

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 11755 of 2004 (Y)

PETITIONER(S):

- 1. K. VISWANATHAN NAIR, DISTRICT JUDGE
NOW WORKING ON DEPUTATION AS LEGAL ADVISOR AND
DISCIPLINARY ENQUIRY OFFICER, KERALA STATE
ELECTRICITY BOARD, RESIDING AT UTHRADOM
NEERAZHI LANE PAPPANAMCODE, THIRUVANANTHAPURAM.**
- 2. D. MOHANRAJAN, SPECIAL JUDGE,
SPE/CBI-II, ERNAKULAM, RESIDING AT KANICHA
LODGE, PADMA JUNCTION, ERNAKULAM.**

**BY ADVS.SRI.P.GOPALAKRISHNAN NAIR
SRI.P.A.AHAMMED**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. ACCOUNTANT GENERAL (A & E),
KERALA, AG'S OFFICE, THIRUVANANTHAPURAM.**
- 3. CHAIRMAN, KERALA STATE ELECTRICITY
BOARD, VYDYUTHI BHAVAN, PATTOM
THIRUVANANTHAPURAM.**

**R,R3 BY ADV. SRI.T.G.RAJENDRAN SC FOR K.S.E.B.
R,R1 & R2 BY ADV. GOVERNMENT PLEADER
R,R3 BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
R BY SRI.P.SANTHALINGAM, SC, KSEB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE ORDER G.O(MS) NO.231/2001/HOME DTD.12.12.01
- EXT.P2 COPY OF THE ORDER NO.B1-73957/2001 DTD.11.4.02.
- EXT.P3 COPY OF THE PAY SLIP NO.GE/15/A/132/1770 DTD.18.6.02 TO THE 1ST PETITIONER.
- EXT.P4 COPY OF THE PAY SLIP NO.GE/15/C/160/1986 DTD.21.6.02 TO THE 2ND PETITIONER.
- EXT.P5 COPY OF THE PAY SLIP NO.GE/15/A/188/2113 DTD.25.6.02 TO THE 1ST PETITIONER.
- EXT.P5(A) COPY OF THE PAY SLIP NO.GE/19/A/1197/6508 DTD.18.12.02 TO THE 1ST PETITIONER.
- EXT.P5(B) COPY OF THE PAY SLIP NO.GE.15.A/1219.5578 DTD. 19.11.03 TO THE 1ST PETITIONER.
- EXT.P6 COPY OF THE PAY SLIP NO.GE.15/C/6029 DTD.29.11.02 TO THE 2ND PETITIONER.
- EXT.P7 COPY OF THE LETTER NO.GE.15/A/1389/6263 DTD.12.12.03 TO THE 1ST PETITIONER.
- EXT.P8 COPY OF THE LETTER NO.GE/15/C/1500/6273 DTD.12.12.03 TO THE 2ND PETITIONER.
- EXT.P9 COPY OF THE PAY SLIP NO.GE/15/A/1167/1112 DTD.17.2.04 TO THE 1ST PETITIONER.
- EXT.P10 COPY OF THE PAY SLIP NO.GE.15A/1669/1114 DTD.17.2.04 TO THE 1ST PETITIONER.
- EXT.P11 COPY OF THE PAY SLIP NO.GE/15/C/1993/1464 DTD.27.2.04 TO THE 2ND PETITIONER.
- EXT.P12 COPY OF THE LETTER NO.GE/15/A/1670/1115 DTD.17.2.04 TO THE 1ST PETITIONER.
- EXT.P13 COPY OF THE LETTER NO.GE/15/C/1933/1464 DTD.1.3.04 TO THE 2ND PETITIONER.

RESPONDENTS EXHIBITS:

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.11755 of 2004 - Y

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Dated this the 13th day of October, 2015

J U D G M E N T

The petitioners are aggrieved with the fact that the petitioners though were granted the benefit under Ext.P1 notification, the same was later withdrawn as per Exts.P7 and P8, and then later re-fixed as per Exts.P9 and P11. The facts of the case are that as per Shetty Commission recommendations, the conditions of service of Subordinate Judicial Officers, were revised as per Ext.P1. Ext.P1 Government Order provided for "Assured Career Progression Scheme" for the Subordinate Judicial Officers on completion of 5 years and 10 years. The benefit as per Ext.P1 was also made applicable retrospectively from 01.01.1996 subject however that the monetary benefits would be paid only from 01.07.1996.

2. The Officers could exercise an option to switch over

to the revised scale within three months from the date of the Government Order. Both the petitioners were promoted to the post of District Judge on 18.10.1996 and 26.12.1996. The petitioners opted the date of promotion as the date of option to switch over to the revised scale in the Sub Judges post. The option exercised by the petitioners were accepted and also the pay fixed accordingly by Exts.P3 and P4. However, later, the same was withdrawn by Exts.P7 and P8 communication and re-fixed as per Exts.P9 and P11.

3. A reading of the communications issued to the petitioners would indicate that the petitioners were informed that there was a clarification issued that the Judicial Officers promoted between 01.01.1996 to 12.12.2001 were not eligible to opt as per Ext.P1. The learned Government Pleader also would rely on the counter affidavit, to contend that the petitioners having been promoted, with the said period; the exercise of option would not apply, since clause 10 of Ext.P1 provides that

all appointments and promotions made on or after 01.01.1996 shall be deemed to have been made in the revised scale of pay.

4. The clarification issued by the Government as is indicated in Exts.P7 and P8 has no legs to stand since that cannot override the specific provisions of Ext.P1 Government Order, which again was in implementation of the recommendations of the National Judicial Pay Commission. Further, clause 10 relied on by the Government would not disentitle the petitioners, who were continuing as Sub Judges at least for a period after the date of effective implementation of Ext.P1, being 01.01.1996.

5. The petitioners hence are deemed to have exercised their option to move over to the revised scale in the Sub Judge's post and the consequent re-fixation has to be effected in the District Judge's scale of pay. That is the exercise, which has been done in Exts.P3 and P4 and the same cannot be said to be in violation of Ext.P1 order nor can the clarification

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issued stand against the exercise of option by the petitioners, who were continuing as Sub Judges during the relevant period. In such circumstance, Exts.P7, P8, P9 and P11 would stand set aside. There shall hence be no refund effected as a consequence of Exts.P12 and P13 which would also stand set aside.

The writ petition would stand allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/15 /10 /2015

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P.A to Judge.