

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WA.No. 2275 of 2015 ()

AGAINST THE JUDGMENT IN WP(C).NO. 27706/2011 DATED 10-07-2015

APPELLANT/3RD PETITIONER :

**KERALA ADVOCATE'S CLERKS WELFARE FUND COMMITTEE
T C NO 26/580(1), SERA 24, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY- 695001**

**BY SENIOR ADVOCATE SRI.T.A.SHAJI
BY ADV. SRI.M.A.ASIF**

RESPONDENTS/PETITIONER & 2ND RESPONDENT IN THE WP(C) :

**1. T. RAGHAVAN NAMBIAR
S/O.KANNAN NAMBIAR, MULLAPPALLY KOKKUNNATH HOUSE
PAPPINISSERY, NEAR PUTHIYAKAV, PAPPINISSERY WEST P.O.,
KANNUR DISTRICT.**

**2. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT ,
DEPARTMENT OF LAW, SECRETARIAT,
THIRUVANANTHAPURAM – 695 001.**

**R1 BY ADV. SRI.M.SASINDRAN
R2 BY SR. GOVT. PLEADER SRI. C.R. SYAMKUMAR**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J

W.A. No. 2275 of 2015

Dated this the 7th day of December, 2015

JUDGMENT

Ashok Bhushan, CJ.

This writ appeal has been filed by Kerala Advocates' Clerks Welfare Fund Committee, which was the first respondent in Writ petition No.27706 of 2011. The writ petition has been allowed by the learned Single Judge by judgment dated 10.7.2015. Aggrieved by the said judgment, the appellant has come up in appeal.

2. We heard Sri. T.A. Shaji, learned Senior Counsel appearing for the appellant, learned Government Pleader and the learned counsel for the writ petitioner.

3. Petitioner, the retired Advocate Clerk had filed the writ petition praying for the following reliefs :

- "i) issue a writ of certiorari or any other writ order to quash Ext .P6.
- ii) To declare that the amendment to Rule 11 of the Rules incorporating Rule 11 (A) as per G.O. dated 11.4.2011 is invalid, in so far as it prescribes 8 years of membership even to those who were in service prior to the introduction of the welfare fund;
- iii) To declare that the restriction imposed for becoming

eligible to get benefit under Rule 11 A that is completion of eight years membership in the Board is not applicable to the petitioner who retired before coming into the force of the said Rule;

- iv) to command the first respondent to grant monthly pension to the petitioner with effect from the date retirement."

4. Petitioner's case in the writ petition was that the State Government in exercise of power under section 25 of the Kerala Advocate Clerks Welfare Act, 2003 framed the rules, namely, Kerala Advocates' Clerks Welfare (Amendment) Rule 2011. In the earlier Rules, there was no prescription of the amount of pension which an Advocate Clerk may be entitled. For the first time Rule 11(A) was inserted by the aforesaid amendment dated 11.4.2011. Rule 11(A) of Kerala Advocates' Clerks Welfare (Amendment) Rule 2011 reads as follows :

"11A. Disbursement of Pension and family pension - (1) Any Advocate Clerk who has completed the age of sixty on 10th April 2012 and who has completed 8 years membership in the Advocate Clerks Welfare Fund may submit application in Form No.XII with an affidavit for discontinuing the service to the committee along with recommendation of the concerned Advocate Clerks Association.

(2) Any Advocate who has completed membership of eight years shall be sanctioned with monthly pension at the rate of rupees five hundred and entitled to increment at the rate of Rs.ten for each subsequent year to the maximum limit of Rs. six hundred. " *(English translation from Exhibit .P5)*

5. The writ petitioner, who had worked as an Advocate Clerk for a period of about 28 years retired on 26.5.2010 ie.,

before the amendment came into force. The learned Single Judge, after referring to the provisions of the Act, held that the Act provides for payment of consolidated amounts of pension, the computation of which was held to be prescribed by the Government. Although Government has prescribed the said amount by amendment of Rules, there is no indication as to what is the prescribed amount for pension of those who retired from service prior to 10.4.2012. Learned Single Judge thereafter issued direction to the State Government to take a decision to prescribe the pension payable to all the persons who have been enrolled under the provisions of the Act. The following observations were made by the learned Single Judge in paragraphs 9 and 10:

“9. In such circumstance, there shall be a direction to the Government to take expeditious steps to prescribe the pension payable to all persons who have been enrolled under the Fund as per the provisions of the Act. But, however, the rate of pension would be left to the discretion of the Government. In the circumstance of the fact that the petitioner is a senior citizen it is only proper that some interim arrangement be made for the petitioner to avail of such benefits in his lifetime itself.

10. It is directed that the petitioner shall be paid the entire arrears computing the pension at the rate of Rs.250/- since the petitioner had, at the time of retirement, completed five years and five months of enrollment in the Welfare Fund. The Fund shall also be entitled to deduct the excess contribution as amended later on, by the Rules, from the amount so disbursed. The

pension, at the rate of Rs.250/-, shall be continued to be paid to the petitioner in the future months also, subject, however, to the decision of the Government.”

6. Learned counsel for the appellant, challenging the judgment contends that the writ petitioner had not completed eight years as member of the Fund. Hence he was not eligible for grant of pension as per Rule 11A (2). He submits that the learned Single Judge ought not to have issued any interim direction for payment till any rates are prescribed by the Government.

7. We have considered the submission of learned counsel for the parties and perused the records. It is also on record that the writ petitioner was a member of the Fund for a period of five years and five months, which period has already been noted by the Single Judge in his judgment. The petitioner had not completed eight years as member of the Fund.

8. Now coming to the direction issued by learned Single Judge for interim payment to the writ petitioner, the direction is only for meager payment of Rs.250/- per month, which is half of Rs.500/-, which has now been prescribed as pension under Amendment Rules, 2011. When the Government has already been directed to consider and take a decision as directed in

paragraph 9 of the judgment, the direction of payment can be said to be in contemplation of the said decision. In view of the fact that the amount directed is so meager, we are of the view that the said direction need no interference by us in exercise of our appellate jurisdiction. Government having already been directed to take a decision, any such interim payment directed shall be subject to the final decision taken by the State Government. The State Government may take appropriate decision as directed by the learned Single Judge, within a period of four months from the date of production of a copy of this judgment.

Subject to the above, this writ petition is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE,
JUDGE