, rules bye-laws and orders made thereunder:

Provided that separate accounts may be maintained for specific purposes.

(2) All moneys in the Mahatma Gandhi University fund shall be lodged in the Government Treasury or with the approval of the Government in the State Bank of India or its subsidiaries upto such limits as may be fixed by the Government.

(3) The University may invest such part of the moneys in the Mahatma Gandhi University

Fund, as it may deem fit, in Government securities or securities guaranteed by the Government of India.

(4) The custody of the Mahatma Gandhi University Fund, the payment of moneys therein, the withdrawal of moneys therefrom and all other ancillary matters shall be regulated by the Statutes, Ordinances, rules and bye-laws made in that behalf."

13. Chapter XLII of the MG University Statutes is also relevant in this context, which provides for the 20 departments maintained by it. These are the only departments maintained out of the University Funds. Self Financing Institutions do not come under any of these Statutory Departments. The appointments of the teachers under the University are governed by Chapter III of M.G.University Statute 1997. Statute 3 of Chapter III provides that, teachers of University shall be appointed by the Syndicate after publishing advertisement inviting applications as provided therein. As per Statute 4, the applications received on such invitation shall be referred to the selection committee consisting of Vice Chancellor as Chairman (1) Syndicate member to be

selected by the Vice Chancellor (2) outside experts chosen by the Syndicate and Head of the Department or Professor in charge. Syndicate is to make appointments thereafter on the basis of the recommendations of the selection committee placed before it.

14. The petitioners do not have a case that they were appointed by the syndicate of the University or that their appointments are approved by the University. On the other hand, the appointments of the petitioners to the self financing institutions were not made by selection as provided in Chapter III of the Statutes. In the above circumstances, the petitioners cannot claim that they are to be treated on par with the teachers directly under the University. The self financing stream does not come under any of the departments under the University. From the order of appointment referred to by the petitioners itself, it is clear that the posts against which they were appointed were created as per the U.O Note referred to therein, which is for the self financing institution. The University Funds are not extended to the self financing institutions and the self financing institutions

are depending upon its self generated funds out of the fees collected. In such circumstances, the petitioners cannot have any valid claim for benefits on par with the teachers of the University Departments, even assuming that they are in permanent posts. In this view of the matter, we are unable to agree with the findings of the learned Single Judge, as we find that the petitioners are not teachers of the University within the meaning of that term as defined under section 2 (30); they are not governed by Chapter III of the University Statutes; the Self financing institutions in which they are working are not maintained out of the University Funds as defined under section 2 (33) as well as Section 46 of the University Act. When the only source for the funds to meet the entire expenditure of the self financing institution is the funds generated by it out of the fees collected from the students, there is no rationale in directing the University to grant the petitioners all the benefits treating them as permanent on par with the University teachers.

15. The legitimate expectation nurtured by the petitioners

on the basis of the conduct of the University in issuing orders like Exts.P3 to P11 or the conduct of the appellants in issuing such orders cannot be a reason for directing the University either to make them permanent or to grant them all benefits as available to the teaching staff of the University, unless and until the rules governing self financing stream provide for any such benefits to them. It is pertinent to note that the notification Ext.P1 as well as Ext.P2, had provided that applications were to be addressed to the Deputy Registrar, Self Financing Stream. The College mentioned in Ext.P1 is a self financing institution. In Ext.P2, apart from stating the Colleges to which the appointments were notified, the name of 4 colleges to which the teachers could be transferred were also given, which were all colleges under the self financing stream. The instances covered by Exts.P3 to P11 cannot be the basis for the materialisation of legitimate expectation of the appointees as long as the petitioners are teachers of self financing institution which is having the status of only an unaided institution, which is not eligible for any grant

from Government or AICTE or UGC or any financial assistance from the University. The mere statement that they would be governed by the University Statutes, will not confer any benefit to the petitioners which are not admissible to them. In this view of the matter, the impugned action of the University cannot be said to be unfair or unreasonable. The University cannot be compelled to treat the petitioners as or on par with teachers of the University under the guise of promissory estoppel. In these circumstances, we are unable to agree with the findings of the learned Single Judge in respect of the promissory estoppel on the part of the appellants as well as the legitimate expectations of the teachers. Hence we are of the view that, the learned Single Judge was not correct in directing the University to treat the petitioners as permanent teachers entitled to all benefits and setting aside of the impugned resolutions of the University.

16. During the course of arguments, the learned Senior counsel for the University submitted that University is prepared to grant the benefit of pay revision to the petitioners with effect

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from 1.1.1996. We record the same.

17. The judgment dated 31.5.2005 in W.A.No.3839 of 2001 and W.P(C) No.20649 of 2009 relied on by the learned Senior Counsel appearing for the petitioners cannot apply in the circumstance of this case. The issue considered in the Writ appeal was regarding denial of AICTE scale to the teachers of self financing institution, where it was found that there was sufficient funds to meet the expenditure, and the scale of pay was made applicable in all other institutions. As far as AICTE scale is concerned, it is already conceded that the petitioners will be given the benefits along with arrears from 1.1.1996.

In the above circumstances we allow the appeal recording the undertaking of the learned Senior Counsel appearing for the University that, the benefit of AICTE scale of pay will be granted to the petitioners with effect from 1.1.1996 instead of 1.1.2001. The same shall be done within a period of 3 months from the date of receipt of a copy of the judgment.

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The judgment impugned in this appeal was rendered following the judgment in W.P.(C) No.5032 of 2010. As we have already set aside that judgment, this W.A is also to be allowed recording the undertaking of the learned Senior Counsel appearing for the University that the benefit of AICTE scale of pay will be granted to the petitioners with effect from 1.1.1996 instead of 1.1.2001. The same shall be done within a period of 3 months from the date of receipt of a copy of the judgment.

These appeals are accordingly allowed with the above directions.

sd/-

**ANTONY DOMINIC,
JUDGE.**

sd/-

**P.V.ASHA,
JUDGE.**

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