IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 6625 of 2013 (C)

PETITIONER:

PROF. K.K. GEORGE (DR.)
KOLANJIYIL HOUSE, AISWARYA LANE, THOTTAKATTUKARA P.O
ALUVA - 683 108, RETIRED AS PROFESSOR AND DIRECTOR
SCHOOL OF MANAGEMENT STUDIES
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY.

BY ADVS.SMT.M.R.SREELATHA
SRI.K.P.SUDHEER

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY
KOCHI - 682 022, REPRESENTED BY ITS REGISTRAR.

3. VICE CHANCELLOR,
COCHIN UNIVERSTIY OF SCIENCE AND TECHNOLOGY
KOCHI - 682 022.

4. FINANCE OFFICER,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY
KOCHI - 682 022.

5. DEPUTY DIRECTOR,
LOCAL FUND AUDIT,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
KOCHI - 682 022.

R2-R5 BY ADV. SRI.V.A.MUHAMMED
R5 BY ADV. GOVERNMENT PLEADER SRI NOUSHAD THOTTATHIL
R BY SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6625 of 2013 ©

APPENDIX

PETITIONER’S EXHIBITS

EXT.P1: TRUE COPY OF NOTIFICATION ISSUED BY THE 2ND RESPONDENT UNIVERSITY REGARDING THE APPOINTMENT OF READER (BANK MANAGEMENT).

EXT.P2: TRUE COPY OF ORDER NO.AD. Dl/250/(1)/78 DATED 8.9.2000 ISSUED BY THE 2ND RESPONDENT.

EXT.P3: TRUE EXTRACT OF THE STATE BANK OF INDIA ACT ENACTED BY THE PARLIAMENT.

EXT.P4: TRUE EXTRACT OF MINUTES OF THE 427TH MEETING OF THE SYNDICATE OF 2ND RESPONDENT UNIVERSITY HELD ON 19.08.2000.

EXT.P5: TRUE COPY OF ORDER NO.Ad.D2.244(22) 76 DATED 8.5.1991 ISSUED BY THE 2ND RESPONDENT UNIVERSITY.

EXT.P6: TRUE COPY OF REPLY NO.IA & I/CAR/2008/Vol.II DATED 25.11.2008 ISSUED BY REGISTRAR OF 2ND RESPONDENT UNIVERSITY.

EXT.P7: TRUE COPY OF REPRESENTATION DATED 11.5.12 SUBMITTED BY THE PETITIONER BEFORE THE REGISTRAR OF THE 2ND RESPONDENT UNIVERSITY.

EXT.P8: TRUE COPY OF REPRESENTATION DATED 4.9.12 SUBMITTED BY THE PETITIONER BEFORE THE REGISTRAR OF THE 2ND RESPONDENT UNIVERSITY.

EXT.P9: TRUE COPY OF JUDGMENT DATED 2.7.2008 IN WP(C) NO.30649/2007 PASSED BY THIS HON’BLE COURT.

EXT.P10: TRUE COPY OF JUDGMENT DT.1.2.07 IN WP(C) NO.5908/2005 PASSED BY THIS HON’BLE COURT.

EXT.P11: TRUE COPY OF G.O(p) NO.369/87/Fin DATED 31.3.1987 ISSUED BY GOVERNMENT OF KERALA, FINANCE (PENSION-B) DEPARTMENT.

EXT.P12: TRUE COPY OF G.O.(P) NO.383/89/Fin. DATED 29.8.1989 ISSUED BY GOVERNMENT OF KERALA, FINANCE (PENSION B) DEPARTMENT.

EXT.P13: TRUE COPY OF G.O(P) 361/89/Fin. DATED 10.8.1989 ISSUED BY FINANCE (PENSION B) DEPARTMENT, GOVERNMENT OF KERALA.

EXT.P14: TRUE COPY OF G.O(P) NO.703/2002/Fin DATED 12.11.200 ISSUED BY FINANCE (PENSION-B) DEPARTMENT, GOVERNMENT OF KERALA.

EXT.P15: TRUE COPY OF APPLICATION DATED 25.10.2012 SUBMITTED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.

EXT.P16: TRUE COPY OF REPLY DATED 4.12.12 ISSUED TO EXT.P15 BY THE PUBLIC INFORMATION OFFICER OF 2ND RESPONDENT UNVIERSITY.

RESPONDENTS’ EXHIBITS

ANNEXURE-R2(a): TRUE COPY OF LETTER NO.17740/B2/2003/H.Edn. OF THE GOVERNMENT DATED 26.6.2004.

ANNEXURE-R2(b): TRUE COPY OF THE LETTER DATED 29.3.2011 ALONG WITH RELEVANT PAGE OF THE REPORT.

ANNEXURE-R2(c): TRUE COPY OF THE LETTER OF THE CUSAT DATED 18.6.12.

ANNEXURE-R2(d): TRUE COPY OF THE ORDER OF THE CUSAT DATED 29.01.2013.

EXT.R5(a): TRUE COPY OF PARA NO.97 OF THE AUDIT REPORT OF CUSAT FOR THE YEAR 2001-02 (LF(CUSAT)A3-7/2004 DATED 4.3.2005) ISSUED UNDER SECTION 36(4) OF THE CUSAT ACT, 1986 AND SECTION 13 OF KERALA LOCAL FUND AUDIT ACT, 1994 AND RULE 18 OF KERALA LOCAL FUND AUDIT RULES 1996.

EXT.R5(b): TRUE COPY OF ORDER NO.Fin.IV/Pen-R.77/2000/UGC/2001 DATED 7.6.2001.

EXT.R5(c): TRUE COPY OF CIRCULAR NO.74/99/Fin.DATED 4.12.1999.

EXT.R5(d): TRUE COPY OF LETTER NO.17740/B2/2003/H.Edn. DATED 26.6.2004.

EXT.R5(e): TRUE COPY OF THE MINUTES OF THE MEETING OF THE SYNDICATE DATED 22.01.2000.

EXT.R5(f): TRUE COPY OF THE UO NOTE DATED 20.05.2000.

EXT.R5(g): TRUE COPY OF THE LETTER NO.PER:ADM:MNS:5021 DATED 20.10.1999.

EXT.R5(h): TRUE COPY OF THE G.O(P) NO.212/2009/Fin. DATED 3.6.2009.

EXT.R5(i): TRUE COPY OF THE PARA NO.5-2-5 OF THE CONSOLIDATED AUDIT REPORT FOR THE YEAR 2001-2002 SUBMITTED TO THE KERALA LEGISLATIVE ASSEMBLY, UNDER SECTION 23 OF KERALA LOCAL FUND AUDIT ACT, 1994 AND RULE 25 OF KERALA LOCAL FUND AUDIT RULES, 1996.

EXT.R5(j): TRUE COPY OF THE CIRCULAR NO.35043/B1/08/H.Edn. DATED 10.02.09.

EXT.R5(k): TRUE COPY OF THE BUDGET SPEECH OF CUSAT FOR THE FINANCIAL YEAR 2011-2012, DELIVERED BY SRI.K.ANWAR SADATH, CONVENOR, STANDING COMMITTEE OF THE SYNDICATE ON FINANCE AND PURCHASE, AS PUBLISHED IN PAGE NO.14 TO 23, IN THE BUDGET ESTIMATES FOR 2011-2012 OF CUSAT.

EXT.R5(l): TRUE COPY OF THE PAGE NO.5 OF THE ANNUAL ACCOUNTS OF CUSAT FOR THE YEAR 2011-12 SUBMITTED TO THE JOINT DIRECTOR OF LOCAL FUND AUDIT, CUSAT AUDIT, KOCHI, UNDER SECTION 9(1) OF KERALA LOCAL FUND AUDIT ACT, 1994 AND RULE 15(1) OF KERALA LOCAL FUND AUDIT RULES, 1996.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.6625 of 2013-C

Dated this the 29th day of May, 2015

JUDGMENT

The petitioner, a retired Professor and the Director of School of Management Studies of Cochin University of Science and Technology (hereinafter referred to as "CUSAT") has approached this Court when the revised pensionary benefits consequent to the 9th Pay Commission, which was due to him from 01.03.2010 onwards, were not granted.

2. The petitioner was appointed as Reader in Bank Management in the CUSAT on the basis of the selection conducted pursuant to Ext.P1 notification, on 19.03.1979. Prior to his appointment in the CUSAT, he had rendered service as Lecturer in Catholicate College, Pathanamthitta, for a period of one year, two months and 11 days from 21.6.1963 to 31.8.1964. Thereafter he rendered service in the State Bank of India (SBI for short) for a period of 14 years and 6 months. He retired from service on 31.10.1999. Initially pensionary benefits were

sanctioned to the petitioner reckoning the service rendered by him in Catholicate College also along with the 20 years 7 months and 12 days' service in CUSAT towards his qualifying service with total 22 years' service. Later Service rendered by him as Officer and Senior Manager in the SBI for a period of 14 years and 6 months (4.9.1964 to 17.03.1979) was also counted for pension.

3. The Syndicate of CUSAT in its meeting held on 19.08.2000, decided to reckon his service in the SBI for the period from 4.9.1964 to 17.03.1979, accepting the pension contribution in respect of petitioner, collected from the SBI. The decision of the Syndicate in the meeting held on 19.08.2000, as seen from Ext P4 minutes was as follows:

> “Resolved that pension contribution collected from the S.B.I in respect of Dr. K.K.George be accepted by the University for computing pensionary benefits in this University.
>
> In this connection, it was further resolved that all claims for reckoning previous service rendered by an employee for claiming pensionary benefits including transfer of the required amount of pro-rata pension be submitted within a period of three years after joining the University service.”

Pursuant to Ext.P4 decision, University issued Ext.P2 order for reckoning his previous service in the S.B.I for the purpose of pensionary benefits in the University. Thereafter a sum of Rs.17,758/- was remitted towards the pension contribution and the petitioner started getting his pensionary benefits on his total qualifying service of 33 years.

4. Petitioner has been drawing pension accordingly, with all benefits as revised from time to time. While so as the petitioner did not get his pension revised, in accordance with the 8th Pay Commission, he made inquiries and came to know that some correspondence had been going on with the University and the Local Fund Accounts Committee regarding the audit objection against reckoning of his SBI service towards his pensionary benefits.

5. Ext.P6 is a letter from the Registrar of CUSAT addressed to the Chairman, Local Fund Accounts Committee on 25.11.2008, forwarding the replies as against the audit objections raised by the Local Fund Accounts Committee. Item No.17 therein was with respect to the petitioner. As against that objection, University answered that the petitioner was appointed

as Reader in the subject Bank Management in the Department of School of Management studies; the very reason for his selection for appointment to the post was his vast experience in S.B.I as Officer for a period of 14 ½ years. The main intention behind his selection was to achieve academic excellence for the course of Master of Banking Management of the University, exploiting the service rendered by him. Apart from that, his pay in the SBI was protected on his appointment in the University. At the time of his appointment, the scale of Reader was Rs.850-1450/-. His pay was protected fixing the same at Rs.1400/- at the time of initial appointment itself. It was in recognition of the service rendered by him in the University that the Syndicate decided to reckon his service in the S.B.I. It was also stated therein that under Section 18 of the CUSAT Act, the Syndicate is having every power to supervise all the affairs of the University. Under Section 18(11), Syndicate is empowered to create various teaching and non teaching posts from time to time. Under Statute 73(V) and 73 (XXII) of the 1st Statue, the Syndicate is empowered to revise the number of posts as well as to fix the service conditions including their pay and allowances. In the reply they have also relied on the judgments in Writ Petition Nos.5908 of 2005 and 30649 of 2007 in support of their contentions that the Syndicate was having every authority to decide on the issue.

6. According to petitioner, he came to know about the objections raised by the Local Fund Audit only in the year 2011, when he made enquiries as to denial of the benefit of revision in pension and even at that stage he was not given any intimation regarding the same. He had been enjoying the benefits out of the Syndicate decision taken in Ext.P4 right from 2000. The petitioner has produced Exts.P11 to P13 orders to defend the action of the University. In G.O.(P)No.369/87/Fin dated 31.3.1987-Ext P11, Government of Kerala ordered inter-alia as follows:

> "xxxx where a State Government employee borne on pensionable establishment is allowed to be absorbed in a Govt of India/autonomous body, the service rendered by him under the Govt shall be allowed to be counted towards pension under Govt of India/autonomous body irrespective of whether the employee was temporary or permanent in Govt. The same procedure will be applied in the case of employees of Govt of India/autonomous bodies who are permanently absorbed under the State Govt/State Autonomous bodies."

By Ext P12-G.O.(P) 383/89/Fin dated 29.8.1989, Government clarified it as follows:

> “When an employee of the State Govornment/State Autonomous Body, borne on pensionable establishment,is allowed to be absorbed in the Government of India/Autonomous Body, the service rendered by him under the State Government/State Autonomous Body shall be allowed to be counted towards pension under the Government of India/Autonomous body irrespective of whether the employee was temporary or permanent in the Government/Autonomous Body. The same procedure will be applied in the case of the employees in the Government of India/Autonomous) Bodies who are permanently absorbed under the State Government/State Autonomous Bodies.
>
> The Government/Autonomous Body, will discharge its pension liability by paying in lump sum, as a one time payment, the pro-rata pension/service gratuity, terminal gratuity and death cum retirement gratuity for the service upto the daJo of aborption in the Autonomous Body/Government as the case may be. Lump sum amount of thepro-rata pension will be determined with reference to the commutation table laid down in Kerala Service Rule3 Part III”

In Ext P14 -G.O.(P)No.703/2002/Fin dated 12.11.2002, Government ordered that the employees of State Government Departments who left the former service in Central

Government/Central Public Sector Undertakings on their own volition for taking up appointment in State Govt Departments would be allowed to reckon their prior service for all pensionary service benefits along with the service in State Govt Department if the former employer remits the share of contributory proportionate pro-rata pensionary mobility on service share basis. That order was issued on the basis of an earlier Govt of India letter intimating their concurrence to share proportionate liability on service share basis.

7. Based on these orders, it is argued that the pension of petitioner was rightly fixed reckoning the entire service. The petitioner as well as the University, as seen from their letter addressed to Local Fund Authority, has relied on several judgments as well as Government Orders to show that the pension was fixed correctly and that he has every right to continue to enjoy the same with the benefit of revision ordered from time to time and that the denial of the benefits towards pension on the basis of the objection raised by the Local Fund Audit is not correct.

8. The Government has filed a counter affidavit seriously

opposing the contentions raised in the Writ Petition. It is stated that immediately after the audit for 2001-2002, Ext R5(a) audit report dated 4.3. 2005, raising serious objections against the irregular sanctioning of pension to petitioner reckoning his service in SBI, was furnished to the University. It is stated that as per Ext R5(b) order of the University issued on 7.6.2001, University irregularly sanctioned pension and gratuity to petitioner reckoning his qualifying service as 30 and 33 years, as against his 20 years service in the University, which is contrary to Ext R5(c) order dated 4.12.1999. According to R5(c), service rendered by the petitioner in the SBI cannot be reckoned towards pension. Ext.R5(c) relates to sharing of pensionery liability of pro rata pension. As per para.3 of the said circular, service paid out of the funds outside the consolidated fund of State or Central like Local Body funds, grant-in-aid, funds of public sector undertakings will not qualify for pension. At the same time it permits the Universities, Panchayats and Municipalities and other autonomous bodies to take their own decision to count the past State Service/Central Government Service as qualifying services, for terminal benefits of their employees who have got past state service. According to the respondents, the service under the State Bank does not come under any of these services and therefore the acceptance of pro rata contribution and reckoning of that service was illegal. It is stated that the petitioner was not entitled to get his pensionary benefits fixed on the total qualifying service of 33 years i.e including the SBI service and therefore he has been paid pensionary benefits far in excess of that admissible to him. Even otherwise it is submitted that the petitioner cannot enjoy the benefit of illegal orders.

9. The University has filed a counter affidavit stating that the initial decision of the Syndicate in its meeting held on 22.01.2000 in the matter of reckoning of service of the petitioner in the S.B.I was reviewed in its subsequent meeting held on 18.3.2000. In the meeting held on 22.1.2000 it was decided that the matter will be referred to the Government. But in the meeting held on 18.03.2000, the said decision was replaced as "the pension contribution be collected from the SBI or the teacher be asked to remit an equivalent contribution to the University." It is further stated that a sum of Rs.17,660/- was

remitted by the petitioner to the University fund towards pension contribution, which was received by him from the State Bank as retirement benefits. It is further stated that the local fund audit objected the reckoning of prior service in the case of the petitioner as in the case of public sector undertakings like FACT, HMT, Nationalised Banks etc. They also stated that by Annexure-R(a) the Secretary to the Government had informed that as per the existing rules the service rendered in Nationalised bank or any other commercial bank cannot be reckoned along with the State/University benefits for pensionery benefits. It is the case of the University that when the consolidated audit report for the period from 1999-2005 of the local fund accounts committee directing the University to revise the pension in the case of the petitioner was received in 2011, it had resolved to represent the matter once again to the local fund account committee with revised reply and the revised reply was furnished on 6.1.2009. According to the University the Syndicate of the University has got powers to fix the terms and conditions of the officers of the University as per the CUSAT Act and Statutes. The petitioner was not given the benefit of revision of pension based on UGC pension revision order on account of the objections from the local fund committee since the syndicate decided to resolve the matter after clearing the objections by local fund audit.

10. I heard the arguments of Smt.Sreeletha, the learned counsel for the petitioner, Shri Noushad Thottathil the learned Government Pleader and Shri.V.A.Muhammed, the learned Standing Counsel for the University.

11. According to the petitioner, he has been enjoying the pension, fixed after reckoning the SBI service, right from 2000, on the basis of the decision of the syndicate. According to him the syndicate took that decision consciously, considering the peculiar nature of his appointment, which required vast experience in Banking. Referring to the notification Ext.P1 it is pointed out that the qualifications required as per Ext.P1 was Masters Degree with specialisation in Banking as well as Doctorate degree, preferably on a topic related to banking or published work of a high standard on banking. According to her, petitioner was appointed in the University on account of his experience as Officer in the banking field and his pay was fixed

in the University protecting the pay he was drawing in the Bank, in recognition of his service rendered in the S.B.I. It is also pointed out that the University has every power to take a decision in the matter of recurring any service with pension, in the light of the Govt. orders Exts.P11 to P14 and even Ext R5(C) relied on by Govt. According to her Ext.R5(c) enables the University to take independent decision on the question of reckoning other service for pension and there is no prohibition, especially in the light of the 2 recent judgments of the Division Bench of this Court.

12. On the other hand Sri.Noushad Thottathil, the learned Government Pleader stoutly opposed the action of the University in reckoning SBI service for the purpose of pension, with reference to the contentions raised in the counter affidavit with the support of Exts.R5(a) to (l). Referring to the decision of the Syndicate, taken initially as per Ext.R5(e) on 22.01.2000, it was argued that the Syndicate had originally decided to seek clarification from the Government regarding the reckoning of SBI service of the petitioner. It is stated that there is no provision to reckon the service in the SBI, for fixing the pension

of a teacher in the University. According to him the decision of the Syndicate, causing serious financial implications like this, without getting concurrence of the Government was not proper or legal. In this case after taking a decision initially to seek opinion of Government in the matter, the Syndicate did not refer it to the Government; at the same time they reviewed it and took another decision to reckon service. It is also pointed out that in Ext.R5(f) dated 20.05.2000, the University had calculated the amount of pension contribution to be remitted in the case of the petitioner as a sum of Rs.3,20,321/-. The said sum was to be remitted by the petitioner or to be credited by the S.B.I to the University. The detailed calculation statement with reference to the service rendered by the petitioner with the break up of the amount for each period was attached to the U.O. Note to Administration `D' Section dated 20.05.2000, ie. Ext.R5(f). It is pointed out that as against a sum of Rs.3,20,321/- calculated in Ext.R5(f), a sum of Rs.17,660/- alone was remitted and the same was accepted by the University towards the pension contribution as pro rata pension in the S.B.I, for which there is no explanation. Hence it is vehemently contended that when the University has gone wrong, Government has every power to correct them while supervising the activities of the University under Section 50 (5) of the CUSAT Act, which empowers the Government to conduct an inspection at any time in respect of the activities of the University, which reads as follows:

> **"50. Power of Government to cause inspection of the University:-(1) xxxx xxxxxx**
>
> **xxxx xxxx xxxxx**
>
> **(5) The Syndicate shall report to the Government the action, if any, which is proposed to be taken, or has been taken, upon the result of any inspection or inquiry under sub-section (1)."**

13. He argued that when financial irregularities are pointed out, it is for the University to correct it. According to him the University did never choose to approach the Govt. even after the receipt of audit report with objections, though it had initially decided to seek clarification of Govt., in respect of the counting of SBI service. Similarly there was huge difference in the amount actually remitted towards pro-rata contribution and the amount which was payable, which caused heavy loss to the exchequer. Pointing out the instances where the Government have objected to the decisions of the Syndicate, the learned Government Pleader points out that usually the University seeks concurrence

of the Government, but in this case that was not done. It is pointed out that serious financial irregularities were detected involving the University, and in order to show the same, budget speech as well as annual accounts for 2011-12 are produced along with the counter affidavit as Exts.R5(k) and R5(l) respectively. He relied on the judgment of this Court in **Dilip.B v. Union of India and Ors.** [ILR 2012 (3) Ker.347] in which this Court held that the service rendered by the petitioner therein, in All India Radio cannot be reckoned for pension, in the light of the provisions contained in Rule 20 of Part III KSR. Therefore he points out that under Rule 20 of Chapter II Part III KSR, there is no provision to reckon the service in S.B.I.

14. In answer to the contentions of Govt., Smt.Sreeletha relied on the Division Bench decisions of this Court in **Mohamed Basheer A Vs State of Kerala [2014 (4) KHC 658] and Dasan K. V Vs State of Kerala [2014 (4) KHC 747]** in which this Court, after considering various Govt. Orders including Exts.P12, P14, etc, directed to reckon the service rendered in the State Govt. Undertakings/State Govt. towards qualifying service along with the service in State Govt./State

Govt. Undertaking/Central Govt./autonomous bodies. Going by the said judgments and the Govt. orders the service rendered in SBI which is established under a Central enactment-SBI Act, 1955 can be reckoned towards qualifyiing service. She also relies on Exts.P9 and P10 judgments of this Court-judgments in W.P.(C)) No.30649/2007 & in 5908/2005, wherein it was held that as long as the decision taken by the Syndicate is not varied, the benefit of the decision cannot be taken away. In W.P.(C) 5905/05, the terminal benefits of a Ret.d Technical Assistant Gr III were not settled on account of audit obection regarding the grade promtion granted to him. The petitioner was granted promotion based on the decision of the Syndicate in respect of pay scale and grade promotion admissible to Technical staff. Audit obection was raised, saying that University has to follow State pattern and benefits available under Govt's pay revision orders alone can be extended to the staff of University. In para 5 of the judgment, this Court held that syndicate is the competent authority as empowered under the Statute and its decision is well within its jurisdiction. It was held that the pay fixed on the basis of the decision of the Syndicate, as long as that decision is not varied, cannot be touched. The judgment Ext.P10 was followed in the judgment in W.P.(C) 30649/07, where this court directed to release the withheld pensionary benefits on account of audit objection.

15. The learned Government Pleader points out that, in the above cases there was a request before the Government by the University for granting the benefit to the concerned employees. But in the case of the petitioner herein the University has not approached the Government so far.

16. In the light of the above contention, it can be seen that the petitioner was granted pensionary benefits reckoning the service rendered by him in S.B.I, on the basis of a decision taken by the Syndicate. That decision of the Syndicate is not so far varied. Just because the initial decision of the Syndicate was to seek clarification of the Government in the matter, the subsequent decision to reckon that service cannot be said to be illegal. The second decision to reckon the SBI service and to accept prorata contribution was taken on review of the first decision. In this context it is relevant to note Rule 11 of Part III Kerala Service Rules (KSR for short) which reads as follows:

> "Rule 11: Notwithstanding the provisions of Rule 10, the Government may,
>
> (1) declare that any specified kind of service rendered shall qualify for pension; and
>
> (2) in individual cases and subject to such conditions as they may think fit to impose in each case, allow service rendered by an employee to count for pension."

The conditions of service of teachers and other staff of the CUSAT are governed by the Cochin University First Statutes, 1981. Statute 9 under Chapter II thereof provides that the provisions contained in the Kerala Service Rules, as amended from time to time shall mutatis mutandis apply to the teachers of the University with such modification as any, of the authorities of the University may make and the expression "Government" appearing in those rules shall be construed as a reference to the "University". Thus going by Rule 11, the University has every authority to declare any service as qualifying service for the purpose of pension. It can also allow any service to be counted in individual cases with or without imposing any condition. The decision of the Syndicate can only be treated as one taken under Rule 11. Therefore it cannot be said that what the syndicate or

University has done in Ext.P4/P2 is illegal or unauthorised. The minutes Ext P4 of the meeting of the syndicate as well as the reply Ext P6 to the audit objection reveal the circumstances under which the syndicate decided to reckon the SBI service rendered by the petitioner for pension. Therefore there was nothing wrong in fixing the pension and pensionary benefits in the case of the petitioner. There is no reason for withholding his pensionary benefits or for denying the benefit of revision ordered from time to time.

17. Even as per the orders Ext.P12 dated 29.8.1989 or Ext.P14 order dated 12.11.2002 , the service in the SBI can be counted for the purpose of pension, in the light of the judgment of this Court in Mohamed Basheer's case (Supra) and in Dasan's case (supra).

18. The syndicate is the Chief executive body of the University as provided in Section 17 of the Act. Under Section 18 (xi), the syndicate is empowered to create teaching and other posts. Under statute 73(vi) of the 1st Statute 1980, it is empowered to manage and control the provident fund, pension, etc. of the teachers. In Ext.P9 and Ext.P10 judgments also, this

Court upheld the action of University based on the decision of the Syndicate. It was held therein that syndicate is the competent authority under the Statute and its decision is within its jurisdiction. Therefore the petitioner, who has been enjoying the pensionary benefits, his SBI service, right since the year 2000, is entitled to get his pension revised on the basis of the govt orders on revision of pension in accordance with the Govt. orders on pay revision issued from time to time.

19. The obection raised by the Govt. against the reckoning of SBI service is it is contrary to Ext R5(c) Govt.order. It is pertinent to note that the said order itself permits Universities to take their own decisions. Apart from that, as found earlier, the Govt. orders issued prior to and subsequent to that clearly provides for counting of such service for pension. Moreover the objections are raised, without considering the provisions contained in Rule 11 of Part III KSR. In that view, the decision taken by the University cannot be said to be faulted in any manner.

20. Moreover it is pertinent to note that the petitioner has been enjoying the benefit of the SBI service, while drawing

pension, ever since his retirement i.e for the last several years right from 2000. He has not been given any intimation regarding any irregularity in the fixation of his pension. The petitioner, has been enjoying the benefit of his entire service of 33 years. He has got every right to get the revised pensionery benefit based on the revision from time to time. The refusal to grant the same is illegal.

Therefore it is declared that the petitioner will be entitled to get his pensionery benefits on the basis of Ext.P2 order passed by the University and he will be entitled to get it revised on the basis of orders issued from time to time, in respect of revision of pension. Respondents are therefore directed to see that the pensionary benefits due to the petitioner are released accordingly and that the arrears of pension due to him are disbursed to him within a period of 4 months from the date of receipt of a copy of the judgment.

This Writ Petition is allowed accordingly.

Sd/-

(P.V.ASHA, JUDGE)

rtr/