

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 12396 of 2015 (Y)

PETITIONER(S):

- 1. UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, THIRUVANANTHAPURAM**
- 2. REGISTRAR,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM.**
- 3. THE VICE CHANCELLOR,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM**

**BY ADVS.SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY
SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA**

RESPONDENT(S):

- 1. G.S.SOBHANAKUMAR
KURISSERY, PANMANA, PUTHENCHANTHA P.O. CHAVARA
KOLLAM 691 001**
- 2. THE KERALA LOK AYUKTA,
REPRESENTED BY ITS REGISTRAR
THIRUVANANTHAPURAM 695033.**

**R1 BY ADV. SRI.K.B.PRADEEP
R2 BY ADV. SMT.RENU. D.P., SC, LOK AYUKTA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE COMPLAINT DTD. 06.01.2014 FILED BY THE
 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.**
- EXT.P2. TRUE COPY OF THE STATEMENT DTD 22.05.2014 FILED BY THE
 PETITIONER BEFORE THE LOK AYUKTA ALONG WITH THE
 DOCUMENTS PRODUCED AS EXTS R1(1) TO R1 (4).**
- EXT.P3. TRUE COPY OF THE ORDER DTD.12.01.2015 ISSUED BY THE
 LOK AYUKTA.**

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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Dated this the 03rd day of December, 2015

J U D G M E N T

The petitioner, the University of Kerala, is aggrieved with Ext.P3 order of the Lok Ayukta. The contention raised by the University in challenge of Ext.P3 order is one of jurisdiction and the dis-entitlement of the petitioner to the relief granted by the Lok Ayukta.

2. The petitioner was an Assistant Registrar with the University, who retired on 31.03.2011. On retirement his terminal benefits to the extent of Rs.50,000/- was withheld, which on repeated representations, did not invoke any response from the University. Frustrated with the attempts to get the withheld amounts, the petitioner approached the Lok Ayukta. The Lok Ayukta, on a detailed consideration of the issue found that the

petitioner has been illegally denied of Rs.50,000/- and that no proceedings could have been taken against the petitioner after his retirement under Rule 3 C of Part III of the Kerala Service Rules (K.S.R).

3. The first contention raised by the petitioner is that the Lok Ayukta specifically has the power only to enquire into a complaint, which projects either a grievance or an allegation and there could be no adjudication made, nor a positive order issued containing directions to the University. The learned Standing Counsel relies on the decision of a Division Bench of this Court reported in **State of Kerala v. Bernard [2002 (3) KLT 254]** to buttress his contention. The Division Bench analyzed Section 12 of the Act and found that the Lok Ayukta could deal with two types of complaints, one raising a grievance or the other involving an allegation. A grievance was held to be a complaint against an action or inaction, which affects only an individual, in

as much as an individual has been subjected to injustice on account of negligence, act of omission, commission or delay on the part of the public authority. Herein it is to be noticed that the complaint was with respect to the grievance of the petitioner that his terminal benefits had been withheld to the extent of Rs.50,000/-. Hence, there cannot be any contention raised against the maintainability of the complaint since it is a grievance of injustice meted out on the petitioner.

4. The further contention is with respect to the powers of the Lok Ayukta to issue directions. The Division Bench again looking at Section 12 of the Act, found that after investigation on a complaint, pertaining to any action involving a grievance, the Lok Ayukta is required to make a report in writing, recommending to the competent authority that injustice or hardship as complained of has occasioned and that such injustice or hardship be remedied or redressed in such manner

and within such time, as contained in the report and shall also intimate the complainant about it having made the report.

5. A reading of the operative portion of Ext.P3 would indicate that the Lok Ayukta has merely done that, in Ext.P3. Having found that withholding of Rs.50,000/- was bad and that it visited the petitioner with injustice, it was directed that such injustice and hardship be remedied or redressed and it was recommended that the respondent shall treat Ext.R1(4), a communication issued to the petitioner, with respect to his liability on wrong re-fixation of pay, as canceled and unenforceable. There was also a recommendation to release a sum of Rs.50,000/- to the complainant within six weeks, failing which, there was also a liability mulcted on the University to pay interest @ 10% from the said date till the actual payment.

6. There cannot be any infirmity found nor a lack of jurisdiction, ferreted out merely on the basis of the directions

issued. The directions are only in the nature of a recommendation and if the same has not been complied with, definitely, further action would ensue,, by way of a special report to the Governor. The Division Bench when it held that the Lok Ayukta, in the context of a grievance projected, by way of a complaint; cannot enter into an adjudication; did not mean that the recommendation made would be of no consequence. It found the role of the Lok Ayukta in such instance, to be of an investigator, making recommendations, which it was held, had to be treated with due importance by the public authority. It is such a recommendation the Lok Ayukta has made in the instant case, which the University assails. The further action on the failure to carry out the recommendation was not occasioned since, this Court had granted a stay of further proceedings against Ext.P3.

7. The contention regarding the exclusion under Section 8 is specious since, though the recovery effected is on

the basis of wrong fixation of pay, the withholding of terminal benefits is the consequence and the cause of action, which prompted the petitioner to approach the Lok Ayukta. Hence, definitely, the complaint would be maintainable before the Lok Ayukta as held by a Division Bench of this Court, in **K.S.R.T.C v. Padmavathy [2008 (1) KLT 584]**, where a reference of the learned Single Judge was answered holding that the Lok Ayukta has jurisdiction to entertain matters relating to the terminal benefits. The Lok Ayukta hence is found to have the jurisdiction to entertain the complaint made by the petitioner before it and there can be no fault found on the report made.

8. The learned Standing Counsel for the University would also argue on the merits of the case. The recovery effected was on account of the wrong fixation of pay. A reading of the order itself would show that the allegation was that; on erroneous fixation, excess amounts were paid from 01.04.1992 to

21.03.2010. The fixations were allegedly done at two instances; w.e.f 01.03.1992 and w.e.f 01.04.2004, respectively. The anomaly in the 1992 pay revision, was insofar as the petitioner having been granted an increment from 01.04.1992 , when his entitlement was only from 01.03.1993. As to the 2004 revision, the petitioner's pay was reckoned as Rs.8,250/- in the pre-revised scale, while, the actual pay was Rs.8,025/-. On the above stated erroneous fixation, excess payment is said to have been made to the petitioner, which was sought to be recovered first by withholding Rs.50,000/-. As on the date of retirement ie: on 31.03.2011, the University had noticed only the anomaly due to the fixation in the 1992 pay revision.

9. Subsequently, the Local Fund Audit department is said to have intimated the subsequent erroneous fixation also; of the year 2004. By the time, the petitioner had retired and the petitioner was issued with a notice on 30.04.2014 and it was

decided to adjust the Rs.50,000/- withheld from the petitioner's terminal benefits, to such excess payment made and also proceed for recovery for the balance amounts.

10. The Lok Ayukta specifically noticed Rule 3 C of Part III of K.S.R, which specifically prescribes that, recovery with respect to any excess payment, can be effected if the same was within a period of four years prior to the date of retirement and also, only within three years from the date of retirement. The petitioner retired on 31.03.2011 and the Lok Ayukta clearly found that the only intimation to the petitioner is by Ext.R1(4) produced along with the written statement of the University, which was dated 30.04.2014. Exts.R1(1) and R1(3) were all communications between the Local Fund Audit department and the Finance Officer of the department.

11. Before withholding the payment or before mulcting such liability on the petitioner, the petitioner was not

issued with any notice. The petitioner was not at all responsible for the erroneous fixation or for the excess payment made, The Lok Ayukta specifically rejected the contention of the University that, under Rule 3 C of Part III of K.S.R, no notice need be issued. The Lok Ayukta according to this Court, correctly found that the principles of natural justice has to be read into the provision since it entail civil consequences to the person, from whom money was sought to be recovered.

12. As was noticed, the recovery made, violates both the conditions in Part III Rule 3 C of K.S.R. The erroneous fixation was in the year 1992 and 2004. If at all, the University has a contention that the erroneous fixation made in such previous years had a spiraling effect, resulting in the petitioner having drawn excess salary, in the four years, just prior to his retirement even then, the proceedings have to be taken within three years of retirement. The notice to the petitioner, who retired on

31.03.2011 was on 30.04.2013; beyond the said period and was not in the nature of initiation of proceeding but merely an intimation of liability.

13. In such circumstance, this Court does not find any reason to interfere with Ext.P3 order. Before parting, this Court cannot but notice that the University, a responsible public authority has unnecessarily approached this Court against an order of the Lok Ayukta, refusing to comply with the recommendation made; on specious grounds, which has to be deprecated. This Court would have imposed exemplary costs on the University, but however taking note of the fervent plea, made by the learned Standing Counsel, against such orders, this Court would only uphold Ext.P3 and direct the University to pay the amounts of Rs.50,000/- with interest as directed in Ext.P3, within a period of three months from today, failing which, the University would be liable to pay 10 % interest from the date of

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retirement, and the University would also be entitled to recover such amounts from the Officer, who defaulted payment of the amounts; within the period as directed by this Court.

The writ petition would stand dismissed leaving the parties to suffer their respective costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/04/12/2015

// true copy //

P.A to Judge.