

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 32649 of 2006 (J)

PETITIONER:

**SMT.E.P.THRIPURA,
RETIRED HEADMISTRESS, 'CHITHRALAYAM', MANAPETTY HOUSE,
PORATHUSSERY, IRINJALAKUDA, THRISSUR DISTRICT.**

BY ADV. SRI.M.C.GOPI

RESPONDENT(S):

- 1. SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE ACCOUNTANT GENERAL (A & E), KERALA,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.**
- 4. THE ASSISTANT EDUCATIONAL OFFICER,
IRINJALAKUDA.**

R1 BY GOVERNMENT PLEADER SRI. SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE G.O.(P) NO. 380/94 DATED 9.6.1994.
- EXHIBIT P2: TRUE COPY OF THE CIRCULAR DATED 29.12.1994 ISSUED BY THE DPI.
- EXHIBIT P3: TRUE COPY OF THE CHALAN RECEIPT DATED 4.10.1995.
- EXHIBIT P4: TRUE COPY OF THE CERTIFICATE TILL 1.6.2002.
- EXHIBIT P5: TRUE COPY OF THE CERTIFICATE TILL 2.6.2003 ISSUED BY THE AEO,
IRINJALAKUDA.
- EXHIBIT P6: TRUE COPY OF THE STATEMENT DATED 29.3.2004.
- EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DATED 7.3.2006 BY THE
PETITIONER TO THE ACCOUNTANT GENERAL, KERALA.
- EXHIBIT P8: TRUE COPY OF THE JUDGMENT DATED 16.6.2006 IN O.P.NO.
29292/2001 AND 15667 OF 2002.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

AK

ANIL K.NARENDRA, J.

W.P.(C).No.32649 of 2006

Dated this the 13th day of August, 2015

JUDGMENT

The petitioner retired from service while working as Headmistress in R.M.L.P.S., Kizhuthani in Irinjalakuda Educational District, on 31.03.2004. She was initially appointed as a Primary School teacher on 3.11.1969. She acquired the departmental test qualification before 1985 and became K.E.R. Test qualified in the year 1985. She was promoted and appointed as Headmistress on 1.6.1985. Thereafter, the petitioner retired from service on 31.3.2004 on superannuation, with a total service of about 35 years.

2. By Exhibit P1 Government order dated 9.6.1994, an opportunity was given to teachers to exercise re-option for 1992 pay revision cancelling the option for the time bound grade already exercised by them. Exhibit P1 Government order was followed by Exhibit P2 circular dated 29.12.1994 issued by the Director of Public Instruction clarifying that

granting of selection grade. In terms of Exhibits P1 & P2 the petitioner exercised re-option for 1992 revision w.e.f. 13.3.1994, which is the date of attainment of selection grade in the cadre of primary school teacher. While exercising such re-option, the petitioner had to refund the excess pay already drawn on the basis of the original option for pay revision and as such she had to refund an amount of ₹4,995/- drawn as excess amount, which was refunded to the Sub Treasury, Irinjalakuda on 4.10.1995, which is evident from Exhibit P3 chalan. Accordingly, the re-fixation of her pay was made w.e.f. 13.3.1994 and the pay re-fixation statement was given to the Assistant Educational Officer, Irinjalakuda, the 4th respondent herein, who has sanctioned the same and which was also entered in her service book. Thereafter, the petitioner was drawing the salary as per the re-fixation, which is evident from Exhibit P4 periodical increment certificate issued by the 4th respondent for the period till 1.6.2002 and Exhibit P5 certificate dated 2.6.2003.

3. As per the pay fixation, the petitioner had been

drawing her salary for more than 10 years prior to her retirement on 31.3.2004. On 21.4.2004, the 4th respondent by Exhibit P6 order dated 29.3.2004, directed the petitioner to repay a sum of ₹49,646/-stating that she had drawn excess salary for the period from 13.3.1995 to 31.3.2004 and that the said amount has to be treated as her liability. Her D.C.R.G. was also withheld. According to the petitioner, the objection raised by the 4th respondent in Exhibit P6 is based on an audit objection by the Deputy Director of Education, Thrissur, the 3rd respondent herein, made on 7.3.2006. The petitioner submitted Exhibit P7 representation before the Accountant General, Kerala, the 2nd respondent herein pointing out that necessary direction may be issued to the 3rd respondent to withdraw and to rectify the mistake and to fix her pay at ₹7,550/- w.e.f. 1.3.1997. Thereafter, the petitioner came to know that by Exhibit P8 judgment in O.P.No.29292/2001 and 15667/2002, in the case of teachers identically situated, who were issued with orders similar to Exhibit P6, this Court quashed the said orders. It is in such circumstances, the petitioner has

approached this Court in this writ petition seeking a writ of certiorari to quash Exhibit P6 order directing recovery of amount from the D.C.R.G. payable to her and seeking a declaration that the pay fixation made after accepting the re-option exercised by her in view of Exhibit P1 Government order was correct and legal and it cannot be changed as done in Exhibit P6.

4. A counter affidavit has been filed on behalf of the 3rd respondent contending that, as per Exhibit P1 Government order, the Government have clarified that, primary school teachers who were promoted as Headmasters prior to 1.3.1992 and who have been eligible for selection grade of PD teacher but for their promotion as Headmaster will be permitted to have their pay fixed notionally in the selection grade as on 1.3.1992 or on the date on which they became eligible for selection grade after 1.3.1992 and on the basis of the pay in the revised scale which they would have drawn and had they continued as Senior Grade Primary Teachers and, then, based on the pay so fixed in the selection grade their pay in the

revised scale of pay of Headmaster will be fixed under Rule 28A Part-I KSR. In the case of the petitioner, she had exercised re-option as per Exhibit P1 Government order and option to the selection grade w.e.f. 13.3.95 in the pre-revised scale of pay ₹1280-2230 and pay fixed at ₹2070/- and then re-fixed the pay at ₹2250/- w.e.f. 13.3.95 in the revised scale of pay. Therefore, the 3rd respondent would contend that, the action of the 4th respondent in allowing notional selection grade in the pre-revised scale of pay was not found in order in terms of Exhibit P1 Government order. It was in such circumstances, the Deputy Director of Education, Thrissur objected the irregular re-fixation noticed in the service book of the petitioner. Since the notional fixation of pay in selection grade can be made only in the revised scale as per Exhibit P1 Government order, the matter was informed to the petitioner on 02.01.2003 with direction to revise the pay fixation as per original option. The 3rd respondent would also contend that, Exhibit P7 reply submitted by the petitioner has been rejected and the 3rd respondent was directed to regularize her pay in accordance

with Exhibit P1 Government order. Accordingly, her pay was regularized by the 3rd respondent and the excess amount for the period from 13.3.95 to 31.03.04 for ₹49,646/- has been fixed as her liability to be recovered from the D.C.R.G. Therefore, the 3rd respondent would support the reasoning in Exhibit P6.

5. The petitioner has filed a reply affidavit contending that, teachers like her who were promoted before they become eligible for Selection Grade and became Headmasters without enjoying the benefit of Selection Grade were permitted to exercise option to become eligible for Selection Grade on 1.3.1992 or a date after 1.3.1992 on the basis of their pay fixed in the pre-revised scale. Then based on the pay so fixed in the Selection Grade, their pay in the scale of Headmaster was fixed under Rule 28A Part-I KSR. Based on the above option given in paragraph 2 (ii)(c) of Exhibit P1 Government order dated 9.6.1994, the petitioner exercised option and the option so exercised is perfectly legal. By Ext.P9 Government order dated 23.08.1994, the Government have clarified that the scale

of pay of teachers who did not enjoy the benefit of Selection Grade is to be first revised as on 1.3.1992 or on the date on which they become eligible for Selection Grade based on the date of option for the Selection Grade they made and based on the above revised scale, their pay has to be fixed in the revised scale of Headmaster under Rule 28A Part-I KSR. The petitioner's salary was re-fixed and she was given all benefits till she attain the age of superannuation. The petitioner would also point out that, in the case of similarly placed teachers, this Court in Exhibit P8 judgment in O.P.No. 15667/2002 found that they are entitled for revision of their pay on the pre-revised scale taking into consideration Exhibit P1 Government order along with Exhibit P9 Government order. Therefore, the stand taken by the 3rd respondent in Exhibit P4 that, due to a mistaken re-fixation of pay the petitioner had drawn an excess amount of ₹49,646/- for the period from 31.3.1995 to 31.3.2004, which has to be recovered from her D.C.R.G. cannot be sustained.

6. I heard arguments of the learned counsel for the

petitioner and also the learned Government Pleader appearing for the respondents.

7. The sole issue that arises for consideration in this writ petition is as to the legality of the re-fixation of pay made by the petitioner in terms of Exts.P1 and P2. The stand taken by the 4th respondent in Exhibit P6 is that, the re-fixation of pay made in the case of the petitioner resulted in excess payment due to wrong fixation of pay, which has to be recovered from her.

8. The stand taken by the 4th respondent in Ext.P6 is that, on verification of the service book of the petitioner, the 3rd respondent objected the notional fixation made w.e.f.13.3.1995 in the pre-revised scale, since as per Ext.P1, Selection Grade can be made only in the revised scale. Senior Grade of the petitioner has already been fixed at ₹1,540/- in the scale of pay of ₹1220-2150 w.e.f.13.3.1990. As the petitioner was promoted as Headmistress before fixing her pay in the Selection Grade, she is eligible only for a notional fixation in the Selection Grade.

9. The said issue is squarely covered in favour of the petitioner by the judgment of this Court in **Mohanan Vs. State of Kerala (2012 (3) KLT 92)**. Paragraphs 6 to 9 of the judgment read thus:-

“6. The relevant clause in G.O.(P)No.380/94/(13)/ Fin, dated 09.06.1994, Ext. P7, is para.2(c) which provides as follows:

'Teachers (P.D) who were promoted as Headmasters prior to 01.03.1992 and who would have been eligible for the selection grade of P.D.Teacher but for their promotion as Headmasters will be permitted to have their pay fixed notionally in the Selection Grade first on 01.03.1992 or on the date on which they become eligible for the Selection Grade after 01.03.1992 on the basis of the pay in the revised scale which they would have drawn had they continued as Senior Grade Primary Teachers and, then, based on the pay so fixed in the Selection Grade, their pay in the revised scale of pay of Headmaster will be fixed under Rule 28A, Part I, Kerala Service Rules.'

It will show that the same applies to P.D.Teachers who were promoted as Headmasters prior to 01.03.1992. In such cases also, they would have been eligible for the selection grade of P.D.Teacher but for their promotion as Headmasters. They will be permitted to have their pay fixed notionally in the Selection Grade first on 01.03.1992 or on the date on which they become eligible for the Selection Grade after

01.03.1992.

7. Evidently, the above will apply only to teachers who have obtained promotion after 1.7.1988 which is the date fixed in Ext.P1 and prior to 1.3.1992. Otherwise, the clauses in Exts.P1 and P7 will become meaningless. Both were issued after the Pay Revisions in 1988 and 1993 respectively. The wording is similar and the difference is in respect of the dates mentioned therein. The clause 2(c) in Ext.P7 is similar to the one provided in Ext.P1 i.e., clause 2(i). There is no specification in Ext.P7 that it will apply to promotions made prior to 1.7.1988. When the pay revision is effected by the Government within a time gap of five years, usually the contingencies which have arisen after the effect of one pay revision and before the coming into effect of the next pay revision will be taken care of in the orders concerned. But, that cannot upset the pay fixations made pursuant to the earlier pay revision orders. Such orders cannot take away the benefit retrospectively. Apart from that, as rightly pointed out by the learned counsel for the petitioner, he was granted the benefit based on the clause in Ext.P1 and there is no dispute that para.2(i) squarely applied to his case also. Therefore, the fixation made as per clause 2(i) of Ext.P1 was valid. In Ext.P3 audit objection, even though Ext.P7 Government Order is relied upon, the fact that he was promoted prior to 1.7.1988 has not been noticed. The relevant clause in Ext.P7 starts by saying "Teachers (P.D.) who were promoted as Headmasters prior to 1.3.1992", that means those teachers who were promoted after 1.7.1988 and before 1.3.1992, otherwise, the said clause will have no real impact and will be self

contradictory'. In that view of the matter, the audit objection does not survive.

8. Learned counsel for the petitioner also relied upon the decision of the Apex Court Chairman. Railway Board and Others v. C. R. Rangadhamaiah and Others (1997 (6) SCC 623) wherein in para. 20 it was held thus:

'It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the 'ground of retroactivity as being violative of Art.14 and Art.16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Art.14 and Art.16 of the Constitution to the extent it operates retrospectively.'

9. It is, therefore, contended that if a benefit which is granted with regard to promotion or pay scale is sought to be reversed from an anterior date, the same will be violative of Articles 14 and 16 of the Constitution of India. The legal position is thus well settled that a vested right cannot be affected by any amendment of the Rule retrospectively. Herein, once the pay fixation has been made validly which was been enjoyed by the petitioner, it has become the right vested upon him. Therefore, at any rate, it cannot be said that Ext.P7 will act retrospectively in respect of fixation made as per Ext.P2 which is based on Ext.P1 Government Order pursuant to pay revision of the year 1988."

10. It is pertinent to note that, the Government in Para.5

(a) of G.O.(P)No.930/93/(2)/Fin.Ext.P8 dated 8.12.1993, substituted Paras.8 to 11 of G.O.(P)No.600/93/Fin. dated 25.9.1993 dealing with the promotions under Time Bound Higher Grade Scheme for all categories of employees including teachers. The Government ordered in Para.5(a) that, the time bound grade promotion schemes existed earlier which were applicable to Teachers and Headmasters of Primary and Secondary Schools will continue as such and that, all the rules/guidelines which were followed for the above purpose will be continued. The Government have also ordered that, Headmasters of Primary Schools and Headmasters of Secondary Schools will be eligible for their higher grades on the basis of the same rules/guidelines which are being followed earlier. Further, in order to dispel doubts in implementation of Ext.P1 Government Order dated 9.6.1994, the Government have also issued Ext.P9 Government Order dated 23.8.1994 in partial modification of Ext.P1.

11. In such circumstances, the audit objection raised by the 3rd respondent, as reflected in Ext.P6 order of the 4th

respondent cannot be sustained and the same is set aside, thereby restoring the refixation of pay evidenced by Ext.P4.

Respondents 2 to 4 shall take necessary steps to revise the pension and pensionary benefits payable to the petitioner, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this judgment, and all consequential monetary benefits shall be disbursed to her without any further delay.

The Writ Petition is disposed of as above. No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

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True copy

P.A. to Judge

The last portion of the first sentence in paragraph 11 of the judgment dated 13/08/2015 in W.P.(C)No.32649/2006 is corrected as "restoring the refixation of pay evidenced by Exts.P4 and P5" instead of "restoring the refixation of pay evidenced by Ext.P4" as per order dated 26/10/2015 in I.A.15314/2015 in W.P.(C)No.32649/2006.

Sd/-
Registrar (Judicial)