

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 9559 of 2009 (L)

PETITIONER(S):

**THE SECRETARY, THE KERALA STATE LIBRARY
COUNCIL, THIRUVANANTHAPURAM - 33.**

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENT(S):

- 1. M.VIJAYALAKSHMI, W/O.LATE GOVINDAN
MANNUKANDY HOUSE, P.O. EDAKKARA, VIA CHELANNUR,
KOZHIKODE DIST, PIN - 673 616.**
- 2. KERALA LOK AYUKTA, LEGISLATURE COMPLEX,
VIKAS BHAVAN POST, THIRUVANANTHAPURAM - 33.**
- 3. STATE OF KERALA, REPRESENTED BY COMMISSIONER &
SECRETARY, HIGHER EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**
- 4. THE SECRETARY, KOZHIKODE DISTRICT
LIBRARY COUNCIL, OLD BUS STAND, KOZHIKODE.**

**R1 BY ADVS. SRI.V.V.SURENDRAN
SRI.P.A.HARISH**

R2 TO R4 BY SENIOR GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-07-2014, ALONG WITH WPC. 9660/2009, THE COURT ON 08-01-2015,
DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: A TRUE COPY OF THE COMPLAINT NO.309/2005 FILED BY THE
1ST RESPONDENT.

EXT.P1(a): A TRUE COPY OF THE ORDER NO.77/2002 DTD.9.1.2002.

EXT.P1(b): A TRUE COPY OF THE G.O.(MS)NO.2/99/H/EDN DTD.1.1.1999.

EXT.P1(c): A TRUE COPY OF THE REGISTERED NOTICE DTD.18.9.2000 ON BEHALF OF
THE 1ST RESPONDENT COMPLAINANT.

EXT.P2: A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.

EXT.P2(a): A TRUE COPY OF THE G.O.(P) NO.36/71/EDN. DTD.23.3.1971 ISSUED BY
THE GOVERNMENT.

EXT.P2(b): A TRUE COPY OF THE G.O.(P) NO.18/72/EDN. DTD.19.1.1972.

EXT.P3: A TRUE COPY OF THE STATEMENT DTD.29.6.2006 FILED BY THE PETITIONER
STATE LIBRARY COUNCIL.

EXT.P4: A TRUE COPY OF THE ADDITIONAL STATEMENT FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.

EXT.P5: A TRUE COPY OF ORDER DTD.7.6.2007 PASSED BY THE 2ND RESPONDENT.

EXT.P6: A TRUE COPY OF THE REPRESENTATION DTD.11.2.2005 SUBMITTED BEFORE
THE GOVERNMENT.

EXT.P7: A TRUE COPY OF THE REPRESENTATION DTD.3.6.2006.

EXT.P8: TRUE COPY OF THE COMMON JUDGMENT IN W.P.5775/2005 AND
W.P.25782/2004 DTD.5.4.2006.

EXT.P9: A TRUE COPY OF THE ORDER DTD.13.10.2006 PASSED BY THE
GOVERNMENT.

EXT.P10: A TRUE COPY OF THE REPRESENTATION DTD. 26.10.2006.

EXT.P11: A TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT
DTD.13.9.2007.

EXT.P12: A TRUE COPY OF THE AFFIDAVIT OF THE PETITIONER DTD.13.11.2007
BEFORE THE 2ND RESPONDENT.

EXT.P13: A TRUE COPY OF THE ORDER DTD.15.11.2007 PASSED BY THE
2ND RESPONDENT.

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EXT.P14: A TRUE COPY OF THE JUDGMENT IN WP(C) 3225/2008 DTD.28.1.2008.

EXTY.P15: A TRUE COPY OF THE AFFIDAVIT DTD.19.1.2008 FILED BEFORE THE LOK
AYUKTA.

EXT.P16: A TRUE COPY OF THE ORDER DTD.30.1.2008 PASSED BY THE
2ND RESPONDENT.

EXT.P17: A TRUE COPY OF THE ORDER DTD.25.6.2008 ISSUED BY THE PETITIONER.

EXT.P18: A TRUE COPY OF THE ORDER DTD.4.7.2008 ISSUED BY THE
2ND RESPONDENT.

EXT.P19: A TRUE COPY OF THE DETAILED STATEMENT OF COMPUTATION OF
ARREARS OF PAY AS PER G.O. (P) 36/71/EDN. OF THE HUSBAND OF THE
1ST RESPONDENT.

EXT.P20: A TRUE COPY OF THE COMMON ORDER DTD.25.9.2008 IN COMPLAINANT
NO.309/2005 PASSED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

WPC Nos.9559/2009 & 9660/2009

Dated this the 8th day of January, 2015

JUDGMENT

The report of the Lok Ayukta under Section 12(1) of the Kerala Lok Ayukta Act (Ext.P20) is under challenge in these writ petitions.

2. Two identical complaints were considered by the Lok Ayukta.

3. The widow of one M.Govindan, who retired from service as Librarian Grade II on 31.10.1998 from the service of the Kozhikode Local Library Authority, filed complaint No.309/2005 before the Lok Ayukta alleging that she was not given the benefit of G.O.P.No.36/71/Edn. Dated 23.3.1971 and G.O.(MS) No.2/99/H.Edn. Dated 1.1.1999. She alleged that had these benefits been extended to the deceased, his pension would have been much more than the one fixed by the Library Council and the family pension

granted to her would have been more than the amount now being paid to her.

4. The other complaint was filed by One Raghavan Nair, who was appointed as Librarian Grade III on 6.2.1955 in the Malabar Local Library Authority. He filed Complaint No.415/2007 alleging as follows:

The pay of Librarian Grade III in the then existing scale of Rs.285-540 was revised to Rs.420-720 on 5.12.1993. He was given yearly increment of Rs.15/- and had his pay fixed at Rs.550/- on 1.7.1983 in the grade of Librarian Grade III. Subsequently, when his salary was wrongly fixed in the cadre of Grade IV, he filed Complaint No.652/2005 before the Lok Ayukta which was disposed of on 16.6.2004. Copy of a report under Section 12(1) of the Act was sent to the competent authority with copy to the Library Authority, Thiruvananthapuram. However, instead of giving effect to the said finding, the Secretary, Kerala State Library Council stuck to the earlier illegalities

committed by him.

The complaints prayed for re-fixation of the pension and to grant arrears of pension as though the deceased and the first respondent in WPC No. 9660/2009 were holding the post of Librarian Grade II on the date of their retirement.

5. The petitioner in these writ petitions is the Secretary of the Kerala State Library Council which is a statutory autonomous body constituted under the Kerala Public Libraries (Grandasala Sanghom) Act V of 1989.

6. The grievance of the petitioner is that the Lok Ayukta without any jurisdiction, power and authority and without any rhyme or reason had undertaken the complaints which are essentially pertaining to a matter covered by Schedule 2 of Section 8 of the Lok Ayukta Act 1999 with respect to which the Lok Ayukta shall not conduct any investigation and has no jurisdiction as per Section 8(1) of the Kerala Lok

Ayukta Act and passed peremptory order/direction directing the petitioners to grant certain ineligible benefits to the applicants and making unwarranted and uncharitable and derogatory observations and remarks on the petitioners personally.

7. According to the petitioners, appointment, removal, pay, superannuation or other matters relating to conditions of service of public servants are outside the purview of the powers of the Lok Ayukta in view of the specific provisions contained in sub section 1 of Section 8. According to the petitioners, the perusal of the complaints filed by the party respondents in these writ petitions who make it clear that it was essentially with respect to pay and service conditions. According to the petitioners, despite detailed counter affidavit, statements and additional affidavit filed by the petitioners as respondents in the complaints, the Lok Ayukta passed orders and directions to the petitioners to grant pay scale and

monetary benefits to the applicants. The petitioner also allege that the petitioner was made personally liable for the interest to be paid. It is with this background, the petitions have been filed.

8. Arguments have been heard.

9. In the counter affidavit filed by the petitioner against complaint No.309/2005, it was averred that the deceased Govindan was entitled to DCRG at Rs.34155/- and an amount of Rs.29205/- was paid earlier and balance amount of Rs.4,950/- had paid later. Pension arrears of Rs.6344/- from January 1999 to February 1999 were also disbursed as per order dated 23.10.2001. According to the petitioner, though the husband of the complainant in Complaint No.309/2005 was not eligible for the benefit of G.O.(P) No.36/71/Edn. Dated 23.7.1971, Library Council refixed the pension of the deceased as per order No.D1/537/01 dated 17.5.2001. From the statement filed by the petitioner before the Lok Ayukta, it

appeared that the State Library Council and its Secretary are having powers to modify/reverse the decision of the Government issued in G.O.(P) No.36/71/Edn. It was observed by the Lok Ayukta that neither the Secretary nor his counsel who appeared in the Lok Ayukta was in a position to substantiate the powers of the council to alter the terms of the Government Order. The Lok Ayukta observed that the petitioner has taken the stand that he can implement the Government order according to his whims and fancies and that his action is beyond question.

10. The findings arrived at by the Lok Ayukta in the order dated 16.6.2004 in Complaint No.652/2003 have not been given effect to while fixing the pensionary benefits due to the complainant in C.No.415/2007. Neither the Library Council nor the Secretary had given any reason as to why the complainant's salary in the 4th grade alone could be fixed and that too with effect from 2004. The Lok

Ayukta found that the Library Council has erred in thinking that Sri.Raghavan, the complainant in Complaint No.415/2007 joined service on 6.2.1955 as Librarian Grade III. So it was also found that the action of the Secretary in treating him in Grade IV on the date of his retirement was a *mala fide* action and it was contrary to the finding arrived at by the Lok Ayukta in the earlier order dated 16.6.2004. It was further observed that the Secretary has no manner of right or authority to sit in judgment over the finding arrived at by the Lok Ayukta.

11. The learned counsel appearing for the petitioners before the Lok Ayukta was harping on the lack of jurisdiction of the forum to entertain the petitions on the basis of the decision of the High Court in ***State of Kerala v Bernard*** (2002 (3) KLT 254). However, the Lok Ayukta was of the view that the said decision cannot be an authority to the proposition canvassed by the petitioners. A detailed discussion

can be seen in paragraphs 10 to 16 in Ext.P20.

12. The Lok Ayukta has considered the entire aspects in the correct perspective and have arrived at the correct conclusion that the petitioners failed to extend the benefit of G.O.(P) 36/71/Edn. dated 23.3.1971 to Sri.K.Raghavan Nair who was the complainant in Complaint No.415/2007 and Govindan, the husband of the complainant in complaint No.309/2005.

13. I see no genuine reason to interfere with Ext.P20 in exercise of the powers conferred under Article 226 of the Constitution of India.

14. In the concluding portion, it was also observed that the Government, if so advised, after effecting payment of interest due to the complainants, recover the same from the petitioner being responsible for causing the delay in disbursing the amount and who tried to ignore the orders of the Government.

15. As the question of recovery of interest was

left open to be decided by the Government, this Court is of the view that it is not necessary to sit in judgment over the said direction.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are not entitled to succeed. In the result, these writ petitions fail and accordingly, they are dismissed.

Sd/- A.V.Ramakrishna Pillai, Judge

CSS/

true copy

P.S.TO JUDGE