

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WP(C).No. 2705 of 2010 (K)

**(AGAINST THE ORDER DATED 20.11.2009 IN COMPLAINT NO.1379/2008
OF THE LOK AYUKTA, THIRUVANANTHAPURAM)**

PETITIONERS/RESPONDENTS:

- 1. THE CHIEF SECRETARY TO GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**
- 2. THE SECRETARY TO GOVERNMENT,
AGRICULTURE (A.H) DEPARTMENT, GOVT.SECRETARIAT
THIRUVANANTHAPURAM.**
- 3. THE DIRECTOR OF ANIMAL HUSBANDRY,
VIKAS BHAVAN, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.T.R. RAJESH

RESPONDENTS/COMPLAINANT:

**S.BRIGHT, S/O.M.SREERANGANATHAN,
SAI SMRITHI, KP 17/17, U R A - 17
NALANCHIRA.P.O, THIRUVANANTHAPURAM-695 015.**

BY ADV. SRI.K.RAVIKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- P1: TRUE COPY OF ORDER NO.D4-2512/81/ESTT. DATED 30.01.1981 OF THE DIRECTOR OF ANIMAL HUSBANDRY, THIRUVANANTHAPURAM**
- P2: TRUE COPY OF THE ORDER NO.G.O.(P) 174/68/FIN.DATED 02.05.1968**
- P3: TRUE COPY OF THE ORDER NO.G.O.(P) 893/78FIN DATED 30.12.1978**
- P4: TRUE COPY OF LETTER NO.7898/AHE2/08/AD DATED 28.07.2008**
- P5: TRUE COPY OF COMPLAINT NO.1379/2008 BEFORE THE LOK AYUKTA, THIRUVANANTHAPURAM**
- P6: TRUE COPY OF THE ORDER DATED 20.11.2009 IN COMPLAINT NO.1379/08 OF THE LOK AYUKTA**

RESPONDENT'S EXHIBITS

- R1: TRUE COPY OF THE PROCEEDINGS DATED 20.1.1981 ISSUED FROM THE DIRECTORATE OF ANIMAL HUSBANDARY**
- R2: TRUE COPY OF THE LETTER DATED 24.3.1983 ISSUED BY THEW DIRECTOR OF ANIMAL HUSBANDARY**
- R3: TRUE COPY OF THE REPRESENTATION DATED 1.10.2005**
- R4: TRUE COPY OF THE LETTER DATED 28.7.2008**

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 2705 of 2010 (K)

Dated this the 9th day of December, 2015

J U D G M E N T

The State is aggrieved with the order passed by the Lok Ayukta directing the respondent's earlier service in the Animal Husbandry Department, to be reckoned for pensionary benefits, as provided in G.O.(P) No.174/68/Fin. dated 02.05.1968.

2. The brief facts to be noticed are that the respondent joined as a Lower Division Clerk in the Animal Husbandry Department on 28.07.1970. He was on deputation to the Kerala State Coconut Development Corporation Limited between 8.12.1975 and 12.01.1981. He rejoined the Animal Husbandry Department on 13.01.1981; but, however, sought relief from his post as a Lower Division Clerk, so as to take up a permanent employment under the Kerala State

Coconut Development Corporation Limited, as Public Relation Officer. Ext.P1 order dated 20.01.1981 was issued permitting him relief and permitting the retention of lien in the department until he is confirmed in the Corporation or till expiry of 5 years, whichever is earlier. It was also stipulated in Ext.P1 that on absorption in the Corporation, his pensionary benefits will be governed by the provisions of G.O.(P) No.174/68/Fin. dated 2.5.1968.

3. The Kerala State Coconut Development Corporation Limited, admittedly, ran into rough weather. The respondent sought voluntary retirement from the Corporation and retired in the year 2000. In the year 2008, the respondent approached the Lok Ayukta, after having constantly been in communication with the Government for reckoning his prior period in the Animal Husbandry Department for pension.

4. The Lok Ayukta allowed the same by Ext.P6 which is assailed by the State on various grounds. It is contended by the learned Government Pleader that there is no allegation of maladministration and no such findings entered or a specific officer of the Government found to have been guilty of such maladministration. Ext.P6 is not a recommendation, but an order directing the respondents therein to sanction pensionary benefits to the complainant as provided in G.O.(P) No.174/68/Fin, which is not permissible, is the argument.

5. The learned Government Pleader relies on **George v. Saralakumari - 2007(4) KLT 924** to contend that both the said aspects would vitiate the order. The learned Government Pleader also relies on the decision in **State of Kerala v. Sheela S. - 2009 (2) ILR 660** to contend that there is no adjudication

possible in an issue by the Lok Ayukta. The decision in **State of Kerala v. John Joseph - 2011 (3) KLT 23** is relied on to contend that even an act of erroneous exercise of an authority, purportedly conferred by a Statute, cannot be classified as maladministration within meaning of the Act.

6. The Lok Ayukta is said to have entered into an adjudication as to whether the petitioner therein is entitled to be reckoned with the prior service for purpose of pension. Having considered the rival claims, the Lok Ayukta found that the respondent therein would be entitled to reckon such service and directed sanction of pensionary benefits. The order of the Lok Ayukta is vitiated insofar as the binding precedents above referred are concerned. The power of the Lok Ayukta was elaborately considered in **State of Kerala**

v. Bernard - 2002(3) KLT 254, wherein a Division Bench of this Court held that the Lok Ayukta neither has any power of adjudication nor the power to enforce the recommendations made. Especially in a complaint involving a “grievance”, the Lok Ayukta was held to be merely an investigator who could bring to the notice of the Legislative Assembly the facts, as to the grievances, which could, at best, trigger a public debate. A learned Single Judge followed this decision in **George (supra)** to hold that positive directions in a report by the Lok Ayukta, would take it out of the purview of a recommendation; which alone was the power conferred under the Lok Ayukta Act. Similar was the finding in **Sheela (supra)**. **John Joseph (supra)** held that an erroneous exercise of jurisdiction could not be classified as a maladministration, under Kerala Lok Ayukta Act, 1999.

7. Further, it is to be noticed that the respondent herein had been working in the Animal Husbandry Department prior to 1981 and he, having taken up an employment in a Corporation, went out of service on voluntary retirement on 13.1.2000. The Lok Ayukta, in the initial part of the order, refers to a representation given to the Director of Animal Husbandry for granting him pensionary benefits, which was said to be admissible in respect of service rendered under Government. The Lok Ayukta also referred to a communication of the Director of Animal Husbandry, which intimated the respondent herein that the same could be disbursed only from the date the Government servant would have normally superannuated, had he continued in Government service. It is this communication which is relied on as a cause of action

by the respondent and accepted by the Lok Ayukta. The said communication has been produced by the respondent as Ext.R2 which is dated 24.3.1983, immediately after he was relieved from the service of the Government by Ext.P1. The respondent obviously did not challenge the same. The respondent also did not continue till his normal date of superannuation, which was on 30.6.2004.

8. It is also trite that when a voluntary retirement scheme is accepted by an employee, then the employee cannot, having accepted the same and relieved himself from the services, turn around and claim the benefits which he would have been entitled on the basis of the normal incidence of service which he would have been entitled to only on retirement on the date of superannuation [**HEC Voluntary Retd. Employees Welfare Society v. Heavy Engineering**

Corporation Limited - (2006) 3 SCC 708].

9. It is also to be emphasised that the respondent having retired voluntarily in the year 2000, was before the Lok Ayukta in the year 2008. For all the above reasons, the order at Ext.P6 is found to be bad. The same is set aside.

Writ Petition stands allowed. Parties to suffer their respective costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE