

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM**

**WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936**

**WP(C).No. 34537 of 2011 (N)**  
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**PETITIONER**  
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**JAYADHAR  
S/O.K.VIDYADHARAN, AGED 52 YEARS,  
SREEVIHAR, 145-MATHRUKA NAGAR,  
ULIYAKOVIL.P.O, KOLLAM, PIN-691019.**

**BY ADVS.SRI.V.JAYAPRADEEP  
SMT.V.V.RISANI  
SRI.SANEESH KUNJUKUNJU**

**RESPONDENTS:**  
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- 1. STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF KERALA,  
DEPARTMENT OF SCIENCE, TECHNOLOGY & ENVIRONMENT,  
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. KERALA STATE COUNCIL FOR SCIENCE, TECHNOLOGY AND ENVIRONMENT  
REPRESENTED BY ITS CHAIRMAN, SASTHRA BHAVAN, PATTOM  
THIRUVANANTHAPURAM-695 004.**
- 3. THE TROPICAL BOTANICAL GARDEN AND RESEARCH INSTITUTE,  
PALODE, THIRUVANANTHAPURAM  
REPRESENTED BY ITS DIRECTOR,  
KARIMANCODE.P.O, PACHA  
THIRUVANANTHAPURAM, KERALA-695562.**

**R2 BY ADV. SRI.GEORGE ZACHARIAH,SC,KSCSTE  
R1 BY ADV. GOVT. PLEADER SRI. SOJAN JAMES.  
R3 BY ADV. SRI.C.K.KARUNAKARAN SC FOR TBGRI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-02-  
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**AMG**

**APPENDIX**

**PETITIONER'S EXHIBITS**

|           |                                                       |
|-----------|-------------------------------------------------------|
| EXT- P1-  | TRUE COPY OF THE NOTIFICATION DATED 23-05 1997        |
| EXT- P2-  | TRUE COPY OF THE APPOINTMENT LETTER DATED 04-03-1998. |
| EXT- P3-  | TRUE COPY OF THE LETTER DATED 21-03-1998 OF R3        |
| EXT- P4-  | TRUE COPY OF THE RELIEVING ORDER DATED 30-04-1998.    |
| EXT- P5-  | TRUE COPY OF THE JOINING REPORT DATED 08-05-1998.     |
| EXT- P6-  | TRUE COPY OF THE ORDER DATED 08-05-1998.              |
| EXT- P7-  | TRUE COPY OF THE LETTER DATED 14-05-2007 OF R3.       |
| EXT- P8-  | TRUE COPY OF THE ORDER DATED 27-09-2010.              |
| EXT- P9-  | TRUE COPY OF THE REPRESENTATION DATED 10-11-2010      |
| EXT- P10- | TRUE COPY OF THE REPRESENTATION DATED 25-07-2011.     |
| EXT- P11- | TRUE COPY OF THE ORDER DATED 10-10-2011               |
| EXT- P12- | TRUE COPY OF THE REPRESENTATION DATED 11-12-2008.     |
| EXT- P13- | TRUE COPY OF THE REPRESENTATION DATED 05-04-2009      |
| EXT- P14- | TRUE COPY OF THE REPRESENTATION DATED 23-04-2010      |

**RESPONDENTS' EXHIBITS**

NIL

True copy

P.A. To Judge

**C.K. ABDUL REHIM, J.**

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**W.P.(c) No. 34537 OF 2011-N**  
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DATED THIS THE 18<sup>th</sup> DAY OF FEBRUARY, 2015.

**J U D G M E N T**

The petitioner was appointed as Security Officer in the 3<sup>rd</sup> respondent based on the selection conducted pursuant to Ext.P1 notification published inviting applications. The petitioner at that time was working as Inspector in the Central Industrial Security Force (CISF). Based on the recommendations of the Selection Committee, the petitioner was offered the post of Security Officer in the 3<sup>rd</sup> respondent, on the scale of pay of Rs.2200-75-2800-100-3500, with effect from 08-05-1998, with 3 advance increments. Exhibit P6 is the order of appointment issued by the Registrar of the 3<sup>rd</sup> respondent. From Exts.P2 and P3 letters issued by the 3<sup>rd</sup> respondent it is evident that the petitioner was offered with the post under the above said scale of pay and he was given with a promise that higher grades will be granted on completion of 5, 7 and 9 years of

service, at the pay scale equivalent to the posts of Dy.SP, SP and DIG in the Kerala Police, since the pay structure of the Police Department is made applicable to the Security staff in the 3<sup>rd</sup> respondent.

2. The petitioner joined service of the 3<sup>rd</sup> respondent after resigning from service of CISF. By virtue of Ext.P7 order passed by the 3<sup>rd</sup> respondent he was given grade promotion as recommended by the 'Assessment Promotion Committee' constituted at the 3<sup>rd</sup> respondent Institute. The petitioner continued in the service of the 3<sup>rd</sup> respondent till 12-02-2008, on which date he had resigned. But during the year 2010, the 3<sup>rd</sup> respondent had effected a re-fixation of the pay and allowances drawn by the petitioner by reducing the initial pay of Rs.2200-3500 to 2000-3500 and effecting consequential reduction in the revised scale of pay fixed from time to time. The petitioner objected the above said action by submitting Exts.P9 & P10 representations before the 3<sup>rd</sup> respondent. But without considering such objection, Ext.P11 was issued re-fixing the scale of pay with effect

from 09-05-2003. It is aggrieved by Exts.P8 & P11, this writ petition is filed.

3. It is further contended that, despite resignation of the petitioner in the year 2008, the terminal benefits due to him, such as pay arrears, leave encashment, gratuity etc. are not paid, despite submission of Exts.P12 to P14 representations. Under such circumstances the petitioner inter alia seeks direction to the 3<sup>rd</sup> respondent to disburse all the benefits due to him consequent on his resignation.

4. In Ext.P8 letter issued by the 3<sup>rd</sup> respondent re-fixation of the pay scale of the petitioner it is mentioned that, the re-fixation is effected on the basis of directions contained in a Government letter. So also it is mentioned in Ext.P11 that the 'Assessment Committee' had considered report of the 'Pay Rectification Committee' of the State Government and the revised pay in the higher grade was fixed accordingly. In the counter affidavit filed by the 3<sup>rd</sup> respondent it is mentioned that the 'Pay Rectification Committee' was constituted by the Finance Department of

the State Government to rectify irregularity in fixation of pay and the said committee had submitted a report on 03-05-2009 pointing out the irregularity in fixation of pay with respect to the administrative and technical staff. It is stated that the 'Pay Rectification Committee' has found that the 3 advance increments sanctioned at the time of initial appointment of the petitioner, was not in order. It is further stated that the Government have directed implementation of recommendation of the 'Pay Rectification Committee' and the pay scale of the petitioner was reduced accordingly. It is further mentioned in the counter affidavit of the 3<sup>rd</sup> respondent that, consequent to formation of 2<sup>nd</sup> respondent the 3<sup>rd</sup> respondent was made as one of the constituent institution under the 2<sup>nd</sup> respondent, and the 3<sup>rd</sup> respondent had adopted CISR pattern in the pay scale for the Scientists and the Kerala State Government pay scale for administrative staff. Further it is pointed out that, the Kerala State Council for Science and Technology and Environment Employees Service Rules had come into force

with effect from 19-06-2003. In the counter affidavit filed by the 2<sup>nd</sup> respondent also it is reiterated that the re-fixation was ordered on the basis of report of the 'Pay Rectification Committee' and on the basis of the directions issued by the Government to implement such recommendations. The Government have filed counter affidavit to the effect that the 3<sup>rd</sup> respondent is bound to implement recommendations of the Pay Rectification Committee and the withdrawal of higher pay and allowances was on the basis of orders issued by the Government, which the 3<sup>rd</sup> respondent is liable to comply with.

5. It is evident from Ext.P1 that, during the year 1998 the 3<sup>rd</sup> respondent had notified the post of 'Security Officer' by inviting applications from eligible candidates. The scale of pay specified in the notification with respect to the post in question was Rs.2200-3500. In Ext.P2 offer letter the 3<sup>rd</sup> respondent had informed the petitioner that the post in question will bear the pay scale as mentioned above, with a maximum of 3 increments. In Ext.P3 the petitioner was

informed that the post will carry 3 assessment promotions and the petitioner will be given higher scale of pay on completion of 5, 7 & 9 years of service. Terms and conditions with respect to pay scale and increments were also specified in Ext.P6 letter of appointment. Evidently the petitioner continued on the basis of the appointment made on the terms and conditions. He had resigned post with effect from 12-08-2008. Question was mooted for consideration is regarding sustainability of the re-fixation and reduction effected with respect to pay and allowance drawn by the petitioner all along during his service. It is evident that the 'Pay Rectification Committee' had submitted a report in the year 2008 to the effect that the initial pay fixed by the 3<sup>rd</sup> respondent was not in accordance with the scale of pay prevailed in the State Government service. First of all, it is to be considered that the 3<sup>rd</sup> respondent was an autonomous entity till it was brought under the control of the 2<sup>nd</sup> respondent. Even it is admitted that Service Rules were framed with respect to employees

of the 2<sup>nd</sup> respondent, only with effect from the year 2003. Even thereafter the petitioner continued in the service on the basis of appointment and he was given benefits of pay revisions effected in between. It is also evident that grade promotions were sanctioned to him by virtue of Ext.P7 order passed by the 3<sup>rd</sup> respondent. Under such circumstances the respondents cannot take away such benefits, after the lapse of long period, based on an allegation that appointment made with 3 increments attached to the pay scale was irregular as found by the Pay Rectification Committee of the State Government. It is well settled through various legal precedents of the hon'ble apex court that, emoluments paid to an employee even on the basis of a mistake in fixation or calculation, which is not accountable to any misrepresentation or false representation made by the employee, cannot be recovered at a distance of time after several years. More over, in the case at hand the appointment was made based on a specific offer which in the legal parlance had the effect of a

concluded contract. Therefore the re-fixation sought to be effected after resignation of the petitioner from service, with retrospective effect from the date of appointment onwards, cannot be sustained as legal and enforceable.

6. Therefore, the re-fixation sought to be effected through Ext.P8 is liable to be set aside. From Ext.P11 it is evident that the petitioner was given benefits of grade promotion with effect from 09-05-2003. But the scale of pay at the promoted post was fixed based on Ext.P8, wherein reduction was effected on the scale of pay from the initial date of appointment. Since Ext.P8 is held as unsustainable, the pay and emoluments due to the petitioner in the promoted post has to be re-worked based on the regulations applicable in the 3<sup>rd</sup> respondent with respect to the post in question.

7. Under the above mentioned circumstances this writ petition is allowed and Exts.P8 & P11 are hereby quashed. The 3<sup>rd</sup> respondent is directed to re-compute the benefits due to the petitioner on the basis of the

observations contained herein above. The benefits due to the petitioner on re-fixation at the promoted post shall be disbursed along with the terminal benefits due with respect to the service of the petitioner, calculated on the above said basis. Amounts due to the petitioner in this regard shall be paid at the earliest possible, at any rate within a period of 3 months from the date of receipt of a copy of this judgment.

Sd/-  
**C.K. ABDUL REHIM**  
**JUDGE**

AMG

True copy

P.A. to Judge