

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

W.P.(C).No.16327 of 2009 (R)

PETITIONER(S):-

1. ANSAMMA MATHEW,
JR. SUPERINTENDENT, MUNSIFF'S COURT, ALAPPUZHA.
2. M.S.SANTHI, JR.SUPERINTENDENT,
MUNSIFF'S COURT, HARIPPAD.
3. G. RAJENDRAN PILLAI, JR.SUPERINTENDENT,
MUNSIFF'S COURT, KAYAMKULAM.
4. C.K.SREEKUMAR, HEAD CLERK,
MUNSIFF'S COURT, KAYAKULAM.

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE.

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HOME (C) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
3. THE DISTRICT JUDGE, ALAPPUZHA.

* ADDITIONAL 4TH RESPONDENT IMPEADED:

ADDL.R4. THE REGISTRAR,
HIGH COURT OF KERALA (SUBORDINATE JUDICIARY),
ERNAKULAM.

*[ADDITIONAL 4TH RESPONDENT IS IMPEADED AS PER ORDER
DATED 23.06.2009 IN I.A.NO.7407 OF 2009]

R1 & R2 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R3 & R4 BY ADVS. SMT.V.P.SEEMANDINI (SENIOR ADVOCATE)
SRI.M.R.ANISON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02-11-2015, ALONG WITH WP(C).27472/2010-R, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF RELEVANT PORTION OF RULES - THE LAW GOVERNING PROMOTION IN KERALA JUDICIAL MINISTERIAL SUBORDINATE SERVICE RULES, 1975.
- EXT.P2 TRUE COPY OF THE ORDER DATED 19.09.2008 OF THE DISTRICT JUDGE, ALAPPUZHA.
- EXT.P3 TRUE COPY OF THE THE NOTIFICATION DATED 21.1.2006.
- EXT.P4 TRUE EXTRACT COPY OF G.O.(P) 125/2006 DATED 17.3.2006.
- EXT.P5 TRUE EXTRACT OF CHAPTER IV OF PAY COMMISSION REPORT, 2006.
- EXT.P6 TRUE COPY OF ORDER NO.A1-37/2009 DATED 07.03.2009.
- EXT.P7 TRUE COPY OF ORDER DATED 17.1.2009 - G.O.(MS). NO.37/09 (121)FIN.
- EXT.P8 TRUE COPY OF THE REPRESENTATION DATED 4.6.2009 FILED BY 1ST PETITIONER.
- EXT.P9 TRUE COPY OF REPRESENTATION FILED BY 3RD PETITIONER DATED 4.6.2009.
- EXT.P10 TRUE COPY OF THE PROCEEDINGS DATED 20.12.2010 ISSUED FROM THE HON'BLE HIGH COURT OF KERALA.
- EXT.P11 TRUE COPY OF OFFICIAL MEMORANDUM DATED 30.07.2014.

RESPONDENT'S EXHIBITS:-

NIL.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).Nos.16327 of 2009-R & 27472 of 2010-R

Dated this the 02nd day of November, 2015

JUDGMENT

The controversy raised in the above writ petitions is with respect to pay fixation granted to the petitioners in both the writ petitions, allegedly on promotion from a lower category to a higher category. The issue revolves around the pay fixation of 2004 and the consequent rectification of anomaly in the year 2009.

2. The petitioners were all, either appointed or promoted as Bench Clerks in the District Court. The Bench Clerks of District Court were category of 2(c) of Class I of Kerala Judicial Ministerial Subordinate Service; which Rules is produced at Exhibit P1 in W.P.(C).No.27472 of 2010, the documents in which are referred to unless otherwise specified. They were promoted as Head Clerks of Munsiff Courts, which is category 2(b) in Class I, in Exhibit P1. Though the petitioners styled it as a promotion, admittedly from category 2(c) there can be only 'by transfer' appointment to category 2(b), especially since promotions are specifically noticed as eligible from category 3(a) or 3(c), in the absence of which from category 4.

3. Be that as it may, the pay scale of Bench Clerks in the Munsiff's Court was higher than the Bench Clerks of District Courts. Prior to the promotion of the petitioners, a pay revision was effected, wherein the post of Head Clerk was assigned a revised scale of pay of Rs.8390-13270 and certain interchangeable posts, for example, that of Bench Clerk of District Courts, was granted a lesser scale of pay, of Rs.7990-12930. Hence, as per Rule 28A of Part I Kerala Service Rules, the petitioners, who were appointed to a post having a higher scale of pay was granted one increment in the lower pay scale and then their pay was fixed in the higher pay scale. Later on, the Government realized the anomaly, in interchangeable posts having two scales of pay and brought out Exhibit P5, in which there was an equation not only with respect to the posts, but also with respect to pay scales. The petitioners were asked to be fixed in accordance with the revised pay scale in the interchangeable post, on which event, they lost the benefit of increment in the lower pay scale and resultant fixation in the higher pay scale. Obviously there was monetary loss to all the petitioners in their pay scales. Hence, they challenged the order at Exhibit P5

directing refixation and the recovery orders at Exhibits P6 and P9 [produced in W.P.(C).No.27472 of 2010] and exemption from 2009 onwards so as to continue in the same fixation.

4. On the same pay scales being conferred to the interchangeable posts, the anomaly stood rectified. In that event Rule 28A will not be applicable, since both the interchangeable posts had the very same pay scale as per Exhibit P5 order. However, the fact remains that the petitioners were fixed in the higher scale of pay and were also drawing salary in accordance with such fixation, which was a direct consequence of the anomaly in revision of pay scales. The petitioners cannot be, hence, mulcted with any liability for recovery, at least till Exhibit P5, since they had been continuing in the higher scale of pay as per the fixation granted for reason of the interchangeable posts having two scales of pay. Hence, the appropriate measure would have been, to effect the revision as per Exhibit P5, holding the interchangeable posts in the higher scale of pay of Rs.8390-13270; but granting protection to the pay drawn by the petitioners till they reach that pay in the revised scale of pay, as per the new fixation effected as per Exhibit P5.

5. The recovery definitely cannot be proceeded with, since the said amount ought to have been protected as their personal pay. However, the fixation has to be necessarily effected in accordance with Exhibit P5 and the interchangeable posts being considered as continuing in the revised pay scale of Rs.8390-13270. Rule 28A would have application only if there were two pay scales in the interchangeable posts; when the one to which an employee is appointed 'by transfer' carries a higher pay scale. The fixation as per Rule 28A was effected only since there was an anomaly in the pay revision order. The anomaly having been rectified by both posts being conferred with the same higher scale of pay; the grant of additional increment would be taken away. The fixation definitely has to be made on that count and the pay drawn on the earlier fixation would be protected till the petitioners reach that stage in the revised higher pay scale. The recovery only of such amounts would stand interdicted by this judgment.

The writ petitions hence would stand disposed off, interdicting the recovery ordered as per Exhibit P6 in W.P.(C). No.16327 of 2009 and Exhibit P9 in W.P.(C).No.27472 of 2010.

However, a different view has to be taken in the case of the 2nd petitioner in W.P.(C).No.16327 of 2009, since she is said to have exercised an option to be continued in the higher pay scale and then later resiled from the same and sought for fixation in the lower pay with one additional increment and re-fixation in the higher pay. Hence, recovery ordered against her shall stand confirmed. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]