

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 16364 of 2012 (U)

PETITIONERS:

1. M.C. NARAYANANKUTTY AGED 55 YEARS
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
2. M.A.VARGHESE MALIYEKAL
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
3. P.CHANDRAN,
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
4. M.T.SURESH BABU
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
5. K.M.SEBASTIAN
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
6. JOSE K JOSEPH
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
7. ROSAMMA P,
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
8. K.P.DIVAKARAN
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
9. THOMAS MATHEW
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
10. K.C.VARGHESE
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
11. PETER A.A
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008
12. A.SAJI JOSEPH
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008

13. A.C.SHAJI
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008

* 14. P.J.SHAJI
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI
CALICUT-673008 [DELETED][PETITIONER P14
IS DELETED FROM PARTY ARRAY AS
PER ORDER DATED 18.12.2014 IN IA 17193/14.

15. PREMARAJAN P
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, CALICUT,
NOW RESIDING AT VADAKKEDATH MEETHAL,
DEVAGIRI, MEDICAL COLLEGE P.O.,
CALICUT-673008

16. N.V.VENUGOPALAN
LAB/ASSISTANT, ST.JOSEPH'S COLLEGE, CALICUT-
NOW RESIDING AT "UDAYAM"
PERINGOLAM P.O., KUNNAMANGALAM,
KOZHIKODE 673571

17. P.BALAKRISHNAN
LAB/ASSISTANT, RTD.,
ST.JOSEPH'S COLLEGE, CALICUT -NOW RESIDING
AT VALAPPIL HOPUSDE, DEVAGIRI, MEDICAL COLLEGE.P.O,
CALICUT 673008

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENTS:

1. STATE OF KERALA
REP.BY ITS PRINCIPAL SECRETARY, HIGHER EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM-695001

2. DIRECTOR OF COLLEGIATE EDUCATION
VIKAS BHAVAN, THIRUVANANTHAPURAM-695003

3. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
CALICUT, 673001

4. PRINCIPAL,
ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-673008

R1-R3 BY SRI.RAFEEL V.K., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS

EXT.P1:- TRUE COPY OF THE ORDER A 5554/08 DTD 7/8/2008 ISSUED BY THE 3RD RESPONDENT ADDRESSED TO THE 4TH RESPONDENT.

EXT.P2:- TRUE COPY OF THE LETTER NO 77476/INFORMATION/2/9/FIN DTD 25/11/2009 ISSUED BY THE ADDITIONAL SECREARY AND APPELLATE AUTHORITY FINANCE DEAPRTMENT ISSUED UNDER THE RIGHT TO INFORMATION ACT

EXT.P3:- TRUE COPY OF THE LETTER NO G2/ESST/NTS/44/111 DTD 16/9/2011 SUBMITTED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT

EXT.P4:- TRUE COPY OF THE REPRESENTAITON DTD 16/9/2011 SUBMITTED BY THE PETITIONERS TO MINSTER FOR EDUCATION SECRETARIAT, THIRUVANANTHAPURAM

EXT.P5:- TRUE COPY of the INFORMATION NUMBER 72939/INFOR.2/2011 FIN DTD 17/10/2011 ISSUED BY THE JOINT SECRETARY AND STATE PUBLIC INFORMATION OFFICER,

EXT.P6:- TRUE COPY OF THE ORDER NO E3/40857/11/COLL.EDN DEPT DTD 29/3/2012 ISSUED BY THE 2ND RESPONDENT

EXT.P7:- TRUE COPY OF THE REPRESENTATION DTD 10/5/2012 SUBMITTED BY THE PRESIDENT KERALA PRIVATE COLELGE MINISTERIAL STAFF FEDERATION NORTHERN RANGE, ST.JOSEPH'S COLLEGE, DEVAGIRI, KOZHIKODE TO THE MINSTER FOR EDUCATION, KERALA

EXT.P8:- TRUE COPY OF THE COMMUNICATION DTD 23/5/2012 RECEIVED FROM THE OFFICE OF THE MINISTER FOR EDUCATION, KERALA

ADDL.EXT.P9: TRUE COPY OF 9TH PAY REVISION ORDER DATED 26.2.2011

3RD RESPONDENT'S EXHIBITS

EXT.R3(A): TRUE COPY OF THE COMMUNICATION DATED 7.5.2010.

EXT.R3(B): TRUE COPY OF THE RELEVANT PAGES OF THE RECOMMENDATIONS OF THE 8TH PAY REVISION COMMISSION.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): TRUE COPY OF RELEVANT PAGES OF THE 8TH PAY REVISION ORDER DATED 25.3.2006

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) No.16364 of 2012
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Dated this the 7th day of July, 2015

JUDGMENT

The petitioners are Lab Assistants working in St.Joseph's College, Devagiri. Their grievance is that they are not given the benefit of actual scale of pay admissible to Lab Assistants/Lab Attenders ordered as per the 8th pay revision order, modified as per G.O.(P) No.262/07(59)/Fin dated 19.6.2007.

2. All the petitioners were granted the revised scale of pay attached to the post of Lab Assistants. All of them were drawing their pay in the scale of pay of Rs.2,650-4,150 as on the date of 8th pay revision order. The Government, accepting the recommendations of the 8th pay commission report, issued orders revising the pay scale of Government servants, teachers, employees in aided colleges etc. as per G.O.(P) No.145/2006/Fin dated 25.3.2006-Ext.R1(a). As per this order, the scale of pay attached to the post of Lab Attender in the Collegiate Education Department, which was in the scale of pay of Rs.2,650-4,150 was revised as Rs.4,510-7,480.

3. Based on this pay revision, the pay in respect of the petitioners was fixed in the scale of pay of Rs.4,510-7,480. While so, the petitioners came to know that the Government revised the scale of pay in respect of the Lab Attenders (subsequently re-designated as Lab Assistants) in Colleges from Rs.4,510-7,480 to Rs.4570-7820 as per G.O.(P) No.262/2007(59)/Fin dated 19.6.2007. The petitioners have extracted the contents of that order in paragraph 4 of the writ petition. The petitioners were not granted the modified scale of pay as per the order dated 19.6.2007. As per this Government order, the revised scale coming in S1, S2, S3, S4, S5 and S6 in Annexure-1 of G.O.(P) No.145/06/fin. dated 25.3.2006 were modified, providing higher scale of pay, as indicated there. The scale of pay of Lab Attenders was in the S3 scale, which got modified as Rs.4750-7820. Even though there had been a series of communications between the Principal and Deputy Director of Collegiate Education as well as the Director of Collegiate Education and the Government, the petitioners had also submitted a series of representations before all the authorities in the Collegiate Education Department including the Minister of Education; but

nothing fruitful happened. While so, the 9th pay revision order also was issued in 2011, by granting further revision of pay to the employees. As per the 9th pay revision order, the scale of pay of the Lab Assistants/Lab Attenders was revised from Rs.4,750-7,820 to Rs.8,960-14,260. Aggrieved by the denial of the benefit of pay revision as ordered in 2007, the petitioners approached this Court seeking a declaration and direction for fixing their pay in the revised scale of pay at Rs.4,750-7,820.

4. The Government have filed 3 counter affidavits, one after another, apparently based on directions issued by this Court. In the first counter affidavit, the stand adopted was that the scale of pay as claimed by the petitioners was admissible only to those who passed the screening aptitude test alone. The respondents admitted that the scale of pay was modified as Rs.4,750-7,820 as per order dated 19.6.2007. In paragraph 4 of the counter affidavit dated 30.9.2012, it was stated that Lab Attenders in private colleges, who were promoted from the post of Last Grade Servants, belong to common attenders pool whose salary as per the 8th pay revision order was Rs.4,630-7,000; but only those Lab Attenders who have passed the screening aptitude test alone

are eligible for the scale of pay of Rs.4,750-7,820. In paragraph 5 of the counter affidavit of the 3rd respondent different scale of pay for Lab Assistant, Lab Assistant 1st H.G. (8 yrs.), Lab Assistant 2nd H.G.(16 yrs) and Lab Assistant 3rd H.G.(23 yrs.) were given. The scale of pay of Rs.4,750-7,820 was stated to be attached to the post of Lab Assistant 1st H.G. (8yrs.), which was revised as Rs.9,190-15,780. The 3rd respondent stated that the Lab Attenders and Library Assistants coming in common attender post are having the same qualification and the same scale of pay of Rs.4,630-7,000/- which was revised as Rs.8,960-14,260 as per G.O.(P) No.85/2011/Fin dated 26.2.2011. In support of the contention of the respondents, that the higher scale of pay as per orders of 2007 was admissible to only those who qualified in screening test, they have produced Ext.R3(a) letter dated 7.5.2010 of the Director of Collegiate Education addressed to the Deputy Director of Collegiate Education Department. As per that letter, the Director of Collegiate Education Department informed that the recommendation of the pay commission was to appoint the Lab Attenders after conducting a screening aptitude test. It was stated that the Lab Attenders in private colleges were not

appointed on the basis of the same. Therefore they continue to be in the common pool. It was also informed that the scale of pay of Rs.4,750-7,820 can be given only for those who have qualified in the screening aptitude test.

5. Dissatisfied with the explanation in the counter affidavit, this Court directed the respondents to file further affidavit explaining the position. An affidavit dated 25.6.2013 was thereupon filed by the Accounts Officer, Office of the Deputy Director of Collegiate Education, stating that the 3rd respondent- Deputy Director of Collegiate Education, Kozhikkode, took the stand that the petitioners should pass the screening aptitude test on the basis of the recommendations of 8th pay revision commission. The recommendations of the 8th pay revision commission was produced as Ext.R3(b). The relevant portion regarding the Laboratory Attender reads as follows:

The Commission considered the existing status of posting Attenders in Laboratories of Educational institutions and recommend to separate this category from common Attender posts and designate it as Laboratory Attender simultaneously awarding scale of pay corresponding to Rs.2750-4625. The Commission

also recommend to fill up these posts from among the Attenders who pass a screening and aptitude test.

6. The petitioners filed reply affidavit. Along with the reply affidavit, a copy of G.O.(P) No.85/2011/Fin dated 26.2.2011 (9th pay revision order) was produced as Ext.P9, in which the scale of pay attached to the post of Lab Attender was seen revised from Rs.4,750-7,820 to Rs.8,960-14260. Based on the pre-revised scale of pay as provided in the Annexure to the pay revision order produced as Ext.P9, the petitioners asserted that the scale of pay of Lab Attender underwent a revision and the petitioners are entitled to the benefit of the same.

7. Thereafter based on a further direction, an affidavit was filed on behalf of the first respondent, in which it was stated that the scale of pay of Lab Attender was revised as per the 8th pay commission report without including any pre condition.

8. I heard the learned counsel appearing on either side.

9. The learned Government Pleader, vehemently opposed the reliefs sought for by the petitioners and on the basis of Ext.R1(a), argued that petitioners cannot be allowed the

modified scale of pay as ordered in 2007, since they have not undergone or got qualified in any screening aptitude test as pointed out in Ext.R3(a). At the same time, the learned counsel appearing for the petitioners pointed out that in view of the affidavit filed on behalf of the first respondent, there cannot be any doubt that the scale of pay attached to the post of Lab Attender underwent a modification.

10. Having regard to the pleadings and the rival contentions, it is necessary to examine whether there was any pre-condition fixed for granting modified scale of pay as ordered in 2007. The respondents do not have a case that they have ever conducted any screening test for petitioners or that they failed to get qualified in such tests. No such screening test is stated to have been conducted on any occasion. On a perusal of Ext.R3(a), I find that it is only a letter addressed to the Deputy Director of Collegiate Education by the Director of Collegiate Education Department. He has, with reference to the recommendations in the pay commission report, stated in that letter that the Lab Attenders in the private colleges are not appointed on the basis of the screening test and therefore they are not eligible for the

modified scale of pay. I find that the contents of Ext.R3(a) letter is only an opinion of the Director of the Collegiate Education; at the same time it is seen that the same is not supported by any of the Government orders. The scale of pay is revised by the Finance Department of the Government merely because there was a recommendation by the Government to the effect that the revised scale of pay of Rs.4,750-7820 shall be payable to the Lab Attenders on getting qualified in the screening test does not mean that the Government have to prepare that condition in order to grant the scale of pay as revised, as given in the pay revision order issued on 25.3.2006. On a perusal of Ext.R3(b) as well as the pay revision order issued by the Government on 25.3.2006 and also with reference to the order Ext.P9 that is 9th pay revision order issued on 26.2.2011, it can be seen that the scale of pay attached to the post of Lab Attenders underwent revision, without attaching any condition. In case the Government had thought of insisting on a condition regarding pass in screening test for the purpose of extending the revised scale of pay to the Lab Attenders, that would have found a place in Ext.R1(a) order that is the order dated 25.3.2006. But no such

provision is seen. Similarly in the order dated 19.6.2007 also nothing is stipulated regarding any condition as to undergo any screening test, for the purpose of extending the revised scale of pay. As also there is no separate provision for the Lab Attenders as indicated in Ext.R3(a) letter of the Director of Collegiate Education, so as to deny the modified scale of pay to the Lab Attenders like the petitioners. In the above circumstances, I find that the petitioners who have been working as Lab Attenders and who were granted the pre-revised scale of pay attached to the post of Lab Attender in the 7th pay revision order and 9th pay revision order are entitled to get their scale of pay modified as admissible to S3 scale of Rs.4750-7820. As the pay revision orders have been given effect to, from 1.7.2004, the petitioners will be entitled to get their pay fixed in the scale of pay of Rs.4,750-7,820 with effect from 1.7.2004 or the date which they opt on the basis of the orders, if any available for option.

In the above circumstances, there will be a direction to the Deputy Director of Collegiate Education to refix the pay of the petitioners in the scale of pay of Rs.4,750-7,820 with effect from 1.7.2004 and to grant them all consequential benefits including

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the arrears of pay. This shall be completed within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

**P.V.ASHA,
JUDGE.**

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