

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).NO. 6790 OF 2009 (S)

OA 768/2007 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

PETITIONER(S):

- 1. THE SECRETARY,
INDIAN COUNCIL OF AGRICULTURAL RESEARCH,
KRISHI BHAVAN, NEW DELHI.**
- 2. THE DIRECTOR,
CENTRAL MARINE FISHERIES RESEARCH INSTITUTE
P.B.NO.1603, ERNAKULAM NORTH P.O., KOCHI-18.**

BY ADV. SRI.P.SANTHOSH KUMAR, SC, ICAR

RESPONDENT(S):

**K.M.JOSEPH, RETIRED UPPER DIVISION CLERK
CMFRI, KOCHUPURAKKAL HOUSE, KADAKKARA PALLI
POST CHERTHALA, ALAPPUZHA.**

BY ADV.SRI.P.V.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 6790 OF 2009 (S)

APPENDIX

PETITIONERS' EXHIBITS:

- P1: TRUE COPY OF O.M. DATED 19-11-97 OF DIRECTOR TO THE GOVT. OF INDIA-
APPLICABILITY OF RE-EMPLOYED PERSONS IN GOVT. SERVICE.**
- P2: TRUE COPY OF O.A.768/07 AND ITS ANNEXURES**
- P3: TRUE COPY OF THE REPLY FILED BY THE PETITIONERS AGAINST THE O.A.**
- P4: TRUE COPY OF JUDGMENT IN O.A.768/07 OF THE CENTRAL ADMINISTRATIVE
TRIBUNAL**

RESPONDENT'S EXHIBITS: NIL

OKB

TRUE COPY

P.A. TO JUDGE

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

W.P.(C) No.6790 of 2009

Dated this the 4th day of February, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard.

2. In this writ petition filed under Article 227 of the Constitution by ICAR, the issue is as to whether O.M. dated 19/11/1997 as was put against the employee would stand. The learned Tribunal has succinctly dealt with the said O.M. dated 19/11/1997 and O.M. dated 11/9/1987. The Tribunal noted that both O.Ms are almost same. The only difference between the two is that O.M. dated 19/11/1997 was one issued after the 4th Pay Commission had submitted its report, while O.M. dated 11/9/1987 was issued after the 5th Pay Commission had submitted its report. It was noted that in **Union of India v. G. Vasudevan Pillai [1995 (2) SCC 32]**, the Apex Court had held that the O.M. dated 11/9/1987 was arbitrary and hit by Articles 14 and 16 of the Constitution and the same was declared as void. It was also noted that for implementation of the directions in **G.Vasudevan Pillai's**

case (supra), DOP&T had themselves issued O.M. dated 14/10/1997 and decided not to deduct the enhanced pension while fixing the pay of ex-servicemen. The Tribunal, therefore, took the view that the O.M. dated 19/11/1997 ought not to have, therefore, been issued. That position notwithstanding, it was also noted that following **Vasudevan Pillai**'s case (supra), the Principal Bench of the Tribunal had also decided O.A. 1514 of 2002 holding that there was no justification or reasonableness in the O.M. dated 19/11/1997 insofar as it directs to deduct the enhanced pension from the re-employed ex-servicemen. We see no legal infirmity or jurisdictional error in the said reasoning process of the Tribunal resulting in the grant of relief to the employee, who is a re-employed pensioner. The impugned order of the Tribunal does not warrant interference under Article 227 of the Constitution.

In the result, this writ petition is dismissed.

Sd/-

THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-

K.HARILAL, JUDGE

okb.