

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 10579 of 2006 (H)

PETITIONER(S):

**C.G.PRABHAKARAN, 'SOWPARNIKA',
T. 76/1054, B.S.R.A.K.22, PETTAH P.O.
THIRUVANANTHAPURAM 24.**

BY ADV. SMT.P.KRADHIKA

RESPONDENT(S):

- 1. UNIVERSITY OF CALICUT,
REPRESENTED BY ITS REGISTRAR, CALICUT UNIVERSITY
P.O. CALICUT.**
- 2. THE VICE CHANCELLOR,
CALICUT UNIVERSITY, CALICUT UNIVERSITY P.O., CALICUT.**

R1,2 BY ADV. SRI.SANTHOSH MATHEW, SC, CALICUT UNIVERSITY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. COPY OF THE ORDER DTD.19.6.1985.
- P2. COPY OF THE ORDER DTD.13.11.1987.
- P3. COPY OF THE ORDER DTD.22.6.1990
- P4. COPY OF THE EXTRACT OF THE MINUTES OF THE SYNDICATE MEETING HELD ON 20.12.1991.
- P5. COPY OF THE ORDER DTD.24.3.1992.
- P6. COPY OF THE UNIVERSITY ORDER DTD.20.5.1992.
- P7. COPY OF THE LETTER DATED 29.3.2003.
- P8. COPY OF THE ORDER DTD.29.7.2004.
- P9. COPY OF THE REPRESENTATION OF THE PETITIONER TO R2 DTD.5.10.2005.
- P10. COPY OF THE ORDER DTD.2.3.2006.

RESPONDENT(S)' EXHIBITS:

NIL.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).No. 10579 of 2006

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Dated this the 10th day of April, 2015

J U D G M E N T

The petitioner entered service of the respondent University as Peon on 26.11.1969 and he was promoted as Library Assistant on 14.10.1974 and was sanctioned his first higher grade with effect from 10.10.1984. He was permitted to change the category as Clerical Assistant and he was also permitted to draw the pay he was drawing in the cadre of Library Assistant, in the cadre of Clerical Assistant. He was granted second higher grade on completion of 15 years of combined service in the cadre of Library Assistant and Clerical Assistant with effect from 14.10.1989. He was promoted as Assistant Grade II on 22.6.1990 and as Assistant Grade I on 20.8.1993 and then promoted as Senior Grade Assistant with effect from 21.5.1998 and he retired on superannuation on 31.3.2003 from the service of the respondent Calicut University.

2. The audit agency concerned, viz., the Deputy Director of Local Fund Audit attached to the Calicut University, as per letter

dated 20.4.2003 observed that since the Government agreed to only time bound higher grade sanctioned to employees prior to 1.3.1992, the higher grade on completion of 15 years of service sanctioned to the incumbent with effect from 14.10.1989 vide the University order dated 24.3.1992 is not acceptable as the sanction by the University in that regard was issued after the cut of date of 1.3.1992. The scale of pay of Rs.1220-2150 sanctioned as per University order dated 20.8.1992 was also stated to be not acceptable to the audit agency as the scale of pay of Assistant Grade II is Rs.1200-2040. That the pay of the incumbent on promotion in the cadre of Assistant Grade II is fixed at the maximum of the pay scale of Rs.865-1450 (1988 pay revision). Accordingly, it was instructed by the audit officer concerned that the excess amount drawn by the petitioner consequent on sanctioning of higher grade with effect from 14.10.1989 and fixation of pay scale in ineligible scale of pay in the cadre of Assistant Grade II, Assistant Grade I and Senior Grade Assistant may be worked out and recovered under intimation to the audit wing. It is stated that the Secretary to Government in the Higher Education Department had intimated that the Government agrees with time bound higher grade sanctioned to

employees prior to 1.3.1992. It is in this context, based on Ext.P-7 proceedings dated 29.3.2003 that the Deputy Director of Local Fund Audit attached to the Calicut University has made the following remarks in Ext.P-7, which read thus:

- “1) Since the Government agree only the Time Bound Higher Grade sanctioned to the employees prior to 1.3.1992, the higher grade on completion of 15 years of service sanctioned to the incumbent with effect from 14.10.1989 vide No.Ad.A1/8208/84/24.3.92 is not accepted as the sanction was after 1.3.92.
- 2) The Scale of pay of Rs.1220-2150 sanctioned vide U.O. No.Ad.A1/8202/84 dated 20.5.92 also not accepted as the scale of pay of Asst.Gr.II is 1200-2040. The pay of the incumbent on promotion in the cadre of Asst. Gr.II is fixed at the maximum of the pay scale Rs.865-1450 (Pay scale of Gr.II Asst. in 88 pay revision).
- 3) The excess amount drawn by the incumbent consequent on the sanctioning of higher grade with effect from 14.10.1989 and the fixation of pay scale in ineligible pay scale in the cadre of second grade, first grade and senior grade Assistants may be recovered.
- 4) Page No.25 of the pension book may be filled up and N.L.C. may be obtained before effecting the payment of pensionary benefits.”

3. In pursuance of Ext.P-7 observations of the Deputy Director of Local Fund Audit, the respondent Calicut University issued the impugned Ext.P-8 proceedings dated 29.7.2004, revising the pay of the petitioner with retrospective effect from 1.3.1992, in a manner which affected him adversely. According to the petitioner, the said impugned revision carried out on the basis of the impugned Ext.P-8 resulted in reduction of one increment and

substantial reduction in pensionary benefits and further an amount of Rs.24,231/- said to be the excess pay paid to the petitioner during the period from March 1992 to March 2003 has also been recovered from the DCRG. It is clear from a reading of Ext.P-8 that an amount of Rs.24,231/- has also been recovered from the DCRG of the petitioner. Essentially the prayer of the petitioner is to quash the impugned Ext.P-8 proceedings dated 29.7.2004 to the extent it adversely affected him. The petitioner had also submitted Ext.P-9 petition before the respondent University, praying that the impugned objections may be overruled and to revise the pensionary benefits of the petitioner taking into account his last pay as Rs.7,850/- sanctioned as per University order No.Ad.C4/968/2001 dated 2.1.2003 and also to refund Rs. 24,231/- recovered from his DCRG.

4. The respondent University has filed a statement in July 2006 as well as counter affidavit dated 26.10.2010 in the Writ Petition.

5. It is stated in paragraph 6 of the said counter affidavit that on the basis of the norms that prevailed in the respondent University in sanctioning time bound higher grade prior to 1.3.1992,

the Class II and Class IV employees were sanctioned higher scales in shorter span of time that existed in Government departments at that time. Later at the time of the implementation of 1992 pay equalisation, the Syndicate on 23.7.1994 and 31.8.1994 had resolved that the case of those employees who were granted time bound higher grade on the basis of the norms prevailing in the University prior to 1.3.1992 need not be re-opened. Later on the basis of the request made to the Government by the University to ratify the action taken by the Syndicate with regard to the higher grades so as to ward off hardships experienced by the retiring employees of the University by counting the benefits sanctioned upto 1.3.1992 for pensionary benefits, the Government after considering the matter in detail, decided to agree the higher scale sanctioned to the employees prior to 1.3.1992. It is clearly stated in the counter affidavit that according to this decision, the State Government had agreed to the higher grades sanctioned prior to 1.3.1992 and this is in all respects, ie., in respect of the period and scale. It is further stated in paragraph 7 of the said counter affidavit that in the case of the writ petitioner, his second higher grade in the cadre of Assistants as per the norms prevailed in the University was

actually due with effect from 14.10.1989 and that it is due to the administrative delay in the office that caused the issuing of the order on 24.3.1992. The date of issuing of an administrative order is not a deciding factor and that this was intimated to the Directorate, Deputy Director of Local Fund Audit, attached to the Calicut University.

6. Heard Smt.P.K.Radhika, the learned counsel appearing for the petitioner and the learned Standing Counsel for the respondent University.

7. Though the petitioner made Ext.P-9 representation, the Syndicate noted that since Ext.P-7 objection is by the statutory audit agency, the same cannot be overruled by the University authorities and that therefore the request of the petitioner could not be allowed by the University and this led to the issuance of Ext.P-10 refusing the request in Ext.P-9 representation and thus upholding the adverse decision in the impugned Ext.P-8.

8. The stand taken by the University in the statement filed in July 2006 is also identical to the one raised in their counter affidavit dated 26.10.2006. From a reading of paragraphs 6 and 7 of the counter affidavit it is clear like the day light that in the case of

the petitioner, his higher grade in the cadre of Assistants as per the norms prevailed in the University was actually due with effect from 14.10.1989 and that it could be granted by an order on 24.3.1992 only due to administrative delay in the office and that the date of issuance of an administrative order is not a deciding factor. Therefore, though the order sanctioning benefit to the petitioner was issued on 24.3.1992, the said benefit was due to the petitioner before the cut of date of 1.9.1992 and merely because the beneficial order was issued on 24.3.1992, which is after the cut of date of 1.3.1992, cannot in any way adversely affect the pay benefits already settled in favour of the petitioner long ago. Therefore, substratum of the audit objection in the impugned Ext.P-7 is without any substance. The University has virtually conceded in paragraphs 6 and 7 of their counter affidavit that the benefits due to the petitioner ought not to have been taken away merely because the order was issued to him on 24.3.1992 after the cut of date of 1.3.1992 and that the second grade in the cadre of Assistant as per the norms that prevailed in the University was actually due to him with effect from 14.10.1989. Merely because the statutory audit agency raises certain objections against the pay fixation or other

allied service benefits granted to the incumbents, it is not as if an employer like the respondent Calicut University, which is statutorily established by an enactment of the State Legislature, is totally helpless and that it is mechanically bound to comply with such directive of the audit agency, irrespective as to the merits of the same. That the audit objection like the one in Ext.P-7 can be a relevant piece of material for the respondent University and it is for them to independently apply their mind and decide as to whether the objections are sustainable. Any proceedings on the basis on such audit objection can be finalised only by giving a show cause notice to the incumbent concerned, in which he/she is told in clear terms about the contents of such audit objections, so that he/she is enabled to fully rebut the basis of such audit objections and convince the employer concerned about untenability of such objections, etc. In the instant case, it is not disputed that the respondent University had never given any show cause notice or memo to the petitioner before passing the impugned Ext.P-8 order. Therefore, both from the point of view of merits of the matter as well as from the point of view of violation of principles of nature justice, the petitioner has to succeed.

9. There is yet another important dimension that emerges in the facts and circumstances of this case. The petitioner was an employee of the respondent University, who retired from service as early as on 31.3.2003. The provisions of Part III of Kerala Service Rules are statutorily applicable to the respondent University in the matter of grant of pensionary benefits to their employees. Note 3 to Rule 3 Part III KSR statutorily mandates that the liability, if any, against DCRG should be finalised with due notice to the pensioner within an outer time limit of three years from the date of retirement. The said outer time limit of three years from the date of retirement has expired as early as on 31.3.2006. So even if Ext.P-8 is quashed, liability fixation with due notice to the pensioner and recovery from the DCRG could be done only within the permissible time limit of three years from the date of retirement. The past pay benefits finalised in March 1992 and consequential other pensionary benefits based on the last pay so fixed, etc. cannot be disturbed after a reasonable period. Therefore, it is not permissible to remit the matter back to the University for fresh consideration, as they are barred from recovering any such service benefits including DCRG due to the petitioner at this distance of time. They should have done

only within a reasonable period. In this view of the matter, the impugned Ext.P-8 to the extent it adversely affects the petitioner is quashed. Though there is a prayer to quash the impugned Ext.P-7 audit objections, it is not necessary to grant this prayer, as Ext.P-7 is only an audit objection and the order as per Ext.P-8 that is passed by the employer on the basis of that audit objection is the impugned order, on which the incumbent can be said to be aggrieved of. The amount of Rs.24,321/- recovered from the DCRG of the petitioner shall be disbursed to the petitioner within a period of two months from the date of production of the certified copy of this judgment. The petitioner has prayed in Ext.P-9 representation that after cancelling of Ext.P-8, the University is bound to revise the pensionary/terminal benefits by taking into account his last pay as Rs.7,850/- sanctioned as per University's order No.Ad.C4/968/2001 dated 2.1.2003 and grant all consequential benefits arising therefrom including the pay benefits and revised pensionary benefits, as the case may be. The details in this regard shall be considered by the respondent University and all consequential benefits that flow from the quashment of the impugned Ext.P-8 as stated above, shall be worked out and disbursed to the petitioner

within a period of four months from the date of production of the certified copy of this judgment.

The Writ Petition (Civil) stands finally disposed of, with the above said observations and directions.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge