

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 27485 of 2008 (V)

PETITIONER(S) :

PRAKASAN K.E.,
S/O.VIJAYAN, "DHANYA VIHAR",
P.O. PINARAYI,
KANNUR,
WORKING AS LD CLERK, JUVENILE COURT
THALASSERY.

BY ADVS.SRI.V.V.ASOKAN
SMT.S.AMINA.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY (FINANCE),
SECRETARIAT, THIRUVANANTHAPURAM.
2. CHIEF JUDICIAL MAGISTRATE,
(PRINCIPAL MAGISTRATE) THALASSERY.
3. ACCOUNTANT GENERAL (A&E)
KERALA, THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SRI.P.V.LONACHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) EXHIBITS :

- EXHIBIT P1- TRUE COPY OF THE PAY FIXATION PROCEEDINGS OF THE ACCOUNTS OFFICER, DISTRICT POLICE OFFICE, KANNUR.
- EXHIBIT P2- TRUE COPY OF THE FORM OF OPTION.
- EXHIBIT P3- TRUE COPY OF THE PROCEEDINGS OF THE SUPERINTENDENT OF POLICE, KANNUR.
- EXHIBIT P3(A) - TRUE COPY OF THE RELIEVING ORDER.
- EXHIBIT P4- TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT.
- EXHIBIT P5- TRUE COPY OF THE STATEMENT OF FIXATION OF PAY IN THE REVISED PAY SCALE SANCTIONED AS PER G.O.(P) NO.145/2006/FIN.
- EXHIBIT P6- TRUE COPY OF THE AUDIT ENQUIRY REPORT.
- EXHIBIT P7- TRUE COPY OF THE G.O.(P) NO.211/2005/FIN.
- EXHIBIT P8- TRUE COPY OF THE CIRCULAR NO.23/2006/FIN.
- EXHIBIT P9- TRUE COPY OF THE PROCEEDING ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.27485 of 2008

Dated this the 5th day of January, 2015

JUDGMENT

The petitioner joined the service of the Police Department as a Police Constable in the year 1990. The petitioner pursuant to the notification issued by the Kerala Public Service Commission for appointment as an L.D.Clerk, was selected and appointed as the L.D. Clerk at the office of the Additional Chief Judicial Magistrate, Thalassery. The petitioner submits that on completion of 10 years service in the Police Department, he was given non-qualifying higher grade with a pay scale of Rs.3350-5275 and pay was fixed at Rs.3590/-. The petitioner submits that he is entitled for pay that was drawn as a Police Constable and the pay was fixed at Rs.3,800/-. It is further submitted that based on the pay revision of 2006, the petitioner's pay was re-fixed at

Rs.7,000/-. The petitioner also submits that the Regional Audit Wing found that there is irregularity in the matter of fixation of pay for the petitioner as an L.D.Clerk in the criminal judicial service. Based on the audit report, the Chief Judicial Magistrate by Ext.P9 reduced the pay as on 1.2.2006 as Rs.5250/- from Rs.7,000/-. The Audit apparently raised the objection based on the amended Rule 37(b) of Part I KSR. It is challenging the above order and Rule, the writ petition is filed.

2. The learned counsel for the petitioner raised two contentions. It is submitted that Rule 37 was made in the year 2005 was not in circulation and not brought to the notice. The petitioner also challenges the vires of the Rule.

3. The Rule 37(b) reads as follows:

“In the case of officiating appointments from a higher time scale of pay to a lower time scale pay by direct recruitment, the officers officiating pay in the lower time scale shall be fixed at the minimum of the scale of pay of the

new post without considering this pay in higher time scale except in the cases where such appointments are made in accordance with the special rules applicable to such appointment and in the case of such appointments, the officer's officiating pay in the new time scale shall be fixed at his officiating pay in the previous appointment, if it is a stage in the new time scale, or at the next lower stage, if it is not a stage in the new time scale or at the next lower stage, if it is not a stage in the new scale, the difference being treated as personal pay to be absorbed in future increases. But nothing in this sub rule shall apply to cases of reversions.

4. The petitioner's contention is that the Rule was not in circulation cannot be accepted. Once the rule is notified, there is a constructive notice to all concerned about its implementation. The Rule provides prior regular service of the appointees with higher time scale of pay cannot be protected except in cases of appointment are made in

accordance with the Special Rules. The petitioner is only eligible for minimum scale of pay. The petitioner is well aware about the implication of new rules. There cannot be any excuse regarding ignorance of a existing rules.

5. The next question is whether the rule is *ultra vires*, it is in the realm of policy of the Government to laid down the recruitment rules. The wisdom of the Government in fixing different norms and procedure for appointment cannot be questioned. The court cannot substitute the wisdom of the Government for laying norms for recruitment. An appointee cannot insist that his appointment should carry the same pay, which he was drawing in the prior service. If the appointee has chosen a different service, it concludes that he has relinquished the pay, which he was drawing in the prior service. The wisdom of choosing different service is in the field of choice of the employee concerned. The employee

cannot now command that his pay should be protected. In view of the above, I do not find any justification challenging the vires of the Rules.

Lastly, it is contended that the petitioner may given liberty to approach the Government to amend the Rule. It is open for the petitioner to pursue any remedy before the Government including for Amendment of Rules.

Accordingly, the writ petition is disposed of. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ln