

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 28111 of 2012 (R)

PETITIONER:

**CHERIAN VARGHESE,
(RETD. CHIEF JUDICIAL MAGISTRATE),
' ADATTE MADAM', THURITHICADU.P.O.,
MALLAPPALLY, PATHANAMTHITTA.**

**BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH PALEX**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY
TO DEPARTMENT OF HOME,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. ACCOUNTANT GENERAL,
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFIFCE OF THE ACCOUNTANT GENERAL(A&E),
M G ROAD, PB NO. 5607, THIRUVANANTHAPURAM - 695 001.**
- 3. HIGH COURT OF KERALA,
REPRESENTED BY ITS REGISTRAR
(SUBORDINATE JUDICIARY), HIGH COURT OF KERALA,
ERNAKULAM - 682 031.**

**R1 & R2 BY GOVERNMENT PLEADER SMT.LILLY LESSLIE
R3 BY ADV. SRI.ELVIN PETER P.J.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-09-2015 ALONG WITH WPC. 43/2013, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P1: TRUE COPY OF GO(MS) NO 231/2001/HOME DATED 12-12-2001.
- EXT.P2: TRUE COPY OF GO(MS) NO 157/2006/HOME DATED 30-08-2006.
- EXT.P3: TRUE COPY OF GO(MS) NO 236/2010/HOME DATED 02-11-2010.
- EXT.P4: TRUE COPY OF THE COMMUTATION TABLE PRESCRIBED UNDER
RULE 6 OF THE PENSION COMMUTATION RULES UNDER KERALA
SERIVE RULES.
- EXT.P5: TRUE COPY OF THE COMMUTATION TABLE PRESCRIBED UNDER THE
CENTRAL CIVIL SERVICE (COMMUTATION OF PENSION) RULES 1981.
- EXT.P6: TRUE COPY OF THE COMMUTATION PAYMENT ORDER ISSUED BY
2ND RESPONDENT BEARING NO 13118274.
- EXT.P7: TRUE COPY OF THE VERIFICATION REPORT DATED 20.6.2011 ISSUED
BY THE 2ND RESPONDENT.
- EXT.P8 : TRUE COPY OF THE LETTER BEARING NO 88323/C3/2010/HOME
DATED 24-02-2011 ISSUED ON BEHALF THE ADDITIONAL CHIEF
SECRETARY OF 1ST RESPONDENT.
- EXT.P9 : TRUE COPY OF THE REPRESENTATION DATED 12.3.2012 SUBMITTED
BY THE PETITIONER.
- EXT.P10: TRUE COPY OF LETTER NO 37670/C3/2011/HOME DATED 05-06-2012
ISSUED BY 1ST RESPONDENT.
- EXT.P11: TRUE COPY OF THE LETTER BEARING NO.30431/C3/2012/HOME
DATED 9.8.2012.

RESPONDENTS' EXHIBITS:

NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ANU SIVARAMAN, J.

=====

W.P. (C) No. 28111 of 2012

&

W.P. (C) No. 43 of 2013

Dated this the 18th day of September, 2015

J U D G M E N T

W.P. (C) No. 28111 of 2012

The petitioner had retired from service as Chief Judicial Magistrate. He is aggrieved by the payment of commuted value of his pension taking the commutation factor as 8.194 which in the rate applicable to Central Government employees instead of the rate available for State Government employees which is 9.81. The claim of the petitioner is based on the recommendations of the National Judicial Pay commission which was accepted by the Apex Court with the modification contained in the judgment reported in ***All India Judges' Association v. Union of India*** [2002(4) SCC 247].

2. It is the specific case of the petitioner that the recommendation of the Shetty Commission to the effect that in the matter of calculation of pension of Judicial Officers, the State Rules for the time being in force in the respective States was accepted by the Central as well as the State Governments.

Though, Ext.P2 Government order specifically provided that 10 years service shall be the minimum qualifying service in the case of Judicial Officers and that commutation will be allowed to the extent of 50% and restoration shall be effected after 15 years, no mention was made to the commutation factor applicable. It is the case of the petitioner that any departure from the recommendations of the National Judicial Pay commission, is also not possible at the hands of the State Government. In any view of the matter, it is stated that since commutation factor applicable in the State services is 9.81 and since it has been recommended by the pay commission and accepted by the Apex Court that the rules for calculation of pension are those applicable to the State Government employees in the case of Judicial Officers also, the petitioner is entitled to commute 50% of his pension with the commutation factor of 9.81 as provided in Exts.P1 and P2. When such benefit was denied to him, the petitioner had preferred Ext.P9 representation before the Government. By Ext.P10 reply dated 05.06.2012, issued by the Principal Secretary to Government to the Secretary of the Kerala Magistrates' Judicial Association, the State Government has stated that the commutation factor applicable to Central Government employees

is 8.194 consequent on the revision by the 6th central pay commission, while the multiplier of 9.81 remains unchanged in the State. It is further stated that the commutation factor applicable to Judicial Officers will change in tune with the commutation factor applicable to Central Government employees. It is further stated that the Rules governing pension of Judicial Officers are same thorough out the country and the same cannot be altered in the State of Kerala alone. On these grounds the request for commuting pension with the commutation factor of 9.81 as applicable to State Government employees is rejected. By Ext.P11, the petitioner was informed that since reply has already been given to the association his case stands thus. The petitioner has preferred this Writ Petition challenging Exts.P10 and P11 as also Item No. 4(b) in Ext.P8 communication from the Additional Chief Secretary to Government to the Accountant General stating that commutation factor for Judicial Officers is 8.194 and seeking a declaration that the commutation factor applicable for calculating his pension is 9.81 as provided under the pension commutation rules applicable to the State Government employees.

3. The Government has filed a counter affidavit stating

that Exts.P1 to P3 Government orders contained no details about the calculation of commutation of pension. It is stated that the orders now issued by the Government limiting the commutation factor to 8.194 are based on the Justice E. Padmanabhan Commission Report, as per which the commutation factor eligible for the petitioner is as per Central Rules. It is further stated that there are differences in the period as well as qualifying service for pension and commutation between employees and the State Government and Judicial Officers and therefore they are not entitled to commutation factor of 9.81 as provided in the Pension Commutation Rules applicable to State Government.

4. Petitioner has preferred a reply affidavit to the counter affidavit filed by the 2nd respondent specifically stating that Justice E. Padmanabhan Commission Report does not contain any deviation from the recommendation of the National Judicial Pay commission which had been accepted by the Central Government. It specifically states that there is no departure from the position that the calculation of pension in respect of Judicial Officers is to be made based on the Rules applicable to State Government employees.

5. The 3rd respondent has also filed a detailed counter

affidavit pointing out that the recommendations of the National Judicial Pay commission were accepted in toto with only the modifications suggested by the Apex Court in the decision reported in **All India Judges Association and others v. Union of India and Others** [(2002)4SCC 247]. The Government of Kerala had issued Exts.P1 and P2 orders sanctioning the pay scales to Judicial Officers with monetary benefits from 01.07.1996. Stipulations regarding grant of pension were also made by Ext.P2 specifying that 10 years shall be the minimum qualifying service for pension and rate of pension shall be 50% of the pay last drawn without any ceiling on the maximum limit. Commutation of 50% of pension with restoration after 15 years is also provided in Ext.P2. The counter affidavit of 3rd respondent also extracts the provisions contained in the recommendation of the Shetty Commission, which was accepted by the Central Government and approved Apex Court. At clause 22.42 of the Report of the Shetty Commission. It is provided as follows:

"22.42 We recommend that the State Rules for the time being in force for calculation of pension may apply to Judicial Officers in the respective States /Union Territories."

6. Further, recommendations as regards commutation of pension and restoration of commutation of pension are also contained in the recommendations. It is therefore, the contention of the petitioner as well as the 3rd respondent that the recommendations of the National Judicial Pay commission was to the effect that for the calculation of pension, the Rules to be applicable are those are applicable to State Government employees of the respective States at the relevant time subject to the modifications contained in the report.

7. Heard Sri. Jacob P. Alex, learned counsel appearing for the petitioner, Smt. Lilly Leslie, learned Government Pleader appearing for respondents 1 and 2 and Sri. Elvin Peter P.J., learned standing counsel appearing for the 3rd respondent.

8. The question raised is with regard to the commutation factor applicable to retired Judicial Officers. It is clear from the pleadings and materials produced that the Commission had specifically recommended that the Rules relating to calculation of pension which are applicable to Government employees of the respective State would be applicable to Judicial Officers also. Wherever departure or modifications from the said Rules were recommended, they were specifically included in the

recommendations in the report and were accepted by the Central Government as well as the respective State Governments. With regard to commutation factor to be implemented in the case of commutation of pension, there is no modification made by the Central Government or even by the State Government in Exts.P1 and P2 orders. The case of the 2nd respondent is that the commutation factor in respect of State Government and Central Government employees were the same until the issuance of the orders accepting the recommendations of the 6th Central Pay Commission. In both cases, the factor was 9.81. Thereafter, it is stated that with the 6th Central Pay Commission recommendations being implemented in the Central Government, the factor for Central Government employees was reduced to 8.194. The 2nd respondent contends that with reduction of the factor in respect of Central Government employees, such reduction would become automatically applicable to Judicial Officers also. The reason mentioned by the State Government in Ext.P10 as well as in the counter affidavit filed by it is to the effect that since the qualifying service as well as the percentage of commutation of pension to which Judicial Officers are eligible are different from that of State Government employees, the retired Judicial Officers would not be

eligible for commutation factor as provided in the Rules applicable to State Government employees.

9. On a consideration of the contentions of the parties and the pleadings and the materials on record, I do not find that such a contention is tenable. National Judicial Pay commission had issued specific recommendations with regard to pay and pension of Judicial Officers. It is specifically pointed out by the petitioner and the 3rd respondent that the Judicial Commission's recommendations that the Rules regarding calculation of pension would be those applicable to State Government employees was accepted by the Central Government and approved by the Apex Court. No modification have been made thereto. All modifications to the Rules regarding pension and commutation thereof have been specifically set forth in the report of the pay commission as well as in the order of the respective Governments accepting the same. Since, there is no provision contained in the decision of the Apex Court reported ***All India Judges Association and others v. Union of India and Others*** (Supra) or in the orders of the Central Government or State Government accepting the recommendations of the Shetty Commission with regard to the factor of commutation, I am of the considered opinion that the

factor to which retired Judicial Officers are eligible to be continued to be the one applicable to the State Government employees of the respective States at the relevant time. In the instant case, it is a specific case of the petitioner that he is entitled to the commutation factor of 9.81 which was the rate applicable to the State Government employees as per Ext. P4. The contention of the respondents that the petitioner would be eligible only for the commutation factor applicable to the Central Government employees is unsupported by the materials and it is bad in law.

10. In the above circumstances, Exts.P10 and P11 are set aside. It is declared that the petitioner would be entitled to commute pension taking into account the commutation factor 9.81 which is applicable to the State Government employees at the relevant time. The stipulation contained in Item 4(b) of Ext.P8 communication from the Additional Chief Secretary to the Accountant General to the effect that the revised table being followed for Central Civil pensioners will be adopted in the case of Judicial Officers, who retired on or after 01.01.2006 is also found to be bad in the face of the National Judicial Pay commission recommendations, which have been accepted. The said condition in Ext.P8 is set aside. It is declared that the said communication

will not have the effect of denying the benefit of the commutation factor applicable to the State Government employees to the petitioner.

11. In the above circumstances, respondents 1 and 2 are directed to recalculate the commutation value of pension payable to the petitioner on the basis of the directions and declarations given above. Calculation shall be completed within a period of one month from the date of receipt of the copy of this judgment and difference in the amounts due to the petitioner shall be disbursed to him within one month thereafter.

W.P. (C) No. 43 of 2013

12. In view of the judgment in W.P.(C) No. 28111 of 2012 dated 18.09.2015, this Writ Petition is allowed.

13. Exts.P9 and P10 and item 4(b) of Ext. P8 are quashed. It is declared that the commutation factor applicable for calculating the commutation of the petitioner's pension shall be 9.81 as provided in the commutation Rule applicable to State Government pensioners.

14. The 2nd respondent is directed to calculate the amount of commutation to which the petitioner is eligible on the basis of the declaration granted above within one month from the date of

receipt of the copy of this judgment and the amounts due to the petitioner shall be disbursed to him within one month thereafter.

These writ petitions are allowed as above.

Sd/-

**ANU SIVARAMAN,
JUDGE**

DST

//True copy//

P.A. To Judge