

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.4797,4801,4804,4807,4809,4812,4813 and 9459 of 2019
and
WMP.Nos.5466,5463,5460,5461,5457,5451,5445,5436
and 5435 of 2019

WP.No.4797/2019

P.Dhanabalan ..Petitioner

K.ThirugnanamPetitioner in WP.4801/2019
M.RamachandranPetitioner in WP.4804/2019
D.NarayananPetitioner in WP.4807/2019
N.V.KrishnamoorthyPetitioner in WP.4809/2019
P.Maruthu pandiyanPetitioner in WP.4812/2019
K.SugumaranPetitioner in WP.4813/2019
R.SankaranPetitioner in WP.9459/2019

Vs.

1.The Government of India,
Rep. by its Secretary to Government,
Ministry of Labour and Employment,
Shram Shakthi Bhawan, Rafi marg,
New Delhi - 110 001.

2. The Regional Provident Fund Commissioner-1,
Employees Provident Fund Organization,
(Ministry of Labour, Govt. of India),
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road, Coimbatore -641 018.

3. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
P.B.No.588, Sree Complex, 'D' Block,
No.18, Madurai Road,
Trichy - 620 008.

..Respondents

Prayer :

1. Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 2nd respondent in No.TN/ZO-CBE/PGHS/NIS/2018 dated 02.01.2018

and to quash the same and consequently directing the respondents to restore the original pension payable to the petitioner in the post of Office Assistant, retired on 30.06.1999 after of deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner.

2.Mandamus, Directing the respondents to restore the original pension payable to the petitioner in the post of Senior Assistant, retired on 31.03.2002 after of deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner, within a time frame to be fixed by this Honorable Court WP.4801 of 2019.

3.Mandamus, Directing the respondents to restore the original pension payable to the petitioner in the post of Senior Assistant retired on 30.04.2005 after of deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner within a time frame to be fixed by this Honorable Court WP.4804 of 2019.

4.Mandamus, Directing the respondents to restore the original pension payable to the petitioner in the post of Field Manager retired on 31.12.2002 after deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner within a time frame to be fixed by this Honorable Court WP.4807 of 2019.

5.Certiorari, To call for the records relating to the impugned proceedings issued by the 2nd respondent in No.TN/ZO-CBE/PGHS/NIS/2018 dated 02.01.2018 and to quash the same and consequently directing the respondents to restore the original pension payable to the petitioner in the post of Assistant Manager retired on 31.03.2000 after deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner within a time frame to be fixed by this Honorable Court WP.4809 of 2019.

6.Mandamus, Directing the respondents to restore the original pension payable to the petitioner in the post of Field Manager retired on 30.11.2002 after deductions from the regular pension for 100 months from the date of retirement and

consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner within a time frame to be fixed by this Honorable Court WP.4812 of 2019.

7.Mandamus, Directing the respondents to restore the original pension payable to the petitioner in the post of Senior Assistant retired on 28.02.2005 after deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times in realization of commutation along with interest payable to the petitioner within a time frame to be fixed by this Honorable Court WP.No.4813 of 2019.

8.Mandamus, Directing the respondents to restore the original pension payable to the Petitioner in the post of Manager retired on 31.10.2002 after deductions from the regular pension for 100 months from the date of retirement and consequently refund the deductions made from the regular pension beyond 100 times i realization of commutation along with interest payable to the Petitioner within a time frame to be fixed by this Honorable Court WP.9459 of 2019.

For Petitioner : Mr.G.Sankaran (in all WPs)

For Respondents : Mr.B.Girish Neelakandan (for R1)in all wps

Mr.C.Kulanthaivel (for R2 & R3)
in WP.4797/2019 & WP.4801/2019

M.s,V.J.Latha for R2 & R3
in WP Nos.4804,4807,
4809,4812,4813&9459/19

COMMON ORDER

The order passed by the 2nd respondent in proceeding dated 02.01.2018, rejecting the claim of the writ petitioners for restoration of full pension even after expiry of the commutation period is under challenge in the present writ petition.

2. The writ petitioners were employed and retired from various posts in Kumbakonam Central Co-operative Bank Ltd., and the writ petitioners were not governed by the Tamil Nadu Pension Rules. They are being given the benefit of Employees Pension Scheme, 1995 by Employees Provident Fund Organization under the provisions of Employees Provident Fund Act. The retired employees of the Central Co-operative Bank are entitled for monthly pension and return of capital value i.e., payable on demise of original pensioner. The return of capital

value is 100 times of the original pension. Further, an employee of the Co-operative Bank can avail commutation to an extent of 1/3 of his monthly pension multiplied by 100 which is repayable by deduction from the original monthly pension as per Clause 12(A) of Employees Pension Scheme, 1995.

3. As on the date of the retirement, the petitioners were granted with revised monthly pension (minimum pension). Accordingly, when they have been paid with total commutation after their retirement, monthly deduction has been made from their pension towards commutation. Whereas the amount paid to the petitioners on commutation is liable to be deducted in 100 months for recovery of the commuted amount. The capital value amount shall be 100 times of the monthly pension payable to the spouse of the original pensioner on his death. On payment of commutation, the capital value would be reduced by 1/3 of the total amount. In such event, after recovery of the entire commutation by deductions from pension for 100 months, the capital value also to be restored to its original value as calculated as monthly pension into 100 payable to widow of the deceased original pensioner.

4. The learned counsel for the writ petitioner contended that the following example would disclose the calculation to be made for the purpose of restoration of original pension and capital value after completion of deduction for 100 months towards recovery of commutation paid to the pensioner. For example, original pension of Rs.1000X100 times Rs.1,00,000/-. While that be so, since the respondent proceed to recover the excess amount from meager amount payable to the petitioners towards regular pension, the entire commutation has been recovered even on 100th month pension payable to them and therefore any further recovery would be against their interest as well as the same is not permissible.

5. The petitioners states that they have submitted a representation to the respondent No.2 and 3, to restore the full pension on completion of the period of commutation, ie., 100 months which was not done and contrarily, the impugned rejection order has been passed which made the writ petitioners to approach this Court by filing the present writ petition.

6. The learned counsel for the writ petitioner reiterated that,

a) It is true that 1/3 portion of the original pension X 100 months (times) was paid as commuted pension to the petitioner. At the time of applying for commutation the petitioner has signed in the application form Form (10 D) in the column 9 and marked in the box "YES" for commutation only. But there was no specific mention that the balance of 2/3 pension would be alone deemed as alleged original pension till

the death of the pensioner. Mere marking "YES" in the box in the printed column 9 should not form part of any statutory agreement. The pensioner did not aware that deduction of commuted portion of the pension could be continued for even after 100 months and ever long. But if that is so he would not have exercised his option for commutation.

b) In the absence of explicit rules under the Scheme, the Commutation means that the rules prevailing for Central and State Government employees would be applicable to this scheme also. It is surprised to note that the pension rules and regulations of Central and State Government employees and also of Transport corporation employees would not be applicable as alleged.

c) There is no specific mention in paragraph 12(A) that the balance of 2/3 pension alone shall be deemed to be the original pension.

d) The objection raised by the EPFO is against the natural justice. The poor pensioner could not be deprived of their fundamental rights guaranteed by the constitution of India. In the case of Central and State Government employees and Teachers of Management Schools, the original pension is being restored after a specific period. Moreover the monthly pension is also increased to them who have completed 80 years or so. In the essence there was no specific agreement between the pensioner and the EPFO, that commuted portion of 1/3 pension would not be restored even after 100 months or any specific period as case may be.

7. The learned counsel appearing on behalf of the respondent Employees Provident Fund Organization disputed the contentions raised by the writ petitioners by stating that, in view of the Clause 12(A) of the Employees Pension Scheme 1955, the full pension as such sought for by the writ petitioners cannot be restored. Once the benefit of commutation is availed by the pensioners, then the full pension as applicable cannot be restored, even after the deduction of the commuted amount. In other words it is contended that though the period of commutation is fixed as 100 months from the date of receiving the commuted amount after the expiry of 100 months also the pensioners are not entitled to claim full pension throughout their life time, they cannot seek full pension under the Employees Pension Scheme 1995.

8. In support of the contention, the learned counsel for the respondents cited the judgment of the Kerala High court in WP.(C).No.18389 of 2013, wherein it is observed as follows:-

"The question raised in the above writ petition is with respect to whether the pensioners under the Employees Provident Funds and Miscellaneous

Provisions Act, 1952 (for short "EPF & MP Act") are eligible to be restored with the commuted portion of pension after a specific period. The aforesaid question was answered by this Court in a writ petition filed by the Provident Fund Pensioners Association by judgment dated 09.12.2013 in W.P. (C). 1362 of 2013. The provisions in the EPF & MP Act as also the binding precedents on restoration of commutation were noticed and it was held so :-

"What is to be immediately noticed is that all the above decisions were rendered in the context of pension Schemes implemented and operated by the employer. Herein the Scheme has been brought in, as a welfare measure, compelling contributions by statute from the employer and deduction from the employee's salary during the period of employment. The employer has no role in the working of the Scheme and does not at all bear the liability except to the extent of the contributions, which stop with the retirement of the employee. The Organisation constituted under the Act has the responsibility of administering the fund.

...Here also, the financial implications ought to be considered by the Central Government, which, however, is not the employer and is not bound by the obligations of an employer since the pension fund is an independent fund constituted under a Welfare Legislation. To draw a distinction between the obligations of an employer and the obligations of a Welfare State would be begging the question. But, the pensioners have with open eyes exercised an option for commutation. Many would not have been fortunate to draw pension for long and on their death their dependants would have been paid a lump sum amount as provided under the Scheme. With the increasing cost of living and the all pervading commercialisation what the petitioners contend is that their increased mortality works to their disadvantage. They contend that they are only a few and there would not be any huge liability on the Fund, if their commuted portion is restored. However, that alone cannot sway this Court to issue any positive direction since, then even the dependants of pensioners who

expired would raise a claim for enhanced lump sum compensation. These are matters which are best left to the Government and the Organization to decide after looking at the balancing considerations of financial viability and the welfare of the pensioners. The State which came forward with a welfare legislation to provide succour also has the responsibility to ensure dignity of life, at least bordering on reasonable sustenance. It will not be proper for this Court to issue positive directions but the Government can very well consider the grievances projected in the Writ petition and examine the financial viability, if a proper representation is made."

9. In the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises & Ors Vs. Union of India & Another, reported in (1996) 2 SCC 187, the Apex Court made following observations in para 3, which is extracted hereunder:-

"3. The above-mentioned second category of the retired government servants namely, those who got one-third pension commuted moved this Court for restoration of their one-third pension by filing a writ petition under Article 32 of the Constitution of India, (vide "Common Cause" v. Union of India [(1987) 1 SCC 142 : (1987) 2 ATC 100 : (1987) 1 SCR 497]). The contention put forward in support of their claim for restoration of the one-third pension was that the lump sum amount paid gets adjusted by about 10 or 12 years and therefore, the Government must be directed to restore the commuted portion of one-third pension. It was also contended that lately there has been a substantial improvement in the life expectancy of the people in India and therefore, there was no justification for denying the restoration of the commuted one-third portion of pension which gets adjusted after a period of 10 or 12 years. When that matter came up before this Court, a suggestion was made to the Government to give a new look to the matter. The respondent Government accepting that suggestion came forward with a new formula and after perusing the same this Court in "Common Cause" v. Union of India [(1987) 1 SCC 142 : (1987) 2 ATC 100 : (1987) 1 SCR 497] held as follows: (SCC pp. 144-45, paras 4-7)

"As the position now stands, when a pensioner commutes any part of his pension up to the

authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.

The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation - (1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15-year rule. In this background, we do not think we would be justified in disturbing the 15-year formula so far as civilian pensioners are concerned.

The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.

The respondent-Government has agreed that this benefit should be extended with effect from 1-4-1986. The writ applications were filed in 1983. The matter was placed on board for hearing in February 1984. The Union Government took some time for responding to the suggestion of the court and that is how the disposal was initially delayed. Thereafter, the hearing of the matter has again been delayed on account of pressing business in the court. In these circumstances, we think it just and equitable that the benefit agreed to be extended in respect of the commuted portion of the pension should be effective from 1-4-1985 so far as the civilian employees are concerned."

10. Citing the above judgments, the learned counsel appearing for the respondents emphasize that the restoration of full pension would not arise at all, in view of the fact that the petitioners have commuted a portion of the pension and availed the benefits under the commutation scheme and therefore the order of rejection is in accord with Clause 12 (A) of the Employee Pension Scheme 1995.

11. A perusal of the judgment of the Hon'ble Supreme Court of India, the relief sought for there in was that the full pension ought to have been restored during the

commutation period was in force. Undoubtedly, once the benefit of commutation was availed by a pensioner, during the period of commutation they are not entitled for full pension. The commuted value is to be recovered and during the period of commutation they are entitled to claim full pension. Therefore, the said judgment of the Apex Court may not have any implications with reference to the facts and circumstances of the present writ petitions, wherein, the period of commutation of 100 months already expired and entire commuted value had already been recovered by the respondent organization. Therefore the facts and circumstances adjudicated before the Apex Court may not have any relevance as far as the present writ petitions are concerned.

12. In yet another case of Des Raj Bhatnagar and Anr. Etc Vs. Union of India, reported in 1991 SCC (2) 266, the Hon'ble Supreme Court of India, made an observation as follows:-

"The commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in the course of his spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation - (1) availability of a lump sum amount, and (2) the risk factor. In the present case the petitioners had not only got one-third of their pension commuted but exercised the option of getting the entire pension commuted and in lieu thereof got a lump sum. Such persons cannot fall in the category of Central Government pensioners for the purposes of getting benefit of Liberalised Pension Rules which can be made applicable only to Central Government pensioners. It is no doubt correct that the family pension has been allowed in case of the persons like the petitioners but that does not make them entitled to get any benefit given to the pensioners on account of the Liberalised Pension Rules taking note of the fallen value of the rupee."

13. The said observations made by the Apex Court also of no avail to the respondent organization as the issue regarding the restoration of full pension after the expiry of commuted period was not considered by the Hon'ble Supreme Court of India. Thus, the said judgment cannot be relied upon for the purpose of sustaining the impugned order of rejection passed by the respondents in all these writ petitions.

14. Considering the arguments, the term commutation of payments which is to be construed as worker's compensation. It is nothing but substitution of lump sum compensation or periodic payments. This being the definition for the commutation of payment, this Court is of an opinion that, the

commutation of pension can be equated with the loan obtained by the writ petitioner from his monthly pension. For example, a person can avail loan from his fixed deposit in a bank, the monthly pension is already assured under the scheme to the pensioner. Once a person is entitled for a monthly pension till his life time and beyond his life time to his/her spouse, when a facility is provided to these pensioners to avail a portion as a commutation and in such an event, the period of commutation is fixed and during the period, a portion of the pension is recovered from the monthly pension. Therefore, the very concept of commutation can be equated with the loan which is to be obtained from the pension.

15. As far as the Government pension schemes are concerned, the terms and conditions stipulated in Government Rules for commutation of pension are as extracted hereunder:-

"A retired Government Servant who has earned a pension can commute up to 1/3rd of his pension i.e., he can surrender up to 33 1/3 % of his pension (in full rupees)

- In lieu of surrender, he receives a lump sum calculated with reference to the Commutation Factor as per the Commutation table prescribed by the

Government linked with his age next birth day

- The amount so surrendered will be restored to him after 15 years from the date of receipt of lump sum amount.

- Me commutation shall be sanctioned unless medical authority certifies that the pensioner's health and prospects of duration of life are such as to justify commutation, In cases where the Individual applies for commutation after one year from the Date of Retirement or date of issue of Pension Payment Order by Accountant General whichever is later. In the following classes of pension, medical examination is not necessary if he/she applies within one year after the Date of Retirement/ Date of issue of Pension Payment Order.

- Medical Certificate is necessary for Compulsory Retirement as a measure of punishment and commutation of compassionate allowance also.

- In the case of Pensioner's drawing invalid pension, certificate of fitness issued by a standing medical board is compulsory for allowing commutation.

- Nomination facility is available for commutation of value of pension and also Life time arrears of

Pension.

- Mode of calculation:-

Lump sum payable = Commutation factor X 12 X
amount of Pension opted for commutation."

16. The Government Rules also stipulates that the amount so surrendered will be restored to the pensioner after 15 years (i.e., the period of commutation from the date of receipt of lump sum amount). Thus the Government Rules clarifies that the commutation is for a specific period and after the expiry of the commutation period, the pensioner is entitled to claim full pension and the authorities are bound to restore the full pension after recovery of the full commuted value.

17. This Court is of an opinion that the Employees Pension scheme is a welfare scheme. Within the scheme certain facilities are provided. The very purpose and object of the scheme is to ensure and provide pension to the eligible persons who have contributed under the Employees Provident Fund Scheme. Thus, the monthly pension till the life time of the pensioner and thereafter to the spouse concerned are ensured under the scheme itself. Under these circumstances, an additional facility of commutation is provided within the scheme, more specifically, in Clause 12(A) of the Employees Pension Scheme 1995. Clause 12(A) is silent with reference to the permanent deduction of the commuted value of pension throughout the life time. There is no specific prohibition under the provisions of the scheme for restoration of full pension. In other words, depriving a pensioner for getting full pension is not contemplated. While so, the authority cannot presume certain conditions which is not made available under the scheme itself.

18. In the present case, the respondents authorities presumed that even after the expiry of the commutation period, the pensioner is not entitled for restoration of full pension. Such a presumption is baseless and in violation of the very principles to be adopted in respect of the facility of commutation of pension.

19. The very concept of commutation of pension is to provide a lump sum amount to the pensioner for certain needs and a pensioner who wish to avail the commutation can avail and it is only an option. Thus, once an employee availed the facility of commutation, the portion of the pension is to be deducted for the period fixed and beyond the period, the authorities have no powers to deduct the pension for an unspecified period or for their life time. Such a concept is unknown and if such principles are adopted, it will amount to

unjust enrichment to the Employees Provident Fund Organization. This apart, the very purpose and object of the pension scheme would be defeated.

20. The pension being the welfare scheme must be interpreted constructively, so far as to provide full pension to the pensioners in all circumstances and only on certain conditions, pension can be deducted. The scheme of commutation is to provide a lump sum to the pensioner and deduct the same on monthly basis and the period of commutation is also fixed at the time of availing the pension scheme. This being the fact after the expiry of the commutation period, the Competent Authorities are bound to restore the full pension and they cannot permanently deny the full pension under the guise of commutation for the pensioner, which would amount to unlawful enrichment and which is not contemplated under Employees Pension Scheme itself.

21. This being the legal principles to be followed, this Court is of an opinion that, non restoration of full pension after the expiry of commutation period i.e., 100 months in this present case is improper and not in consonance with the very scheme of commutation itself.

22. Accordingly, the impugned orders passed by the Regional Provident Fund Commissioner-1, Employees Provident Fund Organization, in No.TN/ZO-CBE/PGHS/NIS/2018 dated 02.01.2018 is quashed and writ petitions stand allowed. The respondents are directed to restore the full pension on expiry of the 100 month period fixed for commutation and pay all other consequential and attendant benefits within a period of 12 weeks from the date of receipt of a copy of this order.

23. All these writ petitions stand allowed. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

pkn
To

1.The Secretary to Government,
The Government of India,
Ministry of Labour and Employment,
Shram Shakthi Bhawan, Rafi marg,
New Delhi - 110 001.

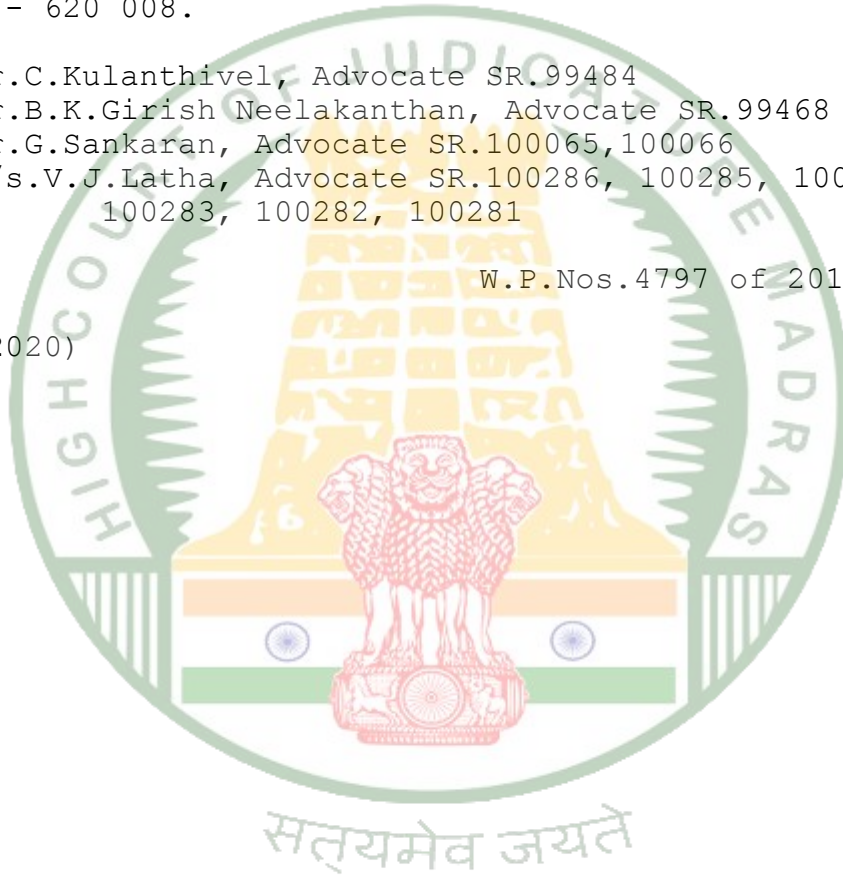
2.The Regional Provident Fund Commissioner-1,
Employees Provident Fund Organization,
(Ministry of Labour, Govt. of India),
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road, Coimbatore -641 018.

3.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
P.B.No.588, Sree Complex, 'D' Block,
No.18, Madurai Road,
Trichy - 620 008.

+1cc to Mr.C.Kulanthivel, Advocate SR.99484
+1cc to Mr.B.K.Girish Neelakanthan, Advocate SR.99468
+2cc to Mr.G.Sankaran, Advocate SR.100065,100066
+6cc to M/s.V.J.Latha, Advocate SR.100286, 100285, 100284,
100283, 100282, 100281

W.P.Nos.4797 of 2019 & batch

BR(CO)
CB(22/01/2020)



WEB COPY