

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 27842 of 2009 (R)

PETITIONER(S):

**B.S. VASANTHY AMMA, 'KARUNYA',
PARAVOORKONAM, KARAKULAM P.O.,
THIRUVANANTHAPURAM-695 564.**

**BY SRI.K.JAJU BABU, SENIOR ADVOCATE.
ADV. SMT.M.U.VIJAYALAKSHMI.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REP. BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE PRINCIPAL SECRETARY (FINANCE),
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 3. THE ACCOUNTANT GENERAL (A & E), KERALA,
THIRUVANANTHAPURAM-695 039.**
- 4. THE ADDITIONAL SUB TREASURY OFFICER,
VANCHIYOOR, THIRUVANANTHAPURAM.**
- 5. THE HIGH COURT OF KERALA,
ERNAKULAM-682 031,
REP. BY THE REGISTRAR (SUBORDINATE JUDICIARY).**

**R1 TO R4 BY GOVT. PLEADER SRI.RAFEEL. V.K.
R5 BY ADV. SRI.ELVIN PETER P.J.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE G.O.(RT) NO.1452/2002/HOME DATED 04/07/2002 ISSUED BY THE 1ST RESPONDENT.
- EXT.P2 COPY OF THE HIGH COURT OF KERALA NOTIFICATION NO.B1-44414/02(3) DATED 06/09/2002.
- EXT.P3 COPY OF THE HIGH COURT OF KERALA ORDER NO.B1-20101/02 DATED 26/10/2002 ISSUED TO THE PETITIONER.
- EXT.P4 COPY OF THE COMMUNICATION DATED 18/02/2003 OF THE 3RD RESPONDENT.
- EXT.P5 COPY OF THE HIGH COURT ORDER NO.B3-77418/2002 DATED 10/03/2003.
- EXT.P6 COPY OF THE COMMUNICATION DATED 09/07/2003 OF THE 3RD RESPONDENT.
- EXT.P7 COPY OF THE G.O.(MS) NO.157/2006/HOME DATED 30/08/2006 ISSUED BY THE 1ST RESPONDENT.
- EXT.P8 COPY OF THE COMMUNICATION DATED 01/10/2007 OF THE 3RD RESPONDENT, ADDRESSED TO THE 4TH RESPONDENT.
- EXT.P9 COPY OF THE COMMUNICATION DATED 01/10/2007 OF THE 3RD RESPONDENT ADDRESSED TO THE REGISTRAR OF THIS HONOURABLE COURT.
- EXT.P10 COPY OF THE COMMUTATION PAYMENT ORDER DATED 01/10/2007 ISSUED BY THE 3RD RESPONDENT.
- EXT.P11 COPY OF THE REVISED PENSION PEYMENT ORDER DATED 16/06/2009 ISSUED BY THE 3RD RESPONDENT.
- EXT.P12 COPY OF THE COMMUNICATION DATED 16/06/2009 OF THE 3RD RESPONDENT ADDRESSED TO THE REGISTRAR OF THIS HONOURABLE COURT.
- EXT.P13 COPY OF THE COMMUNICATION DATED 24/08/2009 OF THE 3RD RESPONDENT ADDRESSED TO THE PETITIONER.

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**EXT.P14 COPY OF THE LETTER DATED 31/08/2002 OF THE
5TH RESPONDENT, ADDRESSED TO THE 3RD RESPONDENT.**

**EXT.P15 COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 11/03/2011 IN WP(C).NO.21382/2009.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P.V.ASHA, J.

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W.P.(C). No.27842 OF 2009

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Dated this the 3rd day of July, 2015

JUDGMENT

The petitioner retired from service on 31.10.2002 while working as Judicial Magistrate of First Class Kayamkulam on the basis of a temporary appointment. She entered service as LD Clerk on 9.2.1973 and on further promotions, while she was working as Sheristadar in the District Court Thiruvananthapuram, in the Kerala Judicial Ministerial Service, she was appointed as temporary Munsiff-Magistrate under Rule 9 of the Kerala Judicial Service Rules, as per Ext. P1 order dated 4.7.2002. On attaining the age of superannuation on 31.10.2002, she retired from service as Munsiff-Magistrate.

2. As per Exts.P4 and P5 proceedings of the High Court and Accountant General respectively, issued in 2003, pensionary benefits were sanctioned and granted to

petitioner, reckoning the last pay drawn by her in the post of 1st Class Judicial Magistrate. She was granted revised pensionary benefits also, based on revised scale of pay of Judicial Officers. Whiles by Exts.P11 and P12 proceedings dated 16.6.2009, the Accountant General issued revised Pension Payment Order reducing her monthly pension as well as other pensionary benefits, fixing the same based on last pay drawn in the post of Sheristadar in the scale of pay of Rs.7,200–11400. It was stated therein that pensionary benefits payable to Judicial Officers are not admissible to temporary Munsiff–Magistrates. The District/Sub Treasury Officer was directed to recover a sum of Rs.1,11,687/– from the Dearness relief of pension towards the commuted value of pension drawn in excess. Accordingly her monthly pension was reduced to Rs.4,307 and Rs.2,872/– on the basis of commutation.

3. On submitting a representation against the reduction effected, the Accountant General informed her that the said revision and reduction was made on the basis

of clarification received from the Registrar of this Court, the 5th respondent, to the effect that the pensionary benefits of judicial officers appointed on temporary basis are to be regulated by the pay in their substantive post as they are not regular members of Kerala Judicial service.

4. It was in the above circumstances, the petitioner approached this court challenging Exts.P11 to P14 proceedings as well as praying for a declaration as to her entitlement of pension and other pensionary benefits admissible to Judicial Magistrate of First Class in terms of Ext.P7 Government Order. She also prayed for a direction restraining the respondents from reducing her pension and other benefits, already allowed her by Exts.P8 to P10 proceedings.

5. The 5th respondent has filed a statement stating that Government has in consultation with the Finance Department informed, in the case of one Mr. K.V Ramachandran, retired temporary Munsiff/Magistrate Koothuparamba that he has been found eligible for

increment in the temporary post of Munsiff/Magistrate as per Rule 33(a) of KSR and that there is no bar in reckoning the said post towards pensionary benefits and that the average emoluments for the purpose of computing pensionary benefits can be calculated on the basis of emoluments drawn during the last 10 years by taking into account of the pay drawn by the officer in the post of Munsiff/Magistrate.

6. When the writ petition came up for hearing, the learned Government Pleader furnished a copy of the letter No.82452/C5/2009/Home dated 19.5.2011 of the Additional Chief Secretary to Government, addressed to Advocate General, in which it was stated that, for the purpose of computing the pensionary benefits of petitioner, the average emoluments drawn by the petitioner can be arrived at on the basis of emoluments drawn during the last 10 months i.e by taking into account of the pay drawn by her in the post of Munsiff/Magistrate also. It is further stated that the Accountant General has already given

necessary instructions for re-computing the pensionary benefits of petitioner on the basis of emoluments drawn by her during the last 10 months.

7. Learned Senior Counsel appearing for the petitioner submits that so far no action is taken in terms of the letter of Additional Chief Secretary to the Government, for re-computing the pensionary benefits for disbursal of the benefits on the basis of the average emoluments actually drawn by her. It was submitted that petitioner is not paid any of the benefits based on subsequent orders revising pension.

In the light of the statement of the 5th respondent as well as the letter of the Additional Chief Secretary, the revision and reduction of pensionary benefits effected as per Exts.P11 to P13 are quashed. The respondents are directed to restore the pensionary benefits of petitioner, as sanctioned and authorised in Exts.P8 to P10 proceedings and to grant her all consequential benefits like arrears of monthly pension and other pensionary benefits due to her

including refund of the amount recovered from her dearness allowance. On such restoration, she shall be granted the benefit of revision of pension ordered from time to time. This shall be done within a period of 3 months from the date of receipt of a copy of this judgment.

Accordingly this writ petition is disposed of.

Sd/–
P.V.ASHA, JUDGE

SKV