

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937**

**WP(C).No. 13124 of 2012 (M)**  
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**PETITIONER :**  
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**P.R. KARTHIAYANI, AGED 60 YEARS,  
W/O. T. K. RAMAKRISHNAN,  
RETIRED HEADMISTRESS U.P.S. PERINCHERY,  
RESIDING AT THEKKE MEPPULLY HOUSE,  
P.O. PERINCHERY, THRISSUR DISTRICT.**

**BY ADV. SRI.P.V.CHANDRA MOHAN**

**RESPONDENTS :**  
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- 1. STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION (B) DEPARTMENT,  
THIRUVANANTHAPURAM - 695001.**
- 2. DIRECTOR OF PUBLIC INSTRUCTION,  
THIRUVANANTHAPURAM - 695001.**
- 3. DEPUTY DIRECTOR OF EDUCATION,  
THRISSUR-680001.**
- 4. ASSISTANT EDUCATIONAL OFFICER,  
CHERPU, THRISSUR DISTRICT-680001.**
- 5. MANAGER  
AIDED U.P. SCHOOL, P.O. PERINCHERY  
THRISSUR DISTRICT-680001.**

**R1 TO R4 BY GOVERNMENT PLEADER MR. P.K. ABDUL RAHMAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**bp**

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF OPTION STATEMENT DT 7/9/1994 SUBMITTED BY THE PETITIONER.
- P2: COPY OF 2ND OPTION STATEMENT DT 30/8/1995 SUBMITTED BY THE PETITIONER.
- P3: COPY OF PAY FIXATION ORDER COUNTERSIGNED BY THE R4.
- P4: COPY OF ORDER OF THE R3 DT 10/4/2007.
- P5: COPY OF THE LETTER OF R2 TO GOVERNMENT DT 7/6/2010.
- P6: COPY OF GOVERNMENT ORDER DT 12/10/2010.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

**A.M. SHAFFIQUE, J.**

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W.P. (C) No. 13124 of 2012

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Dated this, the 12<sup>th</sup> day of November, 2015

## **J U D G M E N T**

Petitioner has approached this Court seeking the following reliefs;

*“i) call for the records leading to Exhibit P4 and P6 orders and issue a writ of certiorari or appropriate writ, direction or order quashing them as illegal and unsustainable.*

*ii) declare that Exhibit P1 and P2 are valid options and the pay fixed on that basis in Exhibit P3 is legal and proper.*

*iii) issue a writ of mandamus or other appropriate writ, direction or order commanding the respondents 1 to 4 to return the amount of Rs.88,317/- recovered from the petitioner with interest at the market rate.*

*iv) issue a writ of mandamus or other appropriate writ, direction or order commanding the respondents 1 to 4 to refix the pensionary benefits of the petitioner on the revised scale of pay as fixed in Exhibit P3 order and pay the arrears forthwith with interest at the market rate.”*

2. The facts involved in the writ petition would disclose that the petitioner entered service as an Upper Primary School

Assistant (UPSA) in the 5<sup>th</sup> respondent's school on 29/7/1975. She was promoted as Headmistress on 01/4/2007 and retired on superannuation on 31/5/2007. As per Government Order dated 9/6/1994, teachers were granted time bound higher grades for 10, 20 and 25 years qualifying service. Petitioner is entitled for 20 years higher grade on 28/7/1995 when she completes 20 years of service. The Government order permitted teachers to opt the date of commencement of time bound higher grade which fell due on or after 01/3/1992. Petitioner submitted an option on 7/9/1994 electing the date 1/9/1995 to come under revised scale. Apprehending technical objection that, as on the date of submitting the option, petitioner had not completed 20 years of service, petitioner submitted a second option statement on 30/8/1995 on completion of 20 years of service opting for the same date of 1/9/1995 for the revised scale. Both the options were accepted by the competent authorities. Ext.P3 pay fixation order came to be passed in accordance with the option exercised by the petitioner. However, by Ext.P4 dated 10/4/2007, Deputy Director of Education observed that re-option exercised by the petitioner on 7/9/1994 could not have been taken into

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consideration and therefore there was a direction to cancel re-fixation of pay sanctioned in favour of the petitioner in terms of Ext.P3. Petitioner submitted a representation to the Director, who observed in Ext.P5 dated 7/6/2010 that the petitioner should have been given an opportunity to exercise re-option as per Government Order dated 3/10/1996 and the authorities ought to have verified the said matter. Accordingly the matter was referred to the Government. The Government as per Ext.P6 dated 12/10/2010 rejected the claim of the petitioner for fixation of the benefits in terms with Ext.P3.

3. Petitioner contends that Ext.P2 option exercised by the petitioner was totally ignored by the authorities and going by Ext.P2, it is submitted in accordance with Government Order dated 9/6/1994 itself. Learned counsel for the petitioner submits that the petitioner having submitted Ext.P2 after attaining 20 years of service and entitled for senior grade was entitled to submit the option and the said option was totally ignored while issuing Exts.P4, P5 and P6.

4. Counter affidavit has been filed by the respondents *inter alia* stating that though the petitioner submitted re-option on

30/8/1995 for senior grade w.e.f. 01/9/2005 in the pre-revised scale, it was not acceptable because the time limit imposed as per Government Order dated 9/6/1994 had exhausted by 8/9/1994. Respondents also supported the stand taken by them in the impugned orders.

5. Heard the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

6. A perusal of the Government Order dated 9/6/1994 would clarify the position. As far as teachers are concerned, time bound higher grades are given based on the fact that they attained qualifying service of 10, 20 and 25 years. It is not in dispute that the petitioner attained 20 years of service and entitled for higher grade as on 28/7/1995. The right to exercise option is provided in clause 2(i), which indicates that "*such re-option should be exercised within three months from the date of promotion*". In such circumstances, the contention that the option exercised by the petitioner on 30/8/1995 was after three months from the date of order dated 9/6/1994 is unsustainable.

7. Under such circumstances, the authorities were not

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justified in unsettling Ext.P3 while issuing Exts.P4, P5 and P6 without reference to Ext.P2.

In the result, the writ petition is allowed. Exts.P4 and P6 orders are set aside. Ext.P3 re-fixation is confirmed and the direction to refund ₹88,317/- is set aside. It is declared that the petitioner is entitled for all pensionary benefits in terms with Ext.P3. The authorities shall rely upon Ext.P2 for the purpose of Ext.P3 and make necessary entries sustaining Ext.P3.

Sd/-

**A.M. SHAFFIQUE, JUDGE**

Rp

13/11/2015

//True Copy//

P.S to Judge