IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 12443 of 2005 (F)

PETITIONER(S):

K.M.JOSEPH,
S/O. MATHAI, AGED 52 YEARS
H.S.A. (MALAYALAM) G.K.M.HIGH SCHOOL, KANIYARAM
RESIDING AT KAKKATTIL HOUSE, KANIYARAM POST
MANANTHAVADI, WAYANAD DISTRICT.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M
SRI.N.A.SHAFEEK

RESPONDENT(S):

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF EDUCATION,
OFFICE OF THE DIRECTOR OF EDUCATION
THIRUVANANTHAPURAM.

3. THE ACCOUNTANT GENERAL (AUDIT),
THIRUVANANTHAPURAM.

4. THE DISTRICT EDUCATIONAL OFFICER,
WAYANAD.

5. THE HEAD MASTER, G.K.M. HIGH SCHOOL,
KANIYARAM, WAYANAD DISTRICT.

R,R1 & R4 BY ADV. GOVERNMENT PLEADER SRI. T.R. RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 12443 of 2005 (F)

APPENDIX

<u>PETITIONERS EXHIBITS</u>

EXT.P1 COPY OF G.O(P0 NO.615/9138/97/FIN DTD. 28.6.97.

EXT.P2 COPY OF THE CHALLAN NO.1774 EVIDENCING THE REMITTANCE OF EXCESS AMOUNT BY THE PETITIONER.

EXT.P3 COPY OF THE COMMUNICATION DATED 28.9.02 SENT BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT.

EXT.P4 COPY OF THE REPRESENTATION DATED 21.4.03 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT .

EXT.P5 COPY OF THE LETTER DTD.29.11.04 OF THE 4TH RESPONDENT TO THE 5TH RESPONDENT.

<u>RESPONDENTS EXHIBITS:</u> NIL

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.12443 of 2005 - F

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Dated this the 15th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the payment of arrears to the petitioner as per Ext.P1 re-option has been directed to be refunded and the consequential increments and pay fixation having not been made, due to the pendency of the above writ petition. The petitioner, admittedly, is now retired. The entire controversy revolves around Ext.P1 and the date of effect of re-option as per the said order.

2. The petitioner was appointed as HSA (Malayalam) in the 5th respondent in July, 1992 and was granted higher Grade on 01.07.1993. By Ext.P1 G.O. of the year 1997, the Government employees and teachers, who got time bound higher grade on or after 01.03.1992, were permitted to re-opt for the time bound higher grade, on the date of their choice and to continue in the

pre-revised scale, till the date of option. The petitioner made a re-option and also paid the excess pay drawn in the pre-revised scale, which is evidenced at Ext.P2. The petitioner was fixed in accordance with the re-option and was granted the arrears of pay due as per the re-option, which came to Rs.9,310/-.

3. An objection was raised on audit, on the basis of the date of effect of re-option and the nature of the objection is reflected in paragraph 4 of the Counter affidavit of the State, which reads as under:-

> "4. Audit observation is that monetary benefit of re-fixation of pay consequent on re-option exercised by the petitioner as per GO(P). 615/(188)Fin. dated 28.06.1994 is admissible with effect from 28.06.1997 Government have emphasized in Government Circular No.43/97/ Fin dated 23.05.1997 that arrears of pay on account of re-option of pay revision will be payable only from the date of filing of re-option and not from the date of effect of re-option. In paragraph 4(11) of G.O.(P)1062/01/Fin dated 25.09.2001 Government have clarified that arrears consequent on re-option of higher grade are admissible only from the date of filing of option and adjustment can be made only against these arrears. In GO(P). 206/03/Fin dated 05.04.2003 Government have reiterated that arrears due to re-option as per dated 28.06.1997 was admissible with effect from date of filing of re-option only."

4. The essential contention raised in the Counter Affidavit is that the arrears of pay on account of the re-option will be payable only from the date of filing of the re-option and not from the date of effect of the re-option.

5. The Government in its Counter Affidavit, have relied on a number of Government Orders to contend that the arrears of pay on account of the re-option would be only from the date of filing of the re-option and not from the date of effect of the re-option.

6. The specific wording in Ext.P1 is as under:

> "3. The excess salary drawn consequent on fixation of pay in the revised scale of the lower post or time bound higher grade on the basis of option already exercised will be adjusted against the arrears due to revised option and the balance, if any, will be refunded in lump. The State Government employees and teachers desirous of exercising option/re-option based on this order will be permitted to do so within a period of three months from the date of orders."

In such circumstances, the option having been exercised as per Ext.P1, the objection of the Government cannot be sustained and no refund can be made from the petitioner, is the contention.

7. This Court is unable to countenance such argument. On a reading of Circular No.43/97/Fin. dated 23.05.1997, which specifically emphasised the Government's view that arrears of pay on account of re-option to pay revisions will be payable only from the date of filing of the re-option and not from the date of effect of re-option. The said Government Order was prior to Ext.P1 Government Order. The said principle is reiterated in Ext.P1 Government Order, as extracted hereunder:-

> 01.03.92 çÈÞ çÖ×çÎÞ ÜÍßºî æd·ÏíÁí ædÉÞçÎÞ×Èí ùà ³Éí×X ¥ÈáÕÆßºî.åÄßøßºî¿ÏíAÈáU Äáµ ¯øßÏV ÄáµÏáÎÞÏß ¥Áí¼Øíxí æºÏîÞ¢.åùà ³Éí×X ÄàÏÄß ÎáÄW ¯øßÏV ÜÍßAáKÄÞÃí.å³Éí×X ®¿áAÈáU µÜÕÇß 27.09.97 Õæø ÎÞdÄ¢.

8. The learned Counsel would contend that the revision will be payable from the date specified in the re-option and not from the filing of the re-option. However, the above extract indicates that on re-option being made the effective date for arrears would be the 're-option date'. Re-option date is the date on which the re-option is filed and not the effective date made on re-option. The original

Government Order of 2003 permitted Government employees to opt time bound higher grade, cancelling the option already exercised. A benefit of re-option was permitted as per Ext.P1 and the date of re-option is the date on which it is filed and not the date opted by virtue of the benefit of re-option. In such circumstance, the petitioner's contentions cannot be upheld.

9. However, it is submitted that the petitioner's subsequent increments have not been granted due to the pending litigation. In such circumstance, the petitioner's pay shall be fixed and the arrears and retirement dues also fixed and paid but however after deducting the amounts directed to be refunded, in accordance with the directions herein above.

The writ petition would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

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P.A to Judge.