

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 8258 of 2014 (F)

PETITIONER(S):

**K.G.VIJAYALAKSHMI
LOWER PRIMARY SCHOOL ASSISTANT (L.P.S.A)
S.M.U.P SCHOOL, VATANAPALLY, THRISSUR DISTRICT.**

BY ADV. SRI.K.B.GANGESH

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. ASSISTANT EDUCATIONAL OFFICER,
VALAPPAD - 680 568.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
THRISSUR - 680 003.**

R1-R3 BY ADV. SUNITHA VINOD, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1 : COPY OF THE AUDIT OBJECTION RAISED BY THE 3RD
RESPONDENT ON 14/12/2012 AND COUNTERSIGNED BY THE
2ND RESPONDENT.**
- EXHIBIT-P2 : COPY OF THE ORDER DATED 21/06/2013 ISSUED BY THE 2ND
RESPONDENT.**
- EXHIBIT-P3 : COPY OF THE ORDER DATED 03/09/2013 ISSUED BY THE 3RD
RESPONDENT.**
- EXHIBIT-P4 : COPY OF THE OBJECTION RAISED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT DATED 15/03/2013.**
- EXHIBIT-P5 : COPY OF THE ORDER DATED 07/01/2014 PASSED BY THE 1ST
RESPONDENT.**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

A. MUHAMED MUSTAQUE, J.

W.P.(C) No.8258 of 2014

Dated this the 20th day of February, 2015

JUDGMENT

Petitioner is working as Lower Primary School Assistant in an aided school. She is due to retire on 31.03.2015. The issue in this writ petition is Ext.P1 audit objection raised by the 3rd respondent in respect of fixation of pay as per 1997 Pay Revision with effect from 01.03.1997. The petitioner was erroneously reckoned 15 years of service for weightage instead of 14 years of service of weightage and therefore, the 3rd respondent directed the 2nd respondent to regularize the pay allowing admissible service weightage for completed years as on 01.03.1997, after getting refunded the excess salary drawn.

2. This objection was first time raised on 14.12.2012. The petitioner cannot be directed to refund the excess amount. Petitioner relies on **Narayanan T.K. Vs. State of Kerala & Others [2008 (3) KLT 188]** and **Indiramma Vs. DEO, Punalur & Others [2012 (4) KHC 295]** to substantiate her contention.

3. Learned Government Pleader submits that the

erroneous fixation of pay was granted to the petitioner only on the basis of duly signed declaration of the petitioner agreeing to refund the excess salary drawn, if found later on further scrutiny and therefore, petitioner cannot say that she is not liable for the same.

4. No doubt when an undertaking is given by an employee, she is bound to honour that. The question is whether the objection raised after 15 years, is equitable in the circumstance or not. But when an employee is placed in an iniquitous position, the demand for the recovery will become unjustifiable. The repayment of any difference after 15 years is inequitable. Though this Court is not interfering with the objection and refixing the salary with effect from 01.03.1997, this Court held that no recovery shall be effected from the petitioner based on the objection. Therefore, there is no other impediment, in releasing pension and other retirement benefits to the petitioner. On receiving the proposal from the Head Master, necessary action shall be taken without any delay.

The Writ Petition is disposed of as above.

SD/-
A. MUHAMED MUSTAQUE,
JUDGE