

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

OP.No. 36634 of 2001 (J)

PETITIONERS:

- 1. C.P. ROSY, W/O. E.P. FRANCIS, AGED 56 YEARS
(HEADMISTRESS [RETD.], ST. JOSEPH'S L.P. SCHOOL
ALLOOR), EMMATTHY HOUSE, MATTAM,
THRISSUR - 680 602.**
- 2. C.C. MARY, (HEADMISTRESS [RETD.], A.L.P. SCHOOL
PAYYUR), CHERUVATHOOR HOUSE, KANIPPAYOOR
KUNNAMKULAM THRISSUR DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

- 1. THE SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT
SECRETARIAT, TRIVANDRUM.**
- 2. THE SECRETARY TO GOVERNMENT
DEPARTMENT OF FINANCE, SECRETARIAT
TRIVANDRUM.**
- 3. THE ACCOUNTANT GENERAL (A&E) KERALA,
TRIVANDRUM.**
- 4. THE DIRECTOR OF PUBLIC INSTRUCTION
JAGATHY, TRIVANDRUM - 14.**
- 5. THE ASSISTANT EDUCATIONAL OFFICER
KUNNAMKULAM, THRISSUR.**

BY GOVERNMENT PLEADER SRI. S. JAMAL

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 - COPY OF THE G.O.(P) NO.180/91/(100)/FIN. OF THE GOVERNMENT.
- EXT.P2 - COPY OF THE LETTER NO.102480/PRU.1/98/FIN. OF THE FINANCE DEPARTMENT.
- EXT.P3 - COPY OF THE ORDER NO.C-24/99 OF THE 5TH RESPONDENT.
- EXT.P4 - COPY OF THE JUDGMENT IN O.P. NO.13093/2000-H OF THIS HON'BLE COURT.
- EXT.P5 - COPY OF THE G.O.(RT) NO.4139/2001/GE OF THE GOVERNMENT.
- EXT.P6 - COPY OF THE CIRCULAR NO.R1/91407/93 OF THE 4TH RESPONDENT.
- EXT.P7 - COPY OF THE G.O.(P) NO. 475/96/(97)/FIN. OF THE FINANCE (PRU) DEPARTMENT.
- EXT.P8 - COPY OF THE NOTICE DATED 09.09.2013 OF THE ASSISTANT EDUCATIONAL OFFICER ALONG WITH LETTER DATED 23.08.2013 OF THE GOVERNMENT.
- EXT.P9 - COPY OF THE COMMUNICATION DATED 30.09.2013 OF THE ACCOUNTANT GENERAL.
- EXT.P10 - COPY OF THE JUDGMENT DATED 16.10.2006 IN O.P. NO.24421/2000 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

O.P. No.36634 of 2001

Dated this the 1st day of September, 2015.

JUDGMENT

The issue relates to the recovery sought for from the petitioners herein, for alleged over payment on the basis of a pay fixation arrived at, in consonance with Ext.P1 order. The petitioners were Primary School Teachers, who were also appointed as Headmasters. Subsequent to which, a Selection Grade on completion of 25 years was introduced in the Cadre of Primary School Teachers. The Government brought out Ext.P1 to mitigate the loss caused to those Primary School Teachers, who were promoted as Headmasters prior to the introduction of the Selection Grade.

2. The Government, by Ext.P1, stipulates that as on the date of completion of 25 years of service, the persons, who were appointed as Headmasters prior to 01.07.1988 would be

notionally fixed with Selection Grade in the pay scale applicable to Primary School Teachers and then a further fixation would be made under Rule 28A Part-I of the Kerala Service Rules in the post of Headmaster. In implementation of Ext.P1, the Director of Public Instructions brought out Ext.P6 Circular dated 29.12.1994. In accordance with the same, the petitioners' pay was fixed notionally in the scale applicable to Primary School Teachers, on completion of the 25 years of service, and further fixation made in the Headmaster's scale.

3. The first petitioner retired on 31.05.2001 and the second petitioner on 31.03.2000. Long after the retirement of the petitioners, the Government sought to cancel Ext.P6 Circular, since the fixation as per Ext.P6 would not be in consonance with what has been directed in Ext.P1. The petitioners were asked to refund the amounts paid in excess.

4. The learned Government Pleader contends that even as per Rule 117(A) of Part III of the Kerala Service Rules, recovery can be effected from the pension of the petitioners and also the pay fixation order itself proceeded on the undertaking of the

petitioners that, any excess fixation would be liable to be refunded.

5. As has been noticed above, there can be no fault found against the petitioners for the pay fixation granted by the Government, since the same was following Ext.P6 Circular. The petitioners having been fixed with such pay, continued on the fixation made under Ext.P6 and also retired from the post of Headmasters. Even if a mistake had crept in with respect to the petitioners, it cannot be rectified at a distant point of time from their retirement. Reliance can be placed on the decision of the Hon'ble Supreme Court in **State of Punjab v. Rafiq Masih [2015 (1) KLT 429]**, wherein it was specifically found that recovery by the employer would be impermissible in law, if the same has been made mistakenly by the employer and recovery is sought from retired employees. It is on that principle, that Ext.P10 judgment also produced, which is produced along with an Interlocutory Application.

In such circumstances, though an erroneous fixation has been made, since the petitioners have long retired, there can be

no recovery made from the petitioners. The writ petition would stand allowed, setting aside Exts.P3 and P5 and directing that no refund shall be made from the petitioners nor can the fixation of pay be disturbed at this distant point of time.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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