

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

W.P.(C).No.12002 of 2004 (D)

PETITIONER(S):-

1. T.P.KHASIM, H.S.A., VELOM HIGH SCHOOL, CHERAPURAM, P.O. CHERAPURAM, KAKKATTIL VIA., KOZHIKODE DISTRICT.
2. K.KUTTYKRISHNAN, H.S.A., -DO- -DO-.
3. M.N.SANTHAKUMARI AMMA, H.S.A., -DO- -DO-.
4. M.SUBAIDA BEEVI, H.S.A., CHENNAMANGALLUR H.S.S., P.O. CHENNAMANGALLUR, MUKKOM VIA., KOZHIKODE DISTRICT.
5. P.K.ABDUL KAREEM, H.S.A., -DO- -DO-.
6. ABDULLA A.M., H.S.A., -DO- -DO-.
7. ABDULLA V.C., DRAWING TEACHER, -DO- -DO-.

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.C.P.SIVADASAN NAIR.

RESPONDENT(S):-

1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
DEPT. OF GENERAL EDUCATION, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE ACCOUNTANT GENERAL (A & E), KERALA,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.

4. THE DISTRICT EDUCATIONAL OFFICER,
VATAKARA, KOZHIKODE DISTRICT.

5. THE DISTRICT EDUCATIONAL OFFICER,
KOZHIKODE.

R1 & R3 to R5 BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-09-2015, ALONG WITH W.P.(C).NO.27965 OF 2003-D, THE COURT ON
12-10-2015 DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT.P1 | TRUE COPY OF G.O.(P) NO.615/97/(138)/FIN. DATGED 26.6.97
ISSUED BY THE GOVEFRNMENT. |
| EXT.P2 | TRUE COPY OF G.O.(P) NO.352/96/FIN. DATED 11.4.96
ISSUED BY THE GOVERNMENT. |
| EXT.P3 | TRUE COPY OF THE G.O.(P) NO.38/98/(152)/FIN.
DATED 5.1.98 ISSUED BY THE GOVERNMENT. |
| EXT.P4 | TRUE COPY OF G.O.(P) NO.399/(178)/99/FIN. DTD.5.2.99
ISSUED BY THE GOVERNMENT. |
| EXT.P5 | TRUE COPY OF THE OPTIONS EXERCISED BY THE
PETITIONERS. |
| EXT.P6 | TRUE COPY OF THE G.O.(MS) NO.1333/99/FIN. DATED
30.04.99 ISSUED BY THE GOVERNMENT. |
| EXT.P7 | TRUE COPY OF G.O.(P) NO.1503/(180)/99/FIN.
DATED 22.6.99 ISSUED BY THE GOVERNMENT. |
| EXT.P8 | TRUE COPY OF THE JUDGMENT DT.11.3.2002 IN
O.P.NO.20280/01 OF THIS HON'BLE COURT. |
| EXT.P9 | TRUE COPY OF G.O.(P) NMO.206/2003/FIN. DATED 5.4.2003
ISSUED BY THE GOVERNMENT. |
| EXT.P10 | TRUE COPY OF THE RELEVANT PORTION OF THE
OBJECTION RAISED BY THE 4TH RESPONDENT AGAINST
THE BENEFITS OF SERVICE DISBURSED TO THE
PETITIONERS 1 TO 3. |
| EXT.P11 | TRUE COPY OF THE OBJECTION SUBMITTED BY THE
1ST PETITIONER BEFORE THE 3RD RESPONDENT. |
| EXT.P12 | TRUE COPY OF THE RELEVANT PORTION OF THE OBJECTION
RAISED AGAINST THE OPTION EXERCISED BY THE
4TH AND 5TH PETITIONERS. |

- EXT.P13 TRUE COPY OF THE RELEVANT PORTION OF THE OBJECTION
RAISED BY THE 5TH RESPONDENT AGAINST THE OPTION/
RECEPTION EXERCISED BY THE 6TH AND 7TH PETITIONERS.
- EXT.P13(a) TRUE COPY OF THE PROCEEDING
NO.SPL.CELL/(HQ)/II/IV/13-3603/384 DATED 11.8.2003 ISSUED BY
THE 2ND RESPONDENT TO THE 5TH RESPONDENT.
- EXT.P14 TRUE COPY OF THE ORDER IN W.P.(C).nO.2553/04
DATED 22.1.2004 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:-

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.12002 of 2004-D & 27965 of 2003-D

Dated this the 12th day of October, 2015

JUDGMENT

None appears for the petitioners when the writ petitions were called for hearing.

2. Common issue arises in these two writ petitions and, therefore, they are disposed of by this common judgment. The parties, facts and documents are referred from W.P.(C). No.12002 of 2004.

3. The issue raised in the writ petition relates to the re-option exercised by the petitioners in accordance with two Government Orders produced as Exhibits P1 and P4. Exhibit P1 is G.O.(P) No.615/97(138)/Fin. dated 28.06.1997 and Exhibit P4 is G.O.(P) No.399/(178)/99/Fin. dated 05.02.1999. The petitioners were all persons who were entitled to higher grade after 01.03.1992.

4. Though an option was permitted to be made by G.O.(P)No.952/95 (63)/Fin. dated 05.12.1995 by G.O.(P) No.616/96(111)/Fin. dated 03.10.1996 a clarification was

issued, which was modified by Exhibit P1. The Government, by Exhibit P1, permitted those employees and teachers who got time bound grade on or after 01.03.1992 to opt a date of choice for such higher grade and to continue in the pre-revised scales of pay till the date of option for time bound higher grade. There were some modifications made; but the same were reiterated in Exhibit P4, wherein again a re-option was permitted.

5. The issue raised herein is with respect to whether the petitioners, who made such option/re-option in accordance with Exhibits P1 and P4, were entitled to be revised pay from the date opted for higher grade or only from the date of filing of the re-option. In fact, many Government Orders had contained the stipulation that on a re-option being made, the monetary benefits would be available only from the date of filing of re-option. However, in Exhibits P1 and P4 orders, such prohibition is not there.

6. Considering the options/re-options made by the petitioners herein, the issue is no longer *res integra*, as the same was considered in the case of similarly situated

teachers in Exhibit P8 judgment in O.P.No.20280 of 2001, dated 11.03.2002. The Writ Appeal filed against the said judgment having been dismissed, the Government has brought out Exhibit P9, G.O.(P) No.206/2003/Fin. dated 05.04.2003. It is on the basis of this Government Order and the clarification brought in by G.O.(P) No.1062/2001/Fin. dated 25.09.2001 that the Government has declined the monetary benefits to the petitioners herein and directed them to refund the excess amount drawn. It was relying on the following clause in the aforesaid Government Order:

“(ii) Arrears consequent on re-option of higher grade are admissible only from the date of filing of options and adjustment can be made only against those arrears”.

7. Exhibit P9 Government Order also said so in paragraph 5:

“5. Under the circumstances, Government in compliance with the judgment, are pleased to order that the re-option exercised in pursuance of the G.O. dated 28.6.97 during the period from 28.6.1997 to 27.9.1997 and the re-option exercised in pursuance of

the G.O. dated 5.2.99 during the period from 5.2.99 to 4.5.99 by those employees whose time bound higher grade fell due/sanctioned on or after 1.3.1992 as per the scheme of time bound higher grade in Pay Revision Orders 1992 shall be accepted as valid subject to the general conditions in the circulars read as 2nd and 4th paper above, viz.;

- (i) arrears consequent on re-option shall be admissible from the date of filing of re-option only and not from the date of effect of re-option.
- (ii) the excess amount drawn consequent on re-option can be adjusted against the arrears due. Balance amount, if any, has to be refunded in lump”.

The Government Orders referred to therein are Exhibits P1 and P4.

8. The above controversy again came up for consideration in ***State of Kerala & Others v. Lissy Joseph M. [2006 (1) KLJ 566]***, in which the Division Bench clearly upheld the proposition that the date of effect of re-option is the relevant date for granting benefit subject to the restriction that if there is excess amount after adjustment, it would be refunded only with effect from the date of filing re-option.

9. Hence, the issue has to be considered in the light of the above judgment and the date of option. The 1st, 2nd and 3rd petitioners in W.P.(C).No.12002 of 2004 have filed their re-options on 29.04.1999 and 3.5.1999 as per Exhibit P4 Government Order, which is covered in the judgment. The said dates are evident from Exhibit P10. Exhibit P12 shows that the 4th and 5th petitioners in the said writ petition had filed the option on 26.04.1999, again as per Exhibit P4 Government Order. The 6th and 7th petitioners, on a reading of Exhibit P13, have filed the re-option on 25.09.1997 as per Exhibit P1 Government Order. So also the petitioner in W.P.(C).No.27965 of 2003 has the option on 25.03.1993, which is evident from the objection at Exhibit P5 produced in the said writ petition, which again is covered by the judgment. Therefore, the petitioners the above writ petitions are entitled to the very same relief granted in W.P.(C).No.20280 of 2011.

In the result, both the writ petitions are allowed. Exhibits P9, P10, P12 and P13 orders in W.P.(C).No.12002 of 2004 and Exhibit P5 in W.P.(C).No.27965 of 2003 are set aside. There shall be no refund effected from the petitioners if

the amounts have already been paid and if not, they shall be entitled to it, within three months from the date of application on that count. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]