

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.P.RAY

MONDAY, THE 29TH DAY OF JULY 2013/7TH SRAVANA, 1935

WP(C).No. 5634 of 2008 (U)

PETITIONER(S):

**K.K.GAUTHAMY, D/O. KRISHNAN,
KURUVATH HOUSE, MANALUR VILLAGE, THRISSUR DIST.
(ASST. COMPTROLLER (DD/A), RETD.**

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT(S):

- 1. THE KERALA AGRICULTURAL UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, VELLANIKKARA, THRISSUR DIST.**
- 2. THE COMPTROLLER,
KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA,
THRISSUR DIST.**

**R1 & R2 BY ADV. SRI.RENJITH THAMPAN,SC,KERALA AGRL.UTY
SRI.BABU JOSEPH KURUVATHAZHA, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-07-2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

J U D G M E N T

None appears. Dismissed.

29/07/2013

SD/- B.P.RAY, JUDGE

/True Copy/

P.S.to Judge

Kss

K.SURENDRA MOHAN, J.

W.P.(C) No.5634 of 2008

Dated this the 12th day of February, 2015

J U D G M E N T

The petitioner retired from the service of the 1st respondent University on 31.01.2006 from the post of Assistant Comptroller (DD & A). Her pension has been fixed at ₹4,963/- per month with effect from 01.02.2006. Her Death Cum Retirement Gratuity ('DCRG' for short) as well as Commuted Value of Pension have been fixed on the above basis, as per Ext.P1 order. According to the petitioner, the fixation of her pension is wrong for, her salary has been reduced while fixing the pension. In other words, it is complained that her pension has not been fixed on the basis of her last drawn salary. The petitioner therefore submitted Ext.P2 representation for rectification of the mistake. Since there was no action on Ext.P2, she approached this Court by filing W.P.(C).No.26465/2006. The said writ petition was disposed of by Ext.P3 judgment directing the petitioner's representation to be considered. However, the representation was not considered. Therefore, the petitioner initiated action in contempt against the respondents. Ext.P4 is the judgment in the contempt case. The same was closed recording the submission that, a decision had been taken in the matter. Since no decision was taken even thereafter, the petitioner submitted Ext.P5, a further representation. Thereafter, on 28.12.2007 as per Ext.P6 proceedings, the

representation of the petitioner has been rejected. This writ petition is filed challenging Ext.P6.

2. According to Adv.Sri.M.K.Dileep Kumar who appears for the petitioner, the petitioner had joined service as an Assistant. Thereafter, she was granted successive promotions up to the post of Assistant Comptroller. According to the counsel, there were a number of cases pending before this Court relating to the service of Assistants under the 1st respondent. The issue arose for the reason that, initially no test qualification had been prescribed for promotion to higher posts under the 1st respondent. Later on, test qualification was insisted as in other Universities. However, the question arose as to whether the persons who were promoted should be reverted and whether the salary drawn by them in the higher post should be recovered. The question was considered by the Executive Committee of the 1st respondent and by Ext.P7, it was decided that the pay drawn by the employees in the higher post should be protected. Therefore, no recoveries were effected, even though, some of the employees were reverted. According to the petitioner, she was never reverted. On the basis of Ext.P7, according to the petitioner her seniority was re-fixed after reviewing the promotions already granted. Later on, she was promoted to the post of Assistant Comptroller as per Ext.P8 dated 24.05.2004. Pursuant to Ext.P8 she continued in the said post until her retirement drawing the salary that was due to her in the said post. Her

last drawn salary is evident from Ext.P9 salary slip. Her contention is therefore that, her pension should be fixed on the basis of Ext.P9.

3. A counter affidavit has been filed on behalf of the respondents. According to the counter affidavit, the University had published an integrated seniority list of ministerial staff as per order dated 05.05.1984. The said order was the subject matter of challenge before this Court in a number of writ petitions. The issue was finally decided in favour of the University by a Division Bench of this Court in Writ Appeal. Though the employees had challenged the Division Bench decision before the Honourable Supreme Court, they could not succeed. Thereafter, the University issued an order dated 19.09.1996 re-fixing the pay of all concerned including retired hands based on a seniority list published by order dated 05.05.1984. Later on, at its 356th meeting held on 15.12.2000, the Executive Committee of the 1st respondent decided to modify the earlier decision. It was accordingly decided that the pay and allowances already drawn for officiating in the promoted post by those incumbents whose promotions were postponed but not reverted be protected. On the basis of the above decision, the subsequent writ petitions that were filed before this Court were closed. Later on, the said decision was clarified by the meeting of the 443rd meeting of the Executive Committee held on 23.08.2007. It was accordingly decided to protect the pay as such without re-fixing the pay and thereby allowing the employees, whose dates of

promotion were postponed, to draw the pay as fixed prior to the review of promotion or only to protect the pay and allowances already drawn but to re-fix the pay with prospective drop in emoluments. According to the respondents, in the case of the petitioner, the pensionary benefits have been computed in accordance with the above decision. However, there was no change in her DCRG, which was paid in full. Therefore, it is contended that the petitioner has got substantial relief and no further relief could be claimed. A reply affidavit has been filed by the petitioner pointing out that as per Ext.P7 order, the petitioner's pay had been re-fixed and finally determined. Thereafter, she was promoted to the post of Assistant Comptroller as per Ext.P8. Till her retirement, she continued in the said post. It is therefore contended that, there is absolutely no justification for reducing her pension by reducing her salary after retirement.

4. Heard. The learned counsel for the petitioner has placed reliance on the judgment of a learned Single Bench of this Court dated 12.02.2013 in W.P.(C).No.12209/2008. In the said case, while considering the claims of two persons who had retired from the service of the 1st respondent in identical circumstances, this Court has directed the pension to be fixed on the basis of the last drawn pay. The said order has been granted taking note of the fact that the pay was protected as per Ext.P7 order dated 22.01.2001, which was Ext.P13 in the said proceedings. In view of the above, I do not find any reason to

deny the same relief to the petitioner herein.

5. In the present case, the petitioner was never reverted from her post. It is not in dispute that, Ext.P7 which is dated 22.01.2001 had been implemented in accordance with the said proceedings, a revised seniority list was prepared and consequential orders were passed. It was long thereafter that the petitioner is seen to have been promoted as per Ext.P8 on 24.05.2004. She worked in the said post until her retirement on 31.01.2006. She was drawing her salary in accordance with Ext.P9 salary slip. There is no justification for not issuing her pension in accordance with her last drawn salary.

In view of the above, this writ petition is allowed. The respondents are directed to fix the pension of the petitioner in accordance with her last drawn salary. Her pension shall be worked out afresh on the above basis. Arrears would be computed and paid to the petitioner as expeditiously as possible and at any rate within a period of two months of the date of production of a copy of this judgment by the petitioner. The petitioner claims interest on the delayed payment. The question is left open to be agitated in appropriate proceedings.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV