

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 27706 of 2011 (K)

PETITIONER:

**T.RAGHAVAN NAMBIAR, S/O.KANNAN NAMBIAR,
MULLAPPALY KOKKUNNATH HOUSE, PAPPINISSERY,
NEAR PUTHIYAKAV, PAPPINISSERY WEST P.O,
KANNUR DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL**

RESPONDENT(S):

- 1. KERALA ADVOCATES' CLERKS WELFARE FUND
COMMITTEE, TC 26/580 (1) SERA 24,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS, SECRETARY - 695 001.**
- 2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF LAW, SECRETARIAT,
THIRUVANANTHAPURAM 695 001.**

**R1 BY SRI.T.A.SHAJI (SENIOR ADVOCATE)
ADV. SRI.M.A.ASIF
R2 BY ADV. GOVERNMENT PLEADER SRI.S.JAMAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1. A TRUE COPY OF THE APPLICATION DATED 26.05.2010 SUBMITTED BY THE PETITIONER BEFORE THE BOARD.
- EXHIBIT P2. A TRUE COPY OF THE PETITION DATED 2.06.2010.
- EXHIBIT P3. A TRUE COPY OF THE ORDER DATED 18.10.2010 ALONG WITH WHICH THE CHEQUE FOR THE AN AMOUNT OF RS.186666/- WAS SENT.
- EXHIBIT P4. A TRUE COPY OF THE REPRESENTATION DATED 26.05.2011 SUBMITTED BY THE PETITIONER BEFORE THE BOARD.
- EXHIBIT P5. A TRUE COPY OF THE KERALA ADVOCATES CLERKS WELFARE FUNDS (AMENDED) RULES 2011.
- EXHIBIT P6. A TRUE COPY OF THE ORDER DATED 02.06.2011 ISSUED BY THE SECRETARY OF THE BOARD.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

W.P.(C) No. 27706 of 2011 (K)

Dated this the 10th day of July, 2015

J U D G M E N T

The petitioner, a retired Advocate Clerk, is before this Court seeking pension, which he claims to be entitled under the Kerala Advocates' Clerks Welfare Fund Act, 2003 and the Kerala Advocates' Clerks Welfare Fund Rules, 1981.

2. I have heard the learned Senior Counsel for the petitioner and learned Senior Counsel appearing for the 1st respondent as also the learned Government Pleader.

3. A reading of the above Act and Rules would indicate that there is a stalemate insofar as the Advocate Clerks who retired before the prescribed date of 10.4.2012, at least in computing the pension payable. The Act, as it stands, under Section 18, enables a member of the Fund, on cessation of employment, to receive from the Fund, a consolidated amount and a pension, based on his number of years of employment as an Advocate Clerk, but at such

rates as is prescribed.

4. Sub section (4) of Section 18 of the Act also speaks of how the computation has to be made with respect to the years of employment, prior to his admission as a member to the Fund; being two years computed as one year. The petitioner was paid the consolidated amount as prescribed in the Rules, but however there was no prescription as to the quantum of pension payable.

5. Section 11 of the Rules provided for payment of the consolidated amount and the pension as per the Schedule. However, the Schedule only provided for a computation of the consolidated amount on the basis of the number of years of employment. Pension, as such, was not prescribed by the Rules when promulgated. The said prescription came, by an amendment in 2011 with the introduction of Rule 11A.

6. As per Rule 11A any Advocate Clerk retiring after 10.4.2012 and completing eight years of membership in the

Fund, was entitled to Rs.500/- per month as pension and an amount of Rs.10/- for every year of employment thereafter, with a maximum cap of Rs.600/- per month. The petitioner having retired prior to 10.04.2012 was not paid any pension since there was no prescription as such.

7. The Act definitely provides for payment of consolidated amount and pension, the computation of which was left to be prescribed by Rules, by the Government. The consolidated amount is prescribed as per the Schedule, on the total year of service, even taking into account the years prior to the enrolment of the Advocate Clerk in the Welfare Fund. There is no warrant to assume that pension also has to be prescribed and determined for the period prior to the enrolment of the Advocate Clerk. But, however, it cannot at all be said that only a person who had completed 8 years after enrolment and then retired would alone be entitled to pension. A person on his enrolment into the Fund, as per the Act, is entitled to both the consolidated amount as also

the pension. The prescription definitely is the discretion of the State Government, which has not been done till date.

8. The contention of the Fund is that the scheme was formulated in 2011, after the retirement of the petitioner. However, that cannot dis-entitle the petitioner from getting the benefits as per the Act. Definitely, the Government would have to consider as to what is the pension payable for those persons who are enrolled in the Act and retired prior to 2012.

9. In such circumstance, there shall be a direction to the Government to take expeditious steps to prescribe the pension payable to all persons who have been enrolled under the Fund as per the provisions of the Act. But, however, the rate of pension would be left to the discretion of the Government. In the circumstance of the fact that the petitioner is a senior citizen it is only proper that some interim arrangement be made for the petitioner to avail of such benefits in his lifetime itself.

10. It is directed that the petitioner shall be paid the entire arrears computing the pension at the rate of Rs.250/- since the petitioner had, at the time of retirement, completed five years and five months of enrollment in the Welfare Fund. The Fund shall also be entitled to deduct the excess contribution as amended later on, by the Rules, from the amount so disbursed. The pension, at the rate of Rs.250/-, shall be continued to be paid to the petitioner in the future months also, subject, however, to the decision of the Government.

Writ petition is disposed of. The Registry is directed to send a copy of the judgment to the Law Secretary, Government of Kerala.

Sd/-
K.VINOD CHANDRAN,
JUDGE