

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

OPNo. 39486 of 2002 (A)

PETITIONER(S):

- 1. D.BABU, HEADMASTER GOVT.L.P.G.S.ERUVA.**
- 2. T.K.VIJAYAN, H.S.A. GOVT.MODEL HIGH SCHOOL, AMBALAPUZHA.**
- 3. M.P.PRASANNA, MUSIC TEACHER, GOVT.U.P.S. BHARANIKKAVU.**
- 4. PAMMINI, HEADMISTRESS, GOVT.U.P.GS. KANNAMANGALAM.**
- 5. A.SULAIKHA BEEVI, HEADMISTRESS GOVT.S.R.V.L.P.S. PUTHUPALLY.**

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, TRIVANDRUM.**
- 2. ACCOUNTANT GENERAL (A & E), KERALA ACCOUNTANT GENERAL'S OFFICE, THIRUVANANTHAPURAM.**
- 3. THE DY.DIRECTOR OF EDUCATION, ALAPPUZHA.**
- 4. THE ASST.EDUCATIONAL OFFICER, KAYAMKULAM.**
- 5. THE DISTRICT EDUCATIONAL OFFICER, ALAPPUZHA.**
- 6. THE DISTRICT EDUCATIONAL OFFICER, MAVELIKKARA.**
- 7. THE ASST.EDUCATIONAL OFFICER, MAVELIKKARA.**

R1 TO 7 BY ADV. GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF G.O.(P) NO.615/97(138)/FIN. DATED 28.06.1997
- P2 : COPY OF G.O.(P) NO.352/96 (86) FIN DATED 11.04.1996
- P3 : COPY OF G.O.P) 38/98 (152) FIN.DT.05.01.98
- P4 : COPY OF G.O.NO.399(178)/99 FIN. DTD.05.02.99
- P5 ; COPY OF G.O.(MS) NO.1333/99/FIN. DTD.30.04.99
- P6 : COPY OF G.O.(P). NO.1503(180)/99/FIN. DT.22.06.99
- P7 : COPY OF THE RE-OPTIONS SUBMITTED BY THE PETITIONERS
- P8SERIES: COPIES OF THE PROCEEDINGS ACCEPTING THE RE-OPTIONS OF PETITIONERS 1, 2, 4 AND 5
- P8(A) : COPY OF THE RE-FIXATION STATEMENT OF THE 3RD PETITIONER
- P9 SERIES: COPY OF HTE CHALAN EVIDENCING PAYMENT MADE BY PETITIONERS 2 TO 5
- P10 SERIES: COPIES OF THE OBJECTION
- P11 : COPY OF THE JUDGMENT IN O.P20280 OF 2001
- P12 : COPY OF THE JUDGMENT IN WA 2293/2002
- P13 : COPY OF THE JUDGMENT IN OP 34099/2002

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

O.P. No.39486 of 2002

Dated this the 15th day of July, 2015

JUDGMENT

The petitioners have filed this original petition seeking a writ of certiorari to quash Ext.P10 series of objections or in the alternative to declare the same as illegal and unsustainable and also seeking a writ of mandamus or any other appropriate writ or direction declaring that the re-option submitted by them are valid and that they are entitled for the benefits thereof.

2. Today, when the case was taken up for final hearing, the learned counsel for the petitioners would submit that, petitioners 1 to 4 have already got the benefit and as such they are not having any subsisting grievance.

3. As far as the 5th petitioner is concerned, the reason for rejection of her claim, as stated paragraph 4 of the counter affidavit filed on behalf of the 1st respondent reads thus:

"4. The 5th petitioner had exercised re-option on 09.02.1998 to sanction 20 years grade (which was sanctioned with effect from 29.07.1992) in the pre-revised scale with effect from 29.07.1997 and also selection grade in the pre-revised scale and 92 revision with effect from

that date. But the said option was not inconsonance with any Government order in force.

- i) As per G.O.(P) No.930/93(2)/Fin. dated 08.12.1993 an employee has to opt revised scale of the promoted post. Again as per Para (9) of G.O.(P) 81/94(5)/Fin. dated 02.02.1994, only the next immediate promotion post assumed on or after 01.03.1992 can be opted. Hence the re-option filed by the petitioner is invalid as she opted Senior Grade and selection Grade together as on the date of promotion or second promotion post after the 1992 pay revision.
- ii) As per Rule 7 of the rules for fixation of 97 pay revision option for pay revision with effect from the date beyond the date of promotion or time bound grade is not admissible. She ought to have opted a date upto 29.07.1998 i.e., promotion date of Selection Grade. As such, the option of 97 pay revision exercised by Smt. Sulaikha Beevi on 13.04.1999 is not admissible."

4. The learned counsel for the petitioner brought to my notice that the judgment of this Court dated 09.02.2012 in W.P. (C). No.13116/2007 in which a person similarly situated like the 5th petitioner was permitted to submit revised re-option for rectifying the anomaly. Paragraphs 5 and 6 of the judgment in W.P.(C). No.13116/2007 read thus:

"5. Evidently, this is a case where the petitioner had been enjoying the revised scale based on the re-option accepted. That is sought to be interfered with after a long lapse of time, viz. in 2004. If that be so, the petitioner could have been given an opportunity to submit a proper option so as to regularise her pay. This aspect is covered in favour of the petitioner, by the principles stated in the judgment in W.P.(C). No.24172/2007, wherein in para 4, it was held thus:

"The petitioner's pay is sought to be re-fixed on account of an audit objection after a long period of six years of original fixation of pay. When pay is sought to be re-fixed after such a long time, that too after the last date for re-option as permitted by the Government, it is only just and equitable that petitioner be given a chance for re-option so as to avoid adverse effect on the audit objection of his pay. The said view is supported by Ext.P16 judgment of this court in W.P.(C). No.33334/2005."

6. I had occasion to consider the matter in the judgment in W.P.(C). No.30935/2006 wherein, following the judgment in W.P.(C). No.24172/2007 the petitioner was allowed to exercise re-option in respect of the 1998 pay revision."

In such circumstances, this original petition is also disposed of with the following direction:

The 5th petitioner shall submit a revised re-option before the 3rd respondent for rectifying the anomaly pointed out in

Ext.P10, within a period of one month from today, who shall accept the same and pass appropriate orders for regularisation of her pay. Such orders shall be passed within a further period of two months. The 3rd respondent shall also take necessary steps to revise the pensionary benefits due to the 5th petitioner and disburse all consequential benefits, without any further delay. It is also ordered that in view of the judgment of this Court in **State of Kerala v. Lissy Joseph [2005 (4) KLT SN page 70, Case No.97]**, the petitioner shall be entitled for arrears consequent on the higher grade as it was admissible from the date of re-option and not from the date filing of the application.

JV

SD/-
ANIL K. NARENDRAN,
JUDGE