IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).NO. 36220 OF 2009 (V)

PETITIONER(S):

1. DR.C.INDIRA DEVI,CHAITHANYA
MUKKOTTIL TEMPLE ROAD, POONITHURA.P.O., ERNAKULAM.

2. DR. S.KUMARI LEKSHMY, "SREE LEKSHMY"
KARITHALA CROSS ROAD, COCHIN-682016.

3. DR. V. BHADRAMMA, "SAI SOUDHAM",
KANIYAMPUZHA ROAD, VYTTILA, COCHIN-682019.

BY ADVS.SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.K.P.CHANDRASEKHAR

RESPONDENT(S):

1. STATE OF KERALA
SECRETARY TO GOVERNMENT, HEALTH & FAMILY
WELFARE DEPARTMENT SECRETARIAT, TRIVANDRUM.

2. ACCOUNTANT GENERAL, KERALA.

3. DISTRICT TREASURY OFFICER, ERNAKULAM.

4. SUB TREASURY OFFICER (PENSION PAYMENT)
SUB TREASURY, ERNAKULAM.

R1-R4 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN CHAMAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: PHOTOCOPY OF THE COMMUNICATION RECEIVED FROM THE 1ST RESPONDENT TO THE PRINCIPAL, GOVERNMENT HOMEOPATHIC MEDICAL COLLEGE THIRUVANANTHAPURAM WITH COPY TO THE 1ST PETITIONER

EXT.P1(A): PHOTO COPY OF THE JUDGMENT DTD.27.7.2000 IN O.P.NO.572/2000

EXT.P2: PHOTO COPY OF THE GO(RT)NO.3643/03/H&FWD DTD.23.12.2003

EXT.P2(A): PHOTO COPY OF THE INTIMATION RECEIVED FROM THE OFFICE OF THE 2ND RESPONDENT DTD.01.01.2005 TO THE 1ST PETITIONER

EXT.P2(B): PHOTO COPY OF THE INTIMATION RECEIVED FROM THE OFFICE OF THE 2ND RESPONDENT DTD.22.01.2005 TO THE 2ND PETITIONER

EXT.P2(C): PHOTO COPY OF THE INTIMATION RECEIVED FROM THE OFFICE OF THE 2ND RESPONDENT DTD.18.01.2005 TO THE 3RD PETITIONER

EXT.P3: PHOTO COPY OF GO(P)NO.180/2006/FIN DTD.18.04.2006

EXT.P4: PHOTO COPY OF GO(P)NO.253/2006/FIN DTD.8.06.2006

EXT.P5: PHOTO COPY OF GO(P)NO.359/2006/FIN DTD.1.09.2006

EXT.P6: PHOTO COPY OF THE AUTHORIZATION DTD.23.09.2009 FROM THE OFFICE OF THE 2ND RESPONDENT TO THE 1ST PETITIONER

EXT.P7: PHOTO COPY OF THE AUTHORIZATION DTD.2.07.2009 FROM THE OFFICE OF THE 2ND RESPONDENT TO THE 2ND PETITIONER

EXT.P8: PHOTO COPY OF THE AUTHORIZATION DTD.2.07.2009 FROM THE OFFICE OF THE 2ND RESPONDENT TO THE 3RD PETITIONER

EXT.P9: PHOTO COPY OF THE LETTER DTD.30.11.2009 FROM THE 2ND RESPONDENT TO THE 1ST PETITIONER

EXT.P10: PHOTO COPY OF THE LETTER DTD.30.11.2009 FROM THE 2ND RESPONDENT TO THE 2ND PETITIONER

EXT.P11: PHOTO COPY OF THE LETTER DTD.30.11.2009 FROM THE 2ND RESPONDENT TO THE 3RD PETITIONER

EXT.P12: PHOTO COPY OF THE REPRESENTATION DATED.09.11.2009 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT

EXT.P13. TRUE COPY OF THE RELEVANT PAGE OF THE PENSION BOOK OF THE 2ND PETITIONER

EXT.P14. TRUE COPY OF THE RELEVANT PAGE OF THE PENSION BOOK OF THE 3RD PETITIONER

EXT.P15. TRUE COPY OF THE LETTER DATED.8.6.2010 OF THE 2ND RESPONDENT ISSUED TO THE 1ST PETITIONER

EXT.P15(A). TRUE COPY OF THE LETTER DATED.8.6.2010 OF THE 2ND RESPONDENT ISSUED TO THE 2ND PETITIONER

EXT.P15(B). TRUE COPY OF THE LETTER DATED.8.6.2010 OF THE 2ND RESPONDENT ISSUED TO THE 3RD PETITIONER

EXT.P16: TRUE COPY OF THE GO(RT)NO.2324/2003/H&FWD DTD.05.08.2003 ISSUED TO THE 1ST PETITIONER

EXT.P17: TRUE COPY OF THE APPLICATION FOR REVISED PENSION SUBMITTED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT.

EXT.18(A) TRUE COPY OF THE LPC ISSUED TO THE 1ST PETITIONER

EXT.18(B) TRUE COPY OF THE LPC ISSUED TO THE 2ND PETITIONER

EXT.18(C) TRUE COPY OF THE LPC ISSUED TO THE 3RD PETITIONER

RESPONDENTS' EXHIBITS:

EXT.R2(A):TRUE COPY OF THE GOVERNMENT LETTER NO.11399/J2/2001/H&FWD DATED 19.11.2002

EXT.R2(B):TRUE COPY OF THE GOVERNMENT LETTER NO.35479/J2/2005/H&FWD DATED 19.08.2005

EXT.R2(C):TRUE COPY OF THE GOVERNMENT LETTER NO.30368/J2/2006/H&FWD DATED 27.02.2008

EXT.R2(D):TRUE COPY OF THE GO(RT)959/2001/H&FWD DATED 31.03.2001

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.36220 of 2009

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Dated this the 12th day of August, 2015

J U D G M E N T

The petitioners in this writ petition are persons who retired from the service of the Dr. Padiar Memorial Homeopathic Medical College. While working as Professors in the said College, the 1st petitioner retired with effect from 28.05.2001, the 2nd petitioner retired with effect from 08.05.2001 and the 3rd petitioner retired with effect from 30.09.2002. The facts in the writ petition would reveal that, the direct payment system was introduced in the College with effect from 01.01.2000. By that time, the petitioners had already crossed the age of 55 years and, as per the provisions of the direct payment system, they would not get the benefit of the pension scheme envisaged under the direct payment system. The petitioners who had crossed 55 years even before the introduction of the direct payment system in the College therefore preferred representations before the 1st respondent to enable them to continue in service till the age of 60 years. By Ext.P1 order dated 02.06.2000, the 1st respondent permitted the petitioners to continue in service till the Government took a decision in the matter. In the meanwhile, the petitioners approached this Court through O.P.No.572 of 2000 and by a judgment dated 27.07.2000, this Court permitted the petitioners to continue in service only as per the rules. The original petition was thus dismissed by this Court. The petitioners, however, continued in service beyond 55 years, on the strength of the permission granted by the 1st respondent, and retired on attaining 60 years of age. In the staff pattern of the College that was fixed by the Government as per G.O.(MS)No.99/2002/H&FW dated 25.04.2002, the staff who had crossed 55 years of age as on 01.01.2000 were not included. The petitioners, therefore, were excluded from the staff pattern in the College. On a representation made by the petitioners for grant of pension as a special case, the Government by Ext.P2 order dated 24.12.2003, sanctioned pension to the petitioners as a special case by treating them as having retired at 55 years. In the said Government Order, two conditions were imposed namely, (i) that the payment of pension to the petitioners was to commence only after they left service on attaining 60 years of age and (ii) it was mandated that gratuity, if any, received by the petitioners had to be refunded. It is not in dispute that, the said conditions were complied with by the petitioners, and therefore, by Exts.P2(a) to P2(c) orders, the petitioners were extended the benefit of the liberalised pension scheme. In later years, on finding that the pension sanctioned to them was not based on the pay as per the then existing pay revision orders, the petitioners preferred a representation before the Government for revising their pension based on the pay scale in force at the time of their retirement from the College. By Ext.P3 order dated 18.04.2006, the Government revised the pension in respect of those who retired prior to 01.07.2004. Thereafter, pursuant to Ext.P4 clarification issued by the Government on 08.06.2006, the pension of the petitioners was also revised vide Exts.P6, P7 and P8 orders in 2009. Thereafter, however, by Exts.P8, P10 and P11 orders dated 30.11.2009, the orders revising the pension of the petitioners (Exts.P6, P7 and P8) were cancelled by the 2nd respondent. In the said orders, it is merely stated that, the petitioners are not eligible for pension revision under the one-rank-one-pension scheme. By the said orders, it was also contemplated that excess amounts paid to the petitioners would be recovered from their pension accounts. As a matter of fact, the recovery was also effected in the case of petitioners 2 and 3 as evidenced by Exts.P13 and P14 endorsements in their pass books. Thereafter, by Ext.P15 series of communication, the petitioners were informed that they would be getting only the minimum pension in future. Enquiries made by the petitioners with regard to what prompted the 2nd respondent to issue Exts.P9, P10 and P11 orders revealed that the said orders were passed based on Ext.P16 Government Order dated 05.08.2003, and the finding of the 2nd respondent that the petitioners were the beneficiaries of a similar treatment as was afforded to certain retirees from the Athurasramam N.S.S Homoeo Medical College, who were also sanctioned pensionary benefits notwithstanding the fact that, they had retired from service prior to the introduction of the direct payment system in the said College. Exts.P9, P10 and P11 are impugned in the present writ petition, where a declaration is sought to the effect that, Ext.P16 Government Order has no application in the case of the petitioners, and further, that the 3rd and 4th respondents have no authority to recover any amounts from the treasury account of the petitioners. There is also a direction sought to respondents 3 and 4 to remit the amounts unauthorisedly taken from the treasury accounts of the 2nd and 3rd petitioners as disclosed from Exts.P13 and P14 documents.

2. A counter affidavit has been filed on behalf of the respondents wherein reliance is placed on a Government letter dated 27.02.2008, to contend that the service of staff in aided Homoeo Medical Colleges prior to the introduction of the direct payment system cannot be

reckoned as qualifying service for the purposes of pension. It is stated that, the revision of pension that was granted to the petitioners was cancelled based on the decision of the Government that found that retirees prior to the introduction of the direct payment system would not be entitled for pensionary benefits. In a reply affidavit filed by the petitioners to the counter affidavit filed by the respondents, the avertments in the counter affidavit are formally traversed.

3. I have heard the learned counsel for the petitioners and the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that, the writ petition in its challenge against Exts.P9, P10 and P11 orders must necessarily succeed. A perusal of Ext.P2 order dated 24.12.2003, that was issued in favour of the petitioners sanctioning pension to them, would clearly indicate that while the Government had examined the case of the petitioners in the light of Government Order dated 31.03.2001, which had sanctioned pensionary benefits to teaching and non-teaching staff of A.N.S.S Homoeo Medical College, Kottayam, who had completed 55 years of age as on 01.11.1995,

which was the date of introduction of the direct payment system in that College, the pensionary benefits that were sanctioned to the petitioners, unlike the benefit that was sanctioned to those persons who are beneficiaries of the Government Order dated 31.03.2001, was subject to the twin conditions stipulated in Ext.P2 Government order namely, that the payment of pensionary benefits would commence only after the petitioners left service on attaining 60 years of age and that the gratuity received by the petitioners would be refunded. It is not in dispute that, the twin conditions specified in Ext.P2 were satisfied in the case of the petitioners. The question then arises as to whether, in the case of the petitioners, a decision to deprive them of the pensionary benefits that was sanctioned to them by a Government Order dated 24.12.2003 could be taken as late as in November 2009, by the 2nd respondent. As already noted, the basis of Exts.P9, P10 and P11 orders issued by the 2nd respondent appears to be the contents of Ext.P16 Government Order dated 05.08.2003. Ext.P16 Government order deals with the sanction of pensionary benefits to persons who retired prior to the introduction of the direct payment system in the College concerned. The extension of pensionary benefits to those persons was not qualified by the conditions that were imposed in the case of the petitioners while sanctioning the pensonary benefits to them in Ext.P2 order. Under the circumstances, therefore, it cannot be said that the petitioners in the instant writ petition are similarly placed as those who were the beneficiaries of Ext.P16 Government Order. Consequently, the reliance placed on Ext.P16 Government Order to deny the pensionary benefits to the petitioners is legally flawed. That apart, the recent decision of the Supreme Court in **State of Panjab and Others v. Rafiq Masih (White Washer) [(2015) 4 SCC 334]**, clearly delineates the circumstances under which orders passed by an employer, seeking recovery of monetary benefits wrongly extended to an employee, can be interfered with by this Court in exercise of the powers under Article 226 of the Constitution of India. It is unambiguously held that interference would be called for only in such cases where, it would be iniquitous to recover the payment made. It is clarified that, as between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other, the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee and if the effect of the recovery from the employee would be, more unfair, more wrongful and more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary to effect the recovery. It was held that, in such a situation, the employees right would outbalance, and therefore, eclipse, the right of the employer to recover. Taking cue from the observations in the above judgment, I am of the view that, in the instant case as well, it would be iniquitous on the part of the respondent Government to recover any amount towards pensionary payments that were paid to the petitioners. This is more so, because the petitioners were extended the pensionary payments subject to a condition which included a condition mandating that they refund the entire gratuity that was received by them. When the petitioners received the pensionary benefits, only after giving up their claim for gratuity, the respondents cannot, after more than 6 years, go back on their assurance with regard to payment of pensionary benefits to the petitioners, and that too on an analogy with other retirees who are not similarly placed as the petitioners. I, therefore, Quash Exts.P9, P10 and P11 orders, as also Ext.P15 series of communications, and allow this writ petition by declaring that the petitioners are entitled to get revised pension as per Exts.P6 to P8 authorisation issued to them by the 2nd respondent. I also direct the respondents 3 and 4 to remit the amounts taken from the treasury accounts of the 2nd and 3rd petitioners, as disclosed from Exts.P13 and P14, within a period of one month from the date of receipt of a copy of this judgment. The petitioners shall continue to get pensionary payments as envisaged in Exts.P6 and P8 authorisation issued to them by the 2nd respondent in future.

Taking note of the apprehension voiced by the learned Government Pleader appearing for the respondents, I make it clear that, I have not pronounced on the issue of includability of service rendered by a person, prior to the introduction of the direct payment system in a college, in the qualifying service for the grant of pensionary benefits.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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