

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 33563 of 2007 (U)

PETITIONERS:

1. V.M.BALAGOPALAN,
OFFICE ASSISTANT, CWRDM, KUNNAMANGALAM
KOZHIKODE.

2. C.KOYATTI,
TYPIST, CWRDM, KUNNAMANGALAM
KOZHIKODE.

3. N.DASAN,
DRIVER, CWRDM, KUNNAMANGALAM
KOZHIKODE.

4. M.SURENDRAN,
HELPER, CWRDM, KUNNAMANGALAM
KOZHIKODE.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, DEPARTMENT OF SCIENCE AND
ENVIRONMENT (A), GOVERNMENT SECRETARIAT
TRIVANDRUM-695 001.

2. THE EXECUTIVE VICE PRESIDENT,
KERALA STATE COUNCIL FOR SCIENCE, TECHNOLOGY AND
ENVIRONMENT, SASTHA BHAVAN, PATTOM,
TRIVANDRUM-695 004.

3. THE EXECUTIVE DIRECTOR,
CWRDM, KUNNAMANGALAM, KOZHIKODE.

4. THE REGISTRAR,
CWRDM, KUNNAMANGALAM, KOZHIKODE.

SMT.ROSE MICHAEL, GOVERNMENT PLEADER
R,R2 BY ADV. SRI.P.A.AHAMED, SC, K.S.C.T.E
R,R2 BY ADV. SRI.GEORGE ZACHARIAH,SC,KSCSTE
R3&4 BY ADV. SRI.GEORGE ZACHARIA, SC, CWRDM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

APPENDIX

PETITIONERS' EXHIBITS

P1: COPY OF GO DATED 6.12.1987 ISSUED BY R1.

P2: COPY OF LETTER DATED 2.11.1999 ISSUED BY R1 TO R4.

P3: COPY OF LETTER DATED 26.4.2000 ISSUED BY R1 TO R3.

P4: COPY OF REPRESENTATION WITH A COVERING LETTER DATED 10.11.2000 SUBMITTED BY THE STAFF FEDERATION OF PETITIONERS TO R3.

P5: COPY OF GOVT. ORDER VIDE NO.G.O.(RT) NO.417/2000/STED DATED 5.12.2000 ISSUED BY GOVT. OF KERALA.

P6: COPY OF LETTER DATED 19.3.2003 ISSUED BY R4 TO R2.

P7: COPY OF LETTER DATED 9.11.2005 ALONG WITH ENCLOSURES ISSUED BY R4 TO R2.

P8: COPY OF GOVT.ORDER VIDE NO.G.O.(RT) NO.15/2006/STD DATED 8.3.2006 ISSUED BY GOVT. OF KERALA.

P9: COPY OF THE QUESTION ISSUED BY GOVT.OF KERALA AND ANSWER OFFERED BY THE RESPONDENTS.

P10: COPY OF GO(RT) NO.54/2007/S&TD DATED 27.7.2007 ISSUED BY GOVT.

P11: COPY OF ORDER OF R4 ISSUED TO THE CONTORLLER OF ADMINISTRATION OF R2 VIDE NO.E1-1074/07 DATED 5.10.2007.

P12: COPY OF ORDER NO.E1-3430/80 DATED 1.11.1980 OF R4.

P13: COPY OF ORDER OF R2 VIDE COUNCIL (M) ORDER NO.67/2009/KSCSTE DATED 22.4.2009, REFERRED TO IN THE AFFIDAVIT.

P14: OPY OF ORDER OF R2 VIDE COUNCIL(M) ORDER NO.86/2009/KSCSTE DATED 22.5.2009, REFERRED TO IN THE AFFIDAVIT.

RESPONDENTS' EXHIBITS: NIL

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

.....
W.P.(C) No.33563 of 2007
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Dated this the 11th day of December, 2015

JUDGMENT

The petitioners are employees in Centre for Water Resources Development and Management (CWRDM for short), who were appointed on 30.10.1991, 22.12.1994, 3.10.1991 and 3.8.1990 respectively in the post of Office Assistant, Typist, Driver and Helper respectively. Their grievance is that those employees who are working in CWRDM in the very same post, but appointed prior to 6.12.1987, are granted pay in a higher scale of pay, which is on account of Ext.P1 order issued by the Government on 6.12.1987. The operative portion of Ext.P1 order reads as follows:

(i) Only the scientists (or equivalents) need be provided with CSIR/ICAR/UGC/ of the Central Government scales of pay, allowances and comparable service conditions and all the rules-governing such things should be identical with any one of the organisations such as CSIR/ICAR/UGC/of the Central Government. In no case more financial benefits than what are provided in CSIR/ICAR/UGC/Central Government will be granted to the scientists (or equivalents) of these

autonomous institutions.

(ii) All other employees of these autonomous bodies should be governed by State Government. Scales of pay, allowances and comparable service conditions. In no case, such employees shall be given more financial benefits than what are provided to the similar State Government Employees.

(iii) Present incumbents of Non-scientific cadre in various autonomous institutions who were already provided with ICSIR/ICAR/UGC/Central Govt. scales of pay and allowances may continue to have them as a very special case and it will be personal to them only. All future recruitments in these cadres will follow State Government scales of pay, allowances and comparable service conditions.

2. As per paragraph 3 of Ext.P1-G.O.Ms.No.30/87/STED dated 6.12.1987, Government ordered that only Scientists need be given CSIR/ICAR/UGC Central Government scale of pay. By Ext.P1 order, it was decided that all other employees of the autonomous bodies coming under the Department other than Scientists shall be governed by State Government scale of pay, allowances and comparable service conditions and at any rate their financial benefits shall not be more than that of State Government employees. At the same time, it was ordered that

the incumbent employees in the non-scientific cadre in these institutions who were already being paid CSIR/ICAR/UGC/Central Government scale of pay and allowances shall continue as such as a special case and the same shall be personal to them. It was also specified that all future recruitment in these cadres will follow the State Government scale of pay, allowances and comparable service conditions. Consequent to implementation of Ext.P1 order there had been two different sets of employees in the same cadre drawing different scale of pay ie. those who were appointed prior to 6.12.1987 and those were appointed subsequent to 6.12.1987.

3. According to the petitioners, the disparity continued even though there had been several correspondence with the Government and the Registrar of CWRDM pointing out that there should not be different pay structure for the very same categories of employees. As per Ext.P2 issued on 2.11.1999, the Secretary to Government informed the Registrar CWRDM that just because the nonscientific employees recruited prior to 6.12.1987 were allowed the CSIR scale, they will not be getting such scale of pay till their retirement and it was suggested that

they should also have been brought under the control of State Government pay structure in the subsequent pay revision. In Ext.P3 letter issued by the Joint Secretary of the Department on 26.4.2000, it was recommended that a uniform scale of pay shall be introduced for all those employees in the Research Centre under the Department, saying that there cannot be different scale of pay for the employees in the same category. The petitioners' Association had submitted representations before the Government as well as the Chairman of the governing body of the CWRDM requesting for parity in pay. By Ext.P6 letter dated 19.03.2003, the Registrar of CWRDM addressed the Chairman STEC and Ex-officio Secretary to Government, STED, explaining the disparity in respect of the scale of pay of the incumbents in the post of Office Assistant, Stenographer, Typist, Driver, Gardener and Helper on account of implementation of Ext.P1 order. It was stated therein that the Government had constituted a committee under the Chairmanship of Sri.Subrata Sinha, Director, Centre for Earth Science Studies to examine all issues in relation to the anomalies arising out of the Government order, in respect of the revision of scale of pay of the administrative

staff in all these R and D institutions under the STEC with effect from 1.7.1988. It was stated therein that the staff in non-scientific categories who were not getting more than the State scales of pay would be given corresponding revised scale of pay in the 5th pay revision order with effect from 1.7.1988 and those who were getting more than the corresponding State scales of pay would be given the revised scales of pay in accordance with the pay revision order, as personal to them. Thereafter another committee was constituted as per order dated 11.3.1992. Thereafter it was stated that orders were issued as per G.O.(P) No.82/99/STED dated 2.8.1999, according to which the employees who were recruited or promoted or occupied the post of non-scientific (Technical) post after 6.12.1987 would be eligible only for State Government scales of pay. The Registrar, after explaining the report of the various committees pointed out that it was not a healthy practice to pay different scale of pay to employees in the very same category and requested for removing the existing anomalies. Petitioners approached this court, at this stage filing W.P.(C) No.26201 of 2006, when there was no positive action on their representations including Ext.P7

as well as the recommendation made by the Registrar. Based on the judgment dated 2.11.2006, in that writ petition, the petitioners/their representatives were heard and the Government passed Ext.P10 order on 27.7.2007, justifying the disparity on the ground that the petitioners had joined service after 6.12.1987, accepting the offer of appointment, knowing fully well that they were covered by the pay and allowances as per the offer. It was further stated that it was only natural to give protection to the existing staff, who were already on higher scale of pay, in order to ensure that they were not adversely affected on integration. The implementation of unified scale of pay and allowances as well as service conditions were necessitated on integration of different institutions. Therefore it was stated that the petitioners who were appointed subsequent to the issuance of Ext.P1 order dated 6.12.1987 were not entitled to get the pay and allowances as in the case of those appointed before 6.12.1987, who were granted protection at the time of integration. It was also stated that any decision to change the scale of pay will lead to opening of a number of cases in all centers of the council. However it was stated that the council was

examining further unification of terms and conditions of staff of all centres under its control and streamlining the same including designation, scale of pay, service conditions etc. The petitioners case also would come under such review when suitable decision will be taken. This writ petition is filed in the above background, challenging Ext.P10 order, with the contention that they are subjected to discriminatory treatment, despite the fact that they are discharging identical duties and they are regulated by identical set of rules with same degree of responsibility. It is also pointed out that there is no reason for fixing the date as 6.12.1987 for the purpose of classifying the employees for pay and allowances.

4. The Government as well as the 2nd respondent have filed counter affidavits supporting the impugned orders. It is stated that Ext.P1 order was issued on 6.12.1987 by which the non scientific employees in the institutions under the 2nd respondent were brought under the scale of pay under the State Government. It was only in the case of those who were enjoying the scale of pay as on that date under a different scheme that Government protected their benefits with a specific direction that

it would be a special case and would be personal to them. In the case of those who joined after 6.12.1987, their pay was in terms of the pay revision order issued by the Government. It is admitted that there has been three types of pay scales in CWRDM subsequent to 6.12.1987, ie. employees drawing CSIR scales, employees drawing KFRI scales and employees drawing State Government scales. The KFRI pay scale is stated to be on par with the Government of India scale. In paragraph 12 of the counter affidavit of the first respondent it was stated as follows:

"12. The decision arrived at by Respondent-1 in Ext.PIO is perfectly legitimate and meets the ends of justice. The Petitioners suffer from a contrived and illogical understanding of the principle of equal pay for equal work. The recruits after 6.12.1987 form a distinct group. There is no discrimination amongst such a homogenous group. If any one belonging to the group was given higher or lower pay, based on considerations like, gender, caste, place of birth, language, religion or any other extraneous considerations, the Petitioner could have raised the allegations of illegality and arbitrariness. As stated earlier, it's a conscious decision of the Government to give state scale of pay to the employees appointed after 6.12.1987 belonging to a homogeneous group and they do enjoy equal pay for equal work subject to seniority

conditions”.

5. According to the respondents all those employees who were appointed after 6.12.1987 belong to a homogeneous group and there is no distinction in the scale of pay as far as such employees are concerned. In paragraph 15 of the counter affidavit of the 2nd respondent, it is stated that the petitioners were given a better deal in the Rules adopted by the KSCSTE with effect from 19.1.2003 inasmuch as the number of assessment promotions were increased to four. The number of years for assessment have also stated to be reduced. Further it is stated that “bulk of the employees drawing KFRI scale of pay as personal to them have retired”. They are a vanishing category and would become extinct in a few years' time.

6. The petitioners have filed a reply to the counter affidavit filed by the 1st respondent. In paragraph 10 of the reply affidavit they have explained the scale of pay under the different patterns even after the better deal with the first assessment on completion of five years, the second assessment on completion of six years, the third assessment on completion of five years and the fourth assessment on completion of six years. At the

same time those who were enjoying KFR scale were eligible for higher scale on the first assessment on completion of five years, on the second assessment on completion of seven years and on the third assessment on completion of nine years. It is pointed out that even though in Ext.P10 order, the Government stated that there is a proposal for review and modification of the scale of pay, no orders have been passed thereafter.

7. I heard the learned Senior Counsel appearing for the petitioners and the learned Government Pleader as well the learned standing counsel for the second respondent.

8. According to the learned Senior Counsel appearing for the petitioners, there cannot be separate scale of pay for those who are working in the same category, whatever be the reason, when the qualification, duties and responsibilities are the same for those who were appointed prior to 6.12.1987 and subsequent to 6.12.1987. It is also pointed out that the fact that their appointment was in a specific scale of pay or that they were aware of such a scale of pay, cannot be a bar for claiming higher scale of pay or parity in pay.

9. The learned Government Pleader as well as the Standing

Counsel for the 2nd respondent pointed out that separate scale of pay was necessitated at the time of integration in order to see that the employees who were enjoying CSIR scale of pay were not adversely affected by introducing the State Government scale of pay and since it was given purely as personal, those who subsequently joined the institution, cannot have any claim for seeking parity of pay. It is pointed out that those who were appointed prior to 6.12.1987 and subsequent to 6.12.1987 form separate classes and there is a valid reason for such differentiation and hence there is no arbitrariness in classifying employees for the purpose of different scale of pay. Moreover, since the persons who are enjoying the scale of pay of CSIR are few and form a vanishing category, the petitioners cannot have any grievance for the same. The learned Government Pleader relied on the judgment of the Delhi High Court in **All India Radio and Doordarshan & Anr. Vs. Union of India & Ors.** (2013 (5) SLR 779 (Delhi)) where the High Court considered the question of parity in pay between the Stenographers of AIR and Doordarshan and the corresponding categories under the Union of India. The Court after considering the factual circumstances

arising in that case and the workload in respect of the categories in each institutions upheld the action of the Government and dismissed the writ petition. Similarly the judgment of Andhra Pradesh High Court in ***Mohammed Aris Ali Vs. Government of Andhra Pradesh*** (2013 (5) ALT 82) was also relied on. There the Workshop Assistants claimed parity with Technician/Mechanical Grade III of Central Workshop of Universal College. It was held that the question relating to equation of posts or fitment in the particular scale of pay are to be decided by executive Government after evaluating the job criteria and scale of pay prescribed for each category. But those cases do not deal with grant of pay in different scale of pay for employees in the very same post.

10. The learned counsel appearing for the 2nd respondent also argued that a conscious decision was taken by the Government in the year 1987 in order to protect the employees who were enjoying the CSIR/Central scale of pay. It was pointed out that Ext.P1 governs employees of different institutions under the 2nd respondent and none among them has claimed or were granted such a parity. It is argued that the peculiar

circumstances arising in the case justify different scale of pay on the basis of date of appointment.

11. The question to be examined is whether there can be any disparity with respect to the pay and allowances among the employees in the very same category under the very same employer on the basis of the date of appointment alone. It is an admitted fact that the qualification, duties and responsibilities and all other service conditions in respect of the employees except in the case of pay and allowances are one and the same and disparity occurs only in the pay scale that too on the basis of date of appointment. The difference in the scale of pay of employees under the very same category is evident from paragraph 10 of the reply affidavit filed by the petitioners, which is not disputed. It is detailed as follows:

	<i>Initial scale</i>	<i>1st assessment(5 yrs)</i>	<i>2nd assessment (7 yrs)</i>	<i>3rd assessment (9 yrs)</i>	<i>4th assessment</i>
KFR	4500-7000	5000-8150	5500-9075	6675-10550	Gets promoted as Section Officers

	<i>Initial scale</i>	<i>1st assessment (5 yrs)</i>	<i>2nd assessment (6 yrs)</i>	<i>3rd assessment (5 yrs)</i>	<i>4th assessment (6 yrs)</i>
State KSCSTE	4000-6900	4500-7000	5250-8150	6500-10550	7200-11400

The above details will show that the disparity continues despite the reduction of intervals between the number of assessments made available to the group of petitioners.

12. The petitioners happen to draw a lower scale of pay than their counter parts appointed before 6.12.1987, because of the classification made as per Ext.P1 order. Even though the petitioners have raised grounds to the effect that the date of Ext.P1 G.O i.e 6.12.1987 is an arbitrary cut off date, petitioners have not chosen to assail Ext.P1 order which has resulted in the disparity classifying the employees of the same category into two groups. The classification is made merely on the basis of the date of Ext.P1 G.O. The principle of equal pay for equal work enshrined under Article 39(d) of the Constitution of India is blatantly violated on account of Ext.P1 allowing one group to enjoy the scale of pay under CSIR and the other in the State scale of pay of the State. Even after assuring in Ext.P10 letter that the matter would be examined in a general review to be undertaken, no review is undertaken so far, to the knowledge of the parties herein. It is evident from Ext.P10, that the respondents are aware of the gross injustice and inequality

resulted on the petitioners, on account of Ext.P1. There is no justification on the part of the respondents to retain the petitioners in a lower scale of pay while those with the very same degree of responsibilities, discharging very same duties having the very same qualification etc. are placed in central scale of pay. The classification is not stated to be made on the basis of merit or experience or educational qualification, length of service or on any such criteria. Discrimination meted out to petitioners is evident. There is no basis for treating equals unequally by way of an artificial classification in violation of Articles 14 and 16 of the Constitution of India.

13. In this context it is relevant to note the judgment in ***Haryana State Minor Irrigation Tubewells Corpn. v. G.S. Uppal*** ((2008) 7 SCC 375), wherein the Apex Court was considering the claim of the employees of the corporation for parity in pay with those in the same categories but appointed on deputation from Government. There were about 27 SDOs on deputation from the Irrigation Department working in the Corporation whose nature of duties and responsibilities were similar and identical to the nature and duties of the SDOs

working in the equivalent post of the Corporation. Their duties were interchangeable. The respondents contended before the High Court that there was no qualitative difference whatsoever between the duties and responsibilities of an employee of the Corporation in the posts of SDOs, SDEs, AEs and the deputationists in the respective posts from various departments of Haryana Government, who were granted pay scales as revised by the Government. The pay scales of employees of the Corporation were also being revised in terms of earlier pay revision orders. But they were denied the subsequent revision on the ground of financial crisis in the Corporation. The High Court found the injustice in it and directed parity with the deputationists. Finding violation of Article 39A of the Constitution of India, the Apex Court upheld the judgment of the High Court.

14. The classification on the basis of the date of appointment cannot be said to have any reasonable and intelligible basis having any nexus to the object sought to be achieved. It denies equal protection of law and results in gross injustice and inequality. Similarly placed persons are entitled to be treated in a similar manner in tune with the doctrine of equal

pay for equal work in the light of Article 39(d) read with Article 14 of the Constitution of India for which the state should ensure parity in pay to persons like petitioners with due recognition to the identical nature of duties, responsibilities, qualifications, source of appointment etc. with the only difference in date of appointment.

15. It is settled law that fixation of pay and determination of parity is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors, as held in ***K.T. Veerappa v. State of Karnataka*** ((2006)9 SCC 406). But in order to direct parity in pay, the validity of Ext.P1 should be examined, for which no relief is sought. It is pointed out that several of the employees benefited by Ext.P1 have already retired from service. It is also pointed out that the employees under all the institutions under Ext.P2 are facing the very same problem.

16. In the said circumstances, I quash Ext.P10 and direct the Government to pass fresh orders in the light of the observations made above, within a period of three months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above.

Sd/-
P.V.ASHA,
JUDGE.

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