IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

&

THE HONOURABLE MR.JUSTICE G. GIRISH

WEDNESDAY, THE 10th DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

ICR (WA) NO.13 OF 2025

ARISING OUT OF THE ORDER OF REFERENCE DATED 07.07.2022 OF THE DIVISION BENCH IN W.A.NO.139 OF 2022 AGAINST THE JUDGMENT DATED 14.12.2021 IN WP(C)NO.857 OF 2019 OF THE HIGH COURT OF KERALA

PETITIONERS/APPELLANT AND SUPPLEMENTAL APPELLANTS 2 TO 5:

VALSALA MILKA.B. (DIED)
AGED 63 YEARS
W/O.CHANDRAMOHAN, RESIDING AT POURNAMI, TC 1/1981-I, POOJAPURA, THIRUMALA VILLAGE, THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM DISTRICT - 695 012.

2 **ADDL APPELLANT NO.2**
DR.CHANDRAMOHANAN.S.R.
AGED 68 YEARS, S/O V.S. RAJA, POURNAMI,T.C.47/2897,POOJAPPURA.P.O., THIRUVANANTHAPURAM, PIN 695012.

3 **ADDL. APPELLANT NO:3**
MANJUSHA C.V
TC 37/1395-ELENZA, THITTAMANGALAM, PULARI NAGAR, TRA 274A, VATTIYOORKKAVU P.O, THIRUVANANTHAPURAM-695 013.

4 **ADDL.APPELLANT NO:4**
REJITH C.V.
POURNAMI, T.C.47/2897, POOJAPPURA P.O, THIRUVANANTHAPURAM-695012.

ADDL. APPELLANT NO.2 IS IMPLEADED AS PER ORDER DATED 27/11/2024 IN I.A NO:1/2024 IN W.A NO:139/2022.

ADDL. APPELLANT NOS: 3 AND 4 ARE SUO MOTO IMPLEADED AS PER ORDER DATED 27/11/2024 IN I.A NO:1/2024 IN W.A NO:139/2022.

BY ADV RAJESH P.NAIR

RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN- 695 001.

2 **THE DIRECTOR OF COLLEGIATE EDUCATION**
VIKAS BHAVAN, THIRUVANANTHAPURAM, PIN - 695 001.

3 **THE ACCOUNTANT GENERAL (H&E) KERALA**
OFFICE OF THE ACCOUNTANT GENERAL (A&E),
THIRUVANANTHAPURAM, PIN - 695 009.

4 **THE DISTRICT TREASURY OFFICER**
DISTRICT TREASURY, THIRUVANANTHAPURAM - 695 001.

5 **CHRISTIAN COLLEGE**
KATTAKKADA, THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY ITS MANAGER - 695 572.

6 **THE PRINCIPAL**
CHRISTIAN COLLEGE, KATTAKKADA, HIRUVANANTHAPURAM
DISTRICT - 679 572.

BY ADVS.
SABEENA P. ISMAIL, GOVERNMENT PLEADER
SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL
T.S.SHYAM PRASANTH, GOVERNMENT PLEADER

THIS ICR (WRIT APPEAL) HAVING BEEN FINALLY HEARD ON 27.11.2024 AND THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

"C.R"

ORDER

Anil K. Narendran, J.

This intra-court reference arises out of the order of reference dated 07.07.2022 of a Division Bench of this Court in W.A.No.139 of 2022 filed by the original appellant-writ petitioner, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, against the judgment dated 14.12.2021 of the learned Single Judge in W.P.(C)No.857 of 2019. During the pendency of the writ appeal, the original appellant died and her legal representatives are impleaded as supplemental appellants 2 to 4 by the order dated 27.11.2024.

2. The writ petition, i.e., W.P.(C)No.857 of 2019, was one filed by the original appellant, who retired from service on 31.03.2011 while working as an Associate Professor in the Department of Physics, the Christian College, Kattakada, a college affiliated with the University of Kerala. The writ petition was filed, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P6 communication dated 12.02.2018 of the 2nd respondent Director of Collegiate Education; a writ of mandamus commanding the respondents to disburse the Death-Cum-

Retirement Gratuity (DCRG) due to her together with interest; and a writ of mandamus commanding the 2nd respondent to issue a non-liability certificate (NLC) forthwith, so as to enable the 4th respondent District Treasury Officer to disburse the DCRG amount due to her.

3. In the writ petition, the 2nd respondent Director of Collegiate Education filed a counter affidavit dated 22.02.2019 opposing the reliefs sought for. The petitioner filed a reply affidavit dated 26.06.2019. By the judgment dated 14.12.2021 in W.P.(C)No.857 of 2019 and the connected matter, i.e., W.P.(C)No.12996 of 2019, the learned Single Judge quashed Ext.P6 communication dated 12.02.2018 of the 2nd respondent Director of Collegiate Education, on the ground that the demand made therein for refund of salary to the tune of Rs.5,75,258/- together with interest at the rate of 12.5% is barred by limitation, in view of the period of limitation prescribed under Section 18 of the Limitation Act, 1963. However, the consequential reliefs sought for, i.e., a writ of mandamus commanding the respondents to disburse the DCRG amount due to the petitioner, together with interest; and a writ of mandamus commanding the 2nd respondent to issue a non-liability certificate in respect of the petitioner to disburse the DCRG due to her were declined. Feeling aggrieved,

the original appellant filed the writ appeal.

4. On 27.01.2021, when the writ appeal came up for admission, notice before admission was ordered to respondents 5 and 6 by speed post. The learned Government Pleader took notice for respondents 1 to 4.

5. On 07.07.2022, when the writ appeal came up for consideration before a Division Bench, the learned counsel for the original appellant submitted that insofar as the learned Single Judge has chosen to set aside Ext.P6 communication, the respondents ought to have been directed to disburse the DCRG payable to the appellant with interest. The learned counsel contended that Ext.P6 communication is unsustainable in law since the appellant has no liability to reimburse the pay and allowances received during the period of deputation, in terms of the bond that has been executed. The learned counsel placed reliance on the decision of a Division Bench of this Court in **State of Kerala v. Ajitha C.K. [2021 (2) KHC 1]** in support of the said contention. On the other hand, the learned Government Pleader submitted that since the appellant failed to successfully complete the Ph.D programme, she is liable to reimburse not only the pay and allowances received during the period of deputation but also the penalty stipulated in the bond. As regards the

contention that the liability of the appellant in terms of the bond cannot now be recovered from the DCRG, the learned Government Pleader submitted that as clarified by this Court in the judgment dated 22.08.2019 in W.P.(C)No. 21588 of 2019, the fixation of liability in terms of the statutory provision is not necessary in a case of this nature, where there exists a bond.

5.1. The Division Bench noticed that in the judgment dated 22.08.2019 in W.P.(C)No.21588 of 2019, this Court clarified that the fixation of liability is not necessary in a case where the pensioner has executed a bond for reimbursement of his/her liability. In the light of the said decision, the only question which survives for consideration is the question relating to the extent of liability of the appellant under the bond. After extracting the relevant portion of Ext.P2 bond in paragraph 9 of the order dated 07.07.2022, the Division Bench noticed that the terms of the said bond originally interpreted by a learned Single Judge in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** – the judgment in W.P.(C)No.884 of 2023 - is to the effect that bounden has no obligation to reimburse the pay and allowances received during the period of deputation in the event of unsuccessful completion of the Ph.D programme, if he/she served the institution for a period of three years after the deputation. As

pointed out by the learned Government Pleader, the correctness of the said decision was doubted by another Single Judge and the matter was referred to a Division Bench. The Division Bench answered that reference in **Premasukumar v. Secretary, Higher Education Department [2019 (3) KLT 912]**, wherein it was held that a teacher who failed to complete successfully the Ph.D programme is liable not only to reimburse the pay and allowances received during the period of deputation but also liable to pay the penalty in terms of the bond. The view taken by the Division Bench in that decision is that serving the college without successful completion of Ph.D programme will not absolve the bounden from the liability under the bond.

5.2. In the order of reference dated 07.07.2022, the Division Bench noticed that in **Premasukumar [2019 (3) KLT 912]**, reliance has been placed on the decision of the Apex Court in **Sant Longowal Institute of Engineering and Technology v. Suresh Chandra Verma [(2013) 10 SCC 411]**. However, in a later decision, in **Ajitha C.K. [2021 (2) KHC 1]**, another Division Bench interpreted the terms of the very same bond to the effect that the bounden has no obligation to reimburse the pay and allowances received during the period of deputation in the event of unsuccessful completion of the Ph.D programme, if

he/she serves the institution for a period of three years after the deputation.

5.3. In the order of reference dated 07.07.2022, it was noticed that as evident from paragraphs 12 to 16 of the decision in **Ajitha C.K. [2021 (2) KHC 1]**, the Division Bench arrived at its conclusion following the decision of the learned Single Judge in W.P.(C)No.884 of 2013, which was overruled in **Premasukumar [2019 (3) KLT 912]**, after distinguishing the principles laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**. In the light of the apparent conflict of opinions formed by the Division Benches in **Premasukumar [2019 (3) KLT 912]** and **Ajitha C.K. [2021 (2) KHC 1]** as to the interpretation of the bond executed by the appellant, the Division Bench found that the question needs to be resolved by a Larger Bench. Accordingly, Registry was directed to place the matter before the Hon'ble the Chief Justice for appropriate orders. After obtaining the orders of the Hon'ble the Chief Justice, the writ appeal was listed before this Bench.

6. By the order dated 15.01.2024, Registry was directed to serve a copy of the memorandum of the writ appeal to the learned Standing Counsel for University Grants Commission and to show his name in the cause list. Along with a memo dated

29.01.2024 filed by the learned Government Pleader in the writ appeal, the orders referred to in Ext.P1 Government order dated 18.12.2001, i.e., G.O.(P)No.166/ 87/H.Edn. dated 04.06.1987; G.O.(Rt.)No.1560/94/H.Edn. dated 18.10.1994; G.O.(Rt.)No. 1216/95/H.Edn. dated 30.08.1995; and G.O.(P)No.124/99/H.Edn. dated 07.10.1999 were placed on record.

7. On 02.07.2024, the learned Standing Counsel for University Grants Commission (UGC) submitted that Faculty Improvement Programme Guidelines (FIP Guidelines) issued by the UGC contain a format of the bond that has to be executed by the teachers before proceeding on deputation to undergo M.Phil/Ph.D course under the said programme.

8. Along with another memo dated 04.07.2024 filed in the writ appeal by the learned Government Pleader, a copy of G.O.(P)No.166/87/H.Edn. dated 04.06.1987, along with the appendices, was placed on record.

9. On 30.08.2024, the learned Standing Counsel for the UGC filed a statement dated 10.07.2024 in the writ appeal, producing therewith the approval letter dated 08.03.2013 issued to the Principal, Government Law College, Cochin for the award of Teacher Fellowship under the Faculty Development Programme - XI Plan period to a Teacher Fellow by name Anusree A., subject to

the condition that if the Teacher Fellow fails to complete her Ph.D/M.Phil programme and leaves it midway, she has to refund the entire amount paid to her by the UGC during her Teacher Fellowship. As per the said letter, the Teacher Fellow is required to give an undertaking that she will complete the research work within the allotted tenure/plan period, failing which she will refund the fellowship grant and substitute teacher salary to UGC-SWRO. The refund of grant-in-aid and interest issued in the prescribed format, in respect of Government Law College, Ernakulam, on account of non-submission of Ph.D Thesis within the stipulated time was also produced along with the said statement.

10. On 10.10.2024, during the course of arguments, the submission made by the learned Standing Counsel for the UGC was that the approval for the award of Teacher Fellowship to the original appellant under the Faculty Development Programme during the IX Plan period was based on a similar communication issued by the UGC to the Principal of the 6th respondent Christian College, Kattakkada, specifying the conditions for such approval. The learned counsel for the original appellant submitted that the appellant does not have a copy of the approval letter issued by the UGC. The learned Additional Advocate General submitted that the 2nd respondent Director of Collegiate Education shall make an

attempt to get a copy of the approval letter issued by the UGC for the award of Teacher Fellowship under the Faculty Improvement Programme to the appellant, from the 6th respondent Principal of Christian College, Kattakkada.

11. Along with a memo dated 23.10.2024 filed in the writ appeal, the learned Government Pleader has placed on record a copy of letter No.F.FIP99/SWRO/UGC/KLKE040 dated 01.02.2001 of the Regional Head of the University Grants Commission, South Western Regional Office, whereby the UGC conveyed its approval for doing Ph.D by the appellant under the IX Plan Faculty Development Programme, subject to the conditions stipulated therein. Condition No.6 incorporated in that letter reads thus;

> "6. The Teacher Fellows should note that he/she shall have to submit their M.Phil/Ph.D thesis compulsorily in order to account for audit as well as for the purpose for which the grants are paid by the Commission failing which the entire amount incurred on the scheme will have to be borne by the Teacher Fellow." (underline supplied)

Another letter No.F.FIP99/SWRO/UGC/KLKE040 dated 28.09.2002 issued by the Joint Secretary of University Grants Commission, South Western Regional Office is also produced along with the memo, which is one issued in continuation of the earlier letter dated 01.02.2001, whereby the UGC conveyed its approval for an extension for doing Ph.D by the appellant under IX plan Faculty

Development Programme, subject to the conditions stipulated therein. Condition No.7 incorporated in that letter reads thus:

> "7. The Teacher Fellow should note that he/she shall have to submit their M.Phil thesis compulsorily in order to account for audit as well as for the purpose for which the grants are paid by the commission, failing which the entire amount incurred on the scheme will have to be borne by the Teacher Fellow."
>
> (underline supplied)

12. On 07.11.2024, the learned counsel for the original appellant submitted that the original appellant is no more and that an application to substitute her legal representatives as supplemental appellants in the writ appeal shall be filed within two weeks. By the order dated 27.11.2024 in I.A.No.1 of 2024 filed by the husband of the appellant, he was impleaded as supplemental 2nd appellant. By the said order, the children of the deceased appellant were *suo motu* impleaded as supplemental appellants 3 and 4.

13. Heard arguments of the learned counsel for supplemental appellants 2 to 4, the learned Additional Advocate General for respondents 1 to 4 and also the learned Standing Counsel for the UGC.

14. The learned counsel for supplemental appellants 2 to 5 contended that the original appellant has no liability to reimburse the pay and allowances received by her during the period of

deputation, in terms of the bond that has been executed. In **Ajitha C.K. [2021 (2) KHC 1]**, a Division Bench of this Court, after distinguishing the principles laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**, rightly interpreted the terms of the very same bond to the effect that the bounden has no obligation to reimburse the pay and allowances received during the period of deputation in the event of unsuccessful completion of the Ph.D programme, if he/she serves the institution for a period of three years after the deputation.

15. On the other hand, the learned Additional Advocate General for respondents 1 to 4 contended that, after taking note of the law laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**, a Division Bench of this Court in **Premasukumar [2019 (3) KLT 912]** rightly held that a teacher who failed to complete successfully the Ph.D programme is liable not only to reimburse the pay and allowances received during the period of deputation but also the penalty in terms of the bond, since serving the college without successful completion of Ph.D programme will not absolve the bounden from the liability under the bond.

16. The learned Additional Advocate General and also the learned Standing Counsel for the UGC pointed out that as per

Condition No.6 of letter No.F.FIP99/SWRO/UGC/KLKE040 dated 01.02.2001 of the Regional Head of the University Grants Commission, South Western Regional Office, whereby the UGC conveyed its approval for doing Ph.D by the original appellant under the IX Plan Faculty Development Programme, and as per Condition No.7 in letter No.F.FIP99/SWRO/UGC/KLKE040 dated 28.09.2002 issued by the Joint Secretary of University Grants Commission, South Western Regional Office, whereby the UGC conveyed its approval for an extension for doing Ph.D by the appellant under IX plan Faculty Development Programme, the Teacher Fellow shall submit his/her M.Phil/Ph.D Thesis compulsorily in order to account for audit as well as for the purpose for which the grants are paid by the commission, failing which the entire amount incurred on the scheme will have to be borne by the Teacher Fellow.

17. In **Sant Longowal Institute of Engineering and Technology v. Suresh Chandra Verma [(2013) 10 SCC 411]** the question that came up for consideration before a Two-Judge Bench of the Apex Court was as to whether the appellant Institute was justified in directing the respondent therein to refund the entire amount of Rs.12,32,126/- paid to him towards salary and other allowances for pursuing Ph.D studies at Indian Institute of

Technology (IIT), Kanpur, on failure to produce the certificate of obtaining the Ph.D, for which study leave was granted. The respondent joined the service of the appellant Institute, as Lecturer in Mechanical Engineering on 30.08.1993. He applied for study leave to pursue his Ph.D at IIT, Kanpur. The competent authority granted study leave for three years, commencing from 24.07.1999 to 22.07.2002. The respondent, after executing necessary bond, proceeded on study leave on 24.07.1999. The 3-year period was completed on 24.07.2002. Due to various reasons, the respondent could not complete his Ph.D studies. He joined back in service as a Lecturer in the Appellant Institute in November, 2003. He was asked to produce the completion certificate for Ph.D course, which he could not produce. Hence, the appellant Institute demanded refund of an amount of Rs.12,32,126/- paid to the respondent during the period of study for pursuing Ph.D, as per the terms and conditions of the bond executed by him. Aggrieved by the steps taken by the appellant Institute, the respondent filed Civil Writ Petition No.12555 of 2010 before the High Court of Punjab and Haryana. That writ petition was allowed by the learned Single Judge, vide the judgment dated 02.02.2012, quashing the demand notice and ordering a refund of the amount already recovered with interest from the respondent. Aggrieved by the

said judgment, the appellant Institute preferred LPA No. 363 of 2012 before the Division Bench, which ended in dismissal by the judgment dated 23.08.2012, on the ground that the appellant could not point out any term in the bond executed by the respondent that he had to complete the Ph.D programme within a period of three years and that the only condition was that the respondent had to serve for a period of six years after joining service on the expiry of the study leave. Aggrieved by the judgment of the Division Bench, the appellant Institute approached the Apex Court.

17.1. In **Sant Longowal Institute [(2013) 10 SCC 411]** the appellant Institute contended before the Apex Court that the High Court had completely misunderstood the terms and conditions on which the respondent was granted study leave, which is reflected in the bond executed by the respondent on 05.05.1999. The High Court had completely ignored the salutary principle of 'no work no pay' and that the respondent during the period of study not only not worked in the appellant Institute but also was not successful in obtaining the Ph.D. Consequently, neither the appellant Institute nor the students are benefited so also the respondent and the public money has been spent for no use. On the other hand, the learned counsel for the respondent

contended that the respondent had completed his course work required for the Ph.D programme, completed the comprehensive examination, etc., but the thesis could not be completed due to the retirement of the guide. The respondent had also made a written request on 24.05.2002 seeking an extension for 6 months so that he could complete the thesis work. Another representation was made on 04.06.2002 and all those representations were left unattended. Under such circumstances, he had to join duty without obtaining Ph.D. It was pointed out that a similarly situated employee, Abanish Kumar Singh, was granted the extension of time, but the same was not done in the case of the respondent. Further, there is no condition in the bond that if the respondent could not complete the Ph.D, then the entire salary and other benefits could be recovered from him. Therefore, the High Court rightly interpreted the terms and conditions of the bond and held that the demand made for the reimbursement of the salary and other allowances was not justified.

17.2. In **Sant Longowal Institute [(2013) 10 SCC 411]**, having gone through the terms and conditions of the bond executed by the respondent on 05.05.1999 [quoted at para.7 on pages 415 and 416 of SCC], the Apex Court noticed that there is no clear-cut provision in the bond either expressly referring to

Rule 63 of the Central Civil Services (Leave) Rules, 1972 [which deals with resignation or retirement after study leave or non-completion of the course of study] forming part of the Fundamental Rules and Supplementary Rules, Part III framed by the Constitution of India or strictly imposing a condition that if a candidate fails to complete the course of study during the period of sanctioned leave, he will have to refund to the appellant Institute the total amount of leave salary and other benefits availed of by him during the period of study leave. Of late, such a specific provision was incorporated in the bond by the Board of Governors of the appellant Institute in its 22nd meeting held on 28.06.2002 [quoted at para.9, on pages 416 to 418 of SCC]. The Apex Court noticed that the question as to whether Rule 63 of the Central Civil Services (Leave) Rules, 1972 [quoted at para.10, on pages 418 and 419 of SCC] is also applicable to the respondent was not seen specifically urged by the appellant Institute, either before the learned Single Judge or before the Division Bench, hence, the High Court had no occasion to examine its applicability. If a government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to

furnish the certificates as required under sub-rule (5) of Rule 53 of the Central Civil Services (Leave) Rules, 1972 [Rule 53 deals with sanction of study leave], he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India. The Apex Court noticed that the abovementioned provision has a laudable object to achieve.

17.3. In **Sant Longowal Institute [(2013) 10 SCC 411]**, the Apex Court found that a Government servant or person like the respondent is given study leave with salary and allowances, etc., so as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the appellant Institute which has sanctioned the study leave would achieve the purpose and object for granting such study leave. The purpose of granting study leave with salary and other benefits is for the interest of the institution and also the person concerned so that once he comes back and joins the institute, the students will benefit from the knowledge and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest in completing the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a

person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in the public interest. Public money cannot be spent unless there is mutual benefit. Further, if the period of study leave was not extended or no decision was taken on his representation, the respondent could have raised his grievances at the appropriate forum.

17.4. In **Sant Longowal Institute [(2013) 10 SCC 411]**, on the facts of the case on hand, the Apex Court noticed that the appellant Institute had already recovered an amount of Rs.6,50,000/- as monthly instalments from the salary of the respondent. The appellant Institute has also recovered an amount of Rs.1,75,000/- from the salary of the respondent and Rs.4,75,000/- from the arrears of revised scales admissible to the respondent with effect from 01.01.2006 and as such approximately Rs.6,50,000/- has been recovered from the respondent. Now, the appellant Institute claims a balance amount of Rs.6,18,000/-. Considering the facts and circumstances of the case and considering the fact that the bond executed by the respondent is found to be vague, the Apex Court found no reason for the appellant Institute to recover the balance amount of Rs.6,18,000/- from the respondent, but the amount already

recovered be not refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the respondent after availing of the entire salary and other benefits. In the judgment, it was made clear that the Apex Court did so, taking into consideration all aspects of the matter, and to do complete justice between the parties. The civil appeal was allowed to the above extent, and the judgment of the learned Single Judge of the High Court of Punjab and Haryana dated 02.02.2012 and the judgment of the Division Bench dated 23.08.2012 were modified accordingly by ordering that no further amount be recovered by the appellant Institute from the respondent.

17.5. As already noticed hereinbefore, in **Sant Longowal Institute [(2013) 10 SCC 411]**, at para.7 on pages 415 and 416 of SCC, the Apex Court quoted the terms and conditions of the bond executed by the respondent on 05.05.1999. Para.7 of the said decision reads thus;

> "7. We have gone through the terms and conditions of the bond executed by the respondent on 05.05.1999. Some of the relevant portions of the bond read as follows:
> 'Whereas I, Suresh Chandra Verma, am granted (kind of leave) by the Institute.
> And whereas for the better protection of the Institute, I have agreed to execute this bond with such conditions as hereunder is written.

> Now the condition of the above written obligation is that in the event of my failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning for duty after the expiry of termination of the period of study leave or at any time within a period of three years after my return to duty, I shall forthwith pay to the Institute or as may be directed by the Institute, on demand, pay and allowances received by me during study leave, the said amount of Rs.10,000/- (Ten thousand only) together with interest thereon from the date of demand at government rates for the time being in force on government loan.
>
> And upon my making such payment the above written obligation shall be avoided and of no effect, otherwise it shall be and remain in full force and virtue.
>
> The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.'

17.6. In **Sant Longowal Institute [(2013) 10 SCC 411]**, after noticing that there is no clear-cut provision in the bond executed by the respondent on 05.05.1999 either expressly referring to Rule 63 of the Central Civil Services (Leave) Rules, 1972 or strictly imposing a condition that if a candidate fails to complete the course of study during the period of sanctioned leave, he will have to refund to the appellant Institute the total amount of leave salary and other benefits availed of by him during the period of study leave, the Two-Judge Bench held that a candidate

who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in the public interest. Public money cannot be spent unless there is mutual benefit. The Apex Court, considering the facts and circumstances of the case and considering the fact that the bond executed by the respondent is found to be vague, found no reason for the appellant Institute to recover the balance amount of Rs.6,18,000/- from the respondent. However, the Apex Court ordered that the amount already recovered need not be refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the respondent after availing of the entire salary and other benefits. In the said judgment, it was made clear that the Apex Court did so, taking into consideration all aspects of the matter, and to do complete justice between the parties. Therefore, the said direction is one issued in the exercise of the powers under Article 142 of the Constitution of India, which confers the Apex Court the power to pass any order necessary for doing complete justice in any cause or matter pending before it. In the said

decision, the Apex Court did not order that the appellant Institute need not refund the amount already recovered, since the bond executed by the respondent was found to be vague.

18. In **Premasukumar v. Secretary, Higher Education Department [2019 (3) KLT 912]**, based on the order of reference made by a learned Single Judge doubting the correctness of the judgment rendered by another learned Single Judge in W.P.(C)No.884 of 2013, the matter came up for consideration before a Division Bench. The question that arose for consideration was regarding the liability of a teacher in an aided College, who was granted a Fellowship by the University Grants Commission (UGC) for doing Ph.D, to refund the salary and other benefits received during the Fellowship, on the failure of the Teacher to acquire Ph.D Degree within the period of Fellowship. The petitioner therein, while working as Selection Grade Lecturer at NSS College, Pandalam, was awarded Teacher Fellowship under the Faculty Improvement Programme of the UGC X plan period. The period fixed for completing the Ph.D Course was from 01.06.2005 to 31.03.2007. She did not acquire Ph.D within the stipulated time or even within the extended time. She, in fact, acquired the qualification only on 31.12.2016, much after her retirement from service on 31.03.2010. Due to the failure on the

part of the petitioner to acquire Ph.D degree within the fellowship period, proceedings were initiated against her for recovery of an amount of Rs.3,07,590/-, being the contingency plus substitute salary paid during the Fellowship period. In the writ petition, the petitioner challenged the said liability and the consequential recovery proceedings. She has also sought for a direction to release the DCRG amount due to her without any deduction. In support of the said contention, the petitioner relied on the decision in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** - the judgment in W.P.(C)No.884 of 2013 - wherein under similar circumstances, it was held that failure to acquire Ph.D within the stipulated period, would entail only a penalty of Rs.7,000/- with interest and not a refund of the entire salary and emoluments received during the period of Fellowship. For arriving at such a conclusion, the learned Single Judge had relied on the terms of the bond executed by the Lecturer on being selected for the Fellowship.

18.1. In **Premasukumar [2019 (3) KLT 912]**, the Division Bench noticed that in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** interpreting clause 3 of the bond executed by the lecturer, the learned Single Judge held as follows, at para.8;

> "8. What could be discerned from above is that the pay and other allowances given to the petitioner could be recovered by the Government only if the petitioner fails to join duty within a period of 3 years from completion of the course. The respondents have no case that the petitioner has (not) rejoined duty within the aforesaid period. However, if the petitioner fails to complete the course successfully within the grace period, it shall be the duty of the petitioner to pay a sum of Rs.7,000/- (Rupees seven thousand only) together with interest at the rates specified therein. The respondents can quantify the liability only in tune with the agreed terms in Ext.P3, and the 2nd respondent cannot go beyond the agreed terms in the bond. Therefore, steps taken by the petitioner to recover salary and other allowances owned by the petitioner during the deputation period from the DCRG are unauthorised and illegal. The same cannot be deducted from the DCRG."

Doubting the above reasoning in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** an order of reference was made in W.P.(C)No.14152 of 2016, on 18.09.2018, stating that the said decision is not in tune with the spirit and purpose of the bond to be executed if penalty provision is read along with other stipulations in the bond.

18.2. In para.6 of the decision in **Premasukumar [2019 (3) KLT 912]**, the Division Bench extracted relevant portions of the 'X Plan Guidelines for Faculty Improvement Programme', under which the petitioner was awarded Teacher Fellowship for doing

Ph.D. The objective of the programme, as stated in Clause (2) is as follows;

> "The objective of the Teacher Fellowship under the Faculty Improvement Programme is to provide an opportunity to the teachers of the Universities and Colleges to pursue their academic/research activities leading to the award of M.Phil/Ph.D Degree."

Clause 3.7 stipulates that the teacher will continue to receive full salary from the parent institution/college during the period of Teacher Fellowship. Clause 3.10 deals with the tenure of Teacher Fellowship. The said clause stipulates that the Teacher Fellowship for the Ph.D Programme would be for a period of two years. An extension of one year could be granted based on the justification and merits of the case. As per Clause 4.3, the salary of the substitute teacher appointed by the university/college in the place of a teacher selected for the award of Teacher Fellowship, will be reimbursed by the UGC. Clause 8.3 stipulates that if a Teacher Fellow fails to complete his/her Ph.D/M.Phil Programme and leaves it midway, he/she has to refund the entire amount paid to him by the UGC during his/her Teacher Fellowship.

18.3. In **Premasukumar [2019 (3) KLT 912]** the Division Bench noticed that from a reading of the aforementioned clauses in the 'X Plan Guidelines for Faculty Improvement Programme', it

is evident that a Teacher Fellowship is granted with the objective of providing an opportunity to the teacher to pursue academic studies or research and acquire further qualification so that it would inure to the benefit of the students. Therefore, the teacher is bound to utilise the Fellowship and acquire the Ph.D/M.Phil Degree within the fellowship period. The Division Bench noticed that in **Sant Longowal Institute [(2013) 10 SCC 411]**, the Apex Court was dealing with a case in which the respondent therein, a Lecturer in the appellant Institute, had availed study leave for three years for pursuing his Ph.D. Though the respondent executed necessary bond, undertaking to complete the course within the leave period, he failed to do so. The appellant Institute demanded refund of the amount paid to the respondent during the period of his study for Ph.D, in terms of the bond executed by him. The respondent challenged the recovery proceedings initiated against him before the High Court successfully. Aggrieved, the Institute filed an appeal before the Apex Court. After careful perusal of the terms of the bond executed by the respondent, the Apex Court found that there is no clear-cut provision imposing the condition that if a candidate fails to complete the course of study during the period of sanctioned leave, he will have to refund to the institute the total amount of leave salary and other benefits

availed by him during the period. Even after noticing the absence of a specific clause in the bond, the Apex Court allowed the appeal, to the extent of allowing the Institute to retain the amounts already recovered from the respondent. The reasoning of the Apex Court for arriving at such a conclusion is contained in paragraph 11 of that judgment. The Division Bench agreed with the said reasoning in the judgment of the Apex Court.

18.4. In **Premasukumar [2019 (3) KLT 912]**, the Division Bench noticed that the objective of awarding Teacher Fellowship is to provide an opportunity to do research or pursue academic studies leading to the award of M.Phil/Ph.D degree. Failure to acquire the degree would indicate that the teacher has not utilised the opportunity properly. This recalcitrance on the part of the teacher is at the cost of the public exchequer and the students. Therefore, necessarily, the teacher is bound to refund the salary and other benefits received by her during the course of the Fellowship which she failed to utilise properly.

18.5. In **Premasukumar [2019 (3) KLT 912]** the Division Bench found that, under the bond, the bounden undertakes to pay back the salary and allowances received by the teacher with interest thereon, in the event of the teacher failing to serve the college for a period of three years immediately and continuously

after return to duty on completion of the course, and to pay a penalty of Rs.7,000/- together with interest, in the event of the teacher failing to complete the course successfully within the grace period and that upon payment of all such sums, the written obligation shall be void and of no effect, and that otherwise, the bond shall remain in full force and effect. The Clause is specific to the effect that the teacher should serve the College for a period of three years after successful completion of the course. This Clause has two limbs; one is successful completion of the course and the other is serving the college for a continuous period of three years after such successful completion. Therefore, serving the College without successful completion of the course will not absolve the Bounden from the liability under the bond. A Lecturer, who has successfully completed the course, but, fails to serve the College would be liable under the bond. The failure to successfully complete the course within the stipulated period would entail in an additional penalty of Rs.7,000/-. Hence, the finding of the learned Single Judge in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** that a teacher, who failed to complete the course successfully within the period, need pay only Rs.7,000/- together with interest, is contrary to the objective of the Faculty Improvement Programme as well as the terms of the bond and

hence found to be not good law by the Division Bench. The Division Bench answered the reference by holding that in the event of a teacher awarded Fellowship for Ph.D course, failing to complete the course and acquiring the degree within the Fellowship period, he/she would be liable to refund the salary and other benefits received during the fellowship period. Before the Division Bench, the learned counsel for the 3rd respondent brought to the notice of the Bench Ext.R1(e) undertaking given by the petitioner, wherein she had affirmed that she would successfully complete the course and get qualified within the stipulated time and would serve the College for not less than three years immediately and continuously after the course, failing which, she would pay the amount with penalty and interest as specified in the bond.

19. In **State of Kerala v. Ajitha C.K. [2021 (2) KHC 1]** another Division Bench of this Court was dealing with a case in which the husband of the applicant before the Kerala Administrative Tribunal retired from service on 31.03.2012, as Associate Professor in Botany from the University College, Thiruvananthapuram. He later died on 10.04.2017. The grievance in the original application filed by the applicant, the widow of the deceased pensioner - Saseendra Babu, was regarding non-payment of the DCRG due to the pensioner, in spite of the expiry

of the outer time-limit of three years, as envisaged in Note 3 appended to Rule 3 of Part III Kerala Service Rules. While working as a Selection Grade Lecturer in Botany at University College, Thiruvananthapuram, Saseendra Babu was selected for deputation to undergo Ph.D under the Faculty Improvement Programme of University Grants Commission (UGC) for the period from 02.11.2004 to 02.11.2006. Consequent thereto, he was relieved from the college with effect from 02.11.2004 AN. The competent authority in the Higher Education Department sanctioned his deputation as per a Government order dated 21.02.2005. It appears that no substitute lecturer/teacher was appointed in his vacancy consequent to his deputation to undergo the Ph.D as per the Faculty Improvement Programme. He had earlier executed a bond in terms of order dated 28.02.2005. According to the applicant, her deceased husband had fulfilled all the conditions for submitting the thesis, but he failed to submit the same in time for reasons beyond his control and as such, he could not secure a Ph.D within the stipulated time. Later, a further period of 5 months was also granted to him under the Faculty Improvement Programme, for the period from 02.11.2006 to 31.03.2007 for which a supplemental agreement dated 02.02.2007 was also executed by him. He joined duty in the college on 01.04.2007 FN,

after the completion of the Faculty Improvement Programme. But, he could not secure a Ph.D. Later, he retired from service on 31.03.2012 while working as an Associate Professor in Botany at University College, Thiruvananthapuram. After retirement, he was sanctioned various retiral benefits. The DCRG amount of Rs.7,00,000/- was sanctioned to him as per the order dated 15.10.2012. However, the said amount was not released. He died on 10.04.2017. It is thereafter that the impugned order dated 15.10.2018 was issued by the Director of Collegiate Education and the consequential order dated 26.10.2018 was issued by the Principal, University College, Thiruvananthapuram, directing the original applicant (widow of the deceased pensioner) that she is liable to pay an amount of Rs.8,80,335/- along with interest at the rate of 18% per annum plus Rs.20,000/- which are the liabilities towards salary and allowances received by the teacher concerned during the period of deputation under the Faculty Improvement Programme as well as the contingency grant received by him, on the ground that he could not secure a Ph.D after the completion of the Faculty Improvement Programme. The Kerala Administrative Tribunal, by the order dated 06.08.2019 in O.A.No.2210 of 2018, allowed the main reliefs in the OA, on the ground that the bond conditions do not permit recovery of the

amount on the ground that the candidate concerned had not successfully obtained a Ph.D after completion of the Faculty Improvement Programme and that, the clauses in those bond/ agreement would only entail payment of an amount of Rs.7,000/- as penalty only if the incumbent concerned does not complete the course. Hence, the Tribunal held that the impugned proceedings for recovery are liable to be interfered with. Since the alleged liability fixation process has not been completed by the issuance of a show-cause notice and hearing Saseendra Babu within a period of three years from the date of retirement, as provided under Notes 2 and 3 of Rule 3 Part III Kerala Service Rules (KSR), the Tribunal held that the impugned proceedings for recovery from the DCRG amount are illegal and ultra vires. The State challenged the said order of the Tribunal by filing O.P.(KAT) No.418 of 2020.

19.1. In **Ajitha C.K. [2021 (2) KHC 1]**, before the Division Bench, the learned Senior Government Pleader contended that the reliance placed by the Tribunal in the impugned order on the decision in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** is not tenable or correct and that, the State is entitled to succeed in view of the decision of the Apex Court in **Sant Longowal Institute of Engineering and Technology v. Suresh Chandra Verma [(2013) 10 SCC 411]**. On the main

issue as to whether the impugned proceedings ordering to recover the amounts covered therein from the DCRG of the deceased pensioner is legally tenable or not, the Division Bench noticed that the teacher concerned retired from service as early as on 31.03.2012 and later he died on 10.04.2017. It is well settled that even without resorting to the proceedings envisaged in the operative portion of Rule 3 of Part III KSR, the departmental authorities can take steps to ascertain the liabilities of the employee/ pensioner concerned, after affording him a reasonable opportunity of being heard, and this aspect of the matter is clear from Note 2 appended to Rule 3 Part III KSR. However, in such cases covered by Note 2 Rule 3 Part III KSR, the statutory rule-making authority has made a mandatory provision as per Note 3 thereof that in such cases, the liability should have been duly and lawfully finalised within an outer time limit of three years on the incumbent concerned becomes a pensioner. In the instant case, the statutory time limit of three years, as envisaged in the mandatory provisions contained in Note 3 of Rule 3 Part III KSR, expired as early as on 31.03.2015. It is thereafter that the pensioner/teacher concerned died on 10.04.2017. At no point of time, either within the outer time limit of three years or at any time before the issuance of the impugned proceedings dated

15.10.2018 and 26.10.2018, the State/departmental authorities concerned has issued any show-cause notice to the teacher concerned for taking steps to ascertain the liability fixation process and then to pass an order fixing the liability within the outer time limit as mandated in Notes 2 and 3 of Rule 3 Part III KSR. Hence, on that simple ground, the petitioners are not legally entitled to recover the said amount covered by the impugned proceedings dated 15.10.2018 and 26.10.2018 from the DCRG from the deceased pensioner. The Division Bench found that, on this sole ground, the original applicant is entitled to succeed and the Tribunal cannot be faulted in any manner for having arrived at the said finding.

19.2. In **Ajitha C.K. [2021 (2) KHC 1]** the Division Bench then considered the contentions raised by both sides regarding the bond conditions contained in Annexure A3 agreement dated 28.02.2005 and Annexure A4 supplemental agreement dated 02.02.2007 executed by the deceased teacher. In para.9 of the judgment the Division Bench quoted the relevant conditions in Annexure A3 agreement dated 28.02.2005. In para.10 of the judgment the Division Bench quoted the relevant conditions in Annexure A4 supplemental agreement dated 02.02.2007. The Division Bench noticed that a perusal of Annexures A3 and A4

would make it clear that in the event of the FIP teacher failing to serve the Government for a period of three years immediately and continuously after his return to duty on completion of the course, he/she shall forthwith pay to the Government on demand, the amount mentioned therein together with interest from the date of demand at Government rates for the time being, in terms of the Government norms and further in case the teacher on FIP fails to complete the course successfully within the grace period, the bounden and the surety shall pay to the Government a penalty of Rs.7,000/- together with interest thereon at the rates mentioned above, unless the bounden successfully completes the course at his own expense within 2 years from the date of expiry of the period of deputation, etc. The additional condition given in Annexure A4 supplemental agreement only stipulates that the aforementioned conditions in Annexure A3 would govern the extended period of the Faculty Improvement Programme. The Division Bench noticed that the very same bond condition has been the subject matter of consideration of this Court in the decision in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]**. In para.11 of the judgment, the Division Bench quoted paras.7 and 8 of the judgment in W.P.(C)No.884 of 2013. The Division Bench noticed that a perusal of the said judgment

would make it clear that the relevant condition in the bond executed by the teacher concerned in the said case is similar and identical to that as made out in Annexures A3 and A4 in the instant case. Hence, the Division Bench held that it is in respectful agreement with the views already rendered by the learned Single Judge in W.P.(C)No.884 of 2013 - **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]**. The Division Bench noticed that, in the case on hand, it is common ground that the teacher concerned, after completion of the Faculty Improvement Programme, had returned back to the parent college and rejoined duty and had continued in service for three years. Therefore, the first limb of the relevant condition of Annexure A3 will not come into play for the simple reason that the said clause will arise only if the incumbent/teacher concerned does not join duty after completing the Faculty Improvement Programme and so for a period of three years thereafter. Hence, at best only the second limb of Annexure A3 for payment of the penalty amount of Rs.7,000/- for not successfully obtaining the Ph.D degree alone will come into play. Hence, the Division Bench did not find any cogent grounds to deviate from the view in the judgment of the learned Single Judge in W.P.(C)No.884 of 2013 - **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]**. Therefore, the

Division Bench held that the Tribunal cannot be faulted for placing reliance on the said judgment of this Court.

19.3. In **Ajitha C.K. [2021 (2) KHC 1]** the Division Bench noticed that as per Clause 8.3 of Annexure R2(a) guidelines issued by the UGC, if a Teacher Fellow fails to complete his/her Ph.D/M.Phil programme and leaves it midway, he/she has to refund the entire amount paid to him by the UGC during his/her teacher fellowship. Before the Division Bench, the learned Senior Government Pleader placed reliance on the judgment of the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**. The Division Bench noticed that a reading of the said decision would make it clear that the teacher concerned was granted three years study leave for the period from 24.07.1999 to 22.07.2002 and he had joined back as Lecturer in November, 2003. The bond executed by the said teacher is extracted in para.7 of the said decision, and it was found that the said bond conditions are quite vague and do not envisage a case of recovery from the full pay and allowances paid to the teacher concerned if he does not subsequently secure a Ph.D. However, a reading of para.9 of the said decision would make it clear that later the appellant Institute had amended its norms for bond conditions on 28.06.2002, which appears to be before the expiry of the leave period of the teacher

concerned (which was up to 22.07.2002). Moreover, a reading of para.10 of the said decision would also make it clear that the explicit statutory rules had governed the field and reference to Rule 63 of the Rules are contained therein. Rule 63 of the said Rule considered in para.10 of the said decision of the Apex Court would make it clear that explicit provisions are provided in the said Rule for dealing with the contingency in question. The Apex Court after considering the facts of the case found that though the bond conditions are vague, the partial refund already effected from the salary of the teacher incumbent concerned may not be interfered with and had also specifically ordered that further balance amount yet to be recovered from the teacher need not be recovered, taking into consideration the facts circumstances of the case.

19.4. In **Ajitha C.K. [2021 (2) KHC 1]**, on the facts of the case on hand, the Division Bench noticed that the parties are fully regulated by the conditions in Annexures A3 and A4 agreements. Further, there are no provisions akin to Rule 63 of the Rules considered in para.9 of the decision of the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]** in the case on hand. Rule 99 of Part I KSR deals with study leave. The said Rule has been deleted from the statute book with effect from 19.02.2007, vide Gazette notification published on 22.02.2007. After referring

to Appendix VI of Part I KSR, which deals with rules for grant of study leave, the Division Bench observed that if the course is meant for Ph.D or M.Phil in academic or literary subjects, then there is no question of invoking Rule 99 or Appendix VI framed thereto. Further, a reading of the operative portion of Annexure A proforma agreement framed under Rule 15 of Appendix VI would make it clear that the liability to pay the amounts to the Government would occur only in cases where the employee concerned resigns or retires from service without returning to duty after expiry of the termination of the period of study leave. Hence, the Division Bench found that the factual situation prevailing in the case on hand is substantially different from the case considered by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**. Moreover, in the said decision, the Apex Court has given certain equitable directions taking into consideration the peculiar facts and circumstances of that case by ordering that whatever has been recovered from the teacher need not be refunded to him and that the amounts which are not yet recovered from the teacher need not be recovered from him. Therefore, the Division Bench arrived at a conclusion that the decision rendered by the Apex Court in the said decision has no application to the facts and circumstances of the case on hand.

Therefore, the Kerala Administrative Tribunal cannot be faulted for having taken the view as in the impugned order dated 06.08.2019 in O.A.No. 2210 of 2018.

20. As already noticed hereinbefore, the condition stipulated in the bond executed on 05.05.1999 by the respondent in **Sant Longowal Institute [(2013) 10 SCC 411]** was that in the event of bounden failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning for duty after the expiry of termination of the period of study leaves or at any time within a period of three years after return to duty, he/she shall forthwith pay to the Institute or as may be directed by the Institute, on demand, pay and allowances received by him/her during study leave, the said amount of Rs.10,000/- (Ten thousand only) together with interest thereon from the date of demand at Government rates for the time being in force on Government loan. After noticing that there is no clear-cut provision in the bond executed by the respondent on 05.05.1999 either expressly referring to Rule 63 of the Central Civil Services (Leave) Rules, 1972 or strictly imposing a condition that if a candidate fails to complete the course of study during the period of sanctioned leave, he will have to refund to the appellant Institute the total amount of leave salary and other benefits

availed of by him during the period of study leave, the Two-Judge Bench held that a candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in the public interest. Public money cannot be spent unless there is mutual benefit.

21. In **Sant Longowal Institute [(2013) 10 SCC 411]**, the Apex Court, after considering the facts and circumstances of the case and considering the fact that the bond executed by the respondent is found to be vague, found no reason for the appellant Institute to recover the balance amount of Rs.6,18,000/- from the respondent. However, the Apex Court ordered that the amount already recovered need not be refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the respondent after availing of the entire salary and other benefits. In the said judgment, it was made clear that the Apex Court did so, taking into consideration all aspects of the matter, and to do complete justice between the parties. Therefore, the said direction is one issued in the exercise of the powers under Article 142 of the

Constitution of India, which confers the Apex Court the power to pass any order necessary for doing complete justice in any cause or matter pending before it. In the said decision, the Apex Court did not issue any direction to the appellant Institute to refund the amount already recovered, on the ground that the bond executed by the respondent was vague.

22. As already noticed hereinbefore, in **Premasukumar [2019 (3) KLT 912]** the order of reference was made after doubting the reasoning of the learned Single Judge in the decision in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** that the pay and other allowances given to the teacher could be recovered by the Government only if the teacher fails to join duty within a period of three years from the completion of the course and that, if the teacher fails to complete the course successfully within the grace period, it shall be duty of the teacher to pay a sum of Rs.7,000/- together with interest at the rates specified therein, and hence, the steps taken to recover the salary and other allowances paid to the teacher during the period of deputation from the DCRG is unauthorised and illegal.

23. In **Premasukumar [2019 (3) KLT 912]**, the Division Bench after referring to the objective and the relevant provisions of 'X Plan Guidelines for Faculty Improvement Programme' under

which the petitioner was awarded Teacher Fellowship for doing Ph.D, and also the law laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**, noticed that a Teacher Fellowship is granted with the objective of providing an opportunity to the teacher to pursue academic studies or research and acquire further qualification so that it would inure to the benefit of the students. Therefore, the teacher is bound to utilise the Fellowship and acquire Ph.D/M.Phil within the fellowship period.

24. As already noticed hereinbefore, in **Premasukumar [2019 (3) KLT 912]** the Division Bench noticed that in **Sant Longowal Institute [(2013) 10 SCC 411]** the Apex Court after careful examination of the terms of the bond executed by the respondent, found that there is no clear-cut provision imposing the condition that if a candidate fails to complete the course of study during the period of sanctioned leave, he will have to refund to the institute the total amount of leave salary and other benefits availed by him during the period. Even after noticing the absence of a specific clause in the bond, the Apex Court allowed the appeal, to the extent of allowing the Institute to retain the amounts already recovered from the respondent. The Division Bench agreed with the reasoning of the Apex Court, as contained in paragraph 11 of that judgment, for arriving at such a conclusion.

The Division Bench noticed that the objective of awarding Teacher Fellowship is to provide an opportunity to do research or pursue academic studies leading to the award of M.Phil/Ph.D degree. Failure to acquire the degree would indicate that the teacher has not utilised the opportunity properly. This recalcitrance on the part of the teacher is at the cost of the public exchequer and the students. Therefore, necessarily, the teacher is bound to refund the salary and other benefits received by her during the course of the Fellowship which she failed to utilise properly. The Clause is specific to the effect that the teacher should serve the College for a period of three years after successful completion of the course. This Clause has two limbs; one is successful completion of the course and the other is serving the college for a continuous period of three years after such successful completion. Therefore, serving the College without successful completion of the course will not absolve the Bounden from the liability under the bond. A Lecturer who has successfully completed the course, but fails to serve the College would be liable under the bond. The failure to successfully complete the course within the stipulated period would entail in an additional penalty of Rs.7,000/-. Hence, the finding of the learned Single Judge in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** that a teacher who failed to complete the

course successfully within the period need pay only Rs.7,000/- together with interest is contrary to the objective of the Faculty Improvement Programme as well as the terms of the bond and hence found to be not good law by the Division Bench. In **Premasukumar [2019 (3) KLT 912]**, the Division Bench answered the reference by holding that in the event of a teacher awarded Fellowship for Ph.D course, failing to complete the course and acquiring the degree within the Fellowship period, he/she would be liable to refund the salary and other benefits received during the fellowship period.

25. The subsequent decision of the Division Bench in **Ajitha C.K. [2021 (2) KHC 1]** is one rendered without noticing the law laid down by the Division Bench in **Premasukumar [2019 (3) KLT 912]**. In the said decision, the Division Bench after taking note of the law laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]** answered the reference holding that in the event of the teacher failing to complete the course successfully within the grace period and that upon payment of all such sums, the written obligation shall be void and of no effect, and that otherwise, the bond shall remain in full force and effect. The Clause is specific to the effect that the teacher should serve the College for a period of three years after

successful completion of the course. This Clause has two limbs; one is successful completion of the course and the other is serving the college for a continuous period of three years after such successful completion. Therefore, serving the College without successful completion of the course will not absolve the Bounden from the liability under the bond. Therefore, the finding of the learned Single Judge in **Geetha S. v. State of Kerala [2014 SCC OnLine Ker. 15658]** that a teacher who failed to complete the course successfully within the period needs to pay only Rs.7,000/- together with interest is contrary to the objective of the Faculty Improvement Programme, as well as the terms of the bond, and hence not good law.

26. In **Ajitha C.K. [2021 (2) KHC 1]** the Division Bench, after referring to the decision of the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**, distinguished the same stating that a reading of para.9 of the said decision would make it clear that later the appellant Institute had amended its norms for bond conditions on 28.06.2002, which appears to be before the expiry of the leave period of the teacher concerned (which was up to 22.07.2002), and that a reading of para.10 of the said decision would also make it clear that the explicit statutory rules had governed the field. The reference to Rule 63 of the Central Civil

Services (Leave) Rules, 1972 considered in para.10 of the said decision of the Apex Court, would make it clear that explicit provisions are provided in the said Rule for dealing with the contingency in question. The Apex Court, after considering the facts of the case on hand, found that though the bond conditions are vague, the partial refund already effected from the salary of the teacher incumbent concerned may not be interfered with and had also specifically ordered that further balance amount yet to be recovered from the teacher need not be recovered, taking into consideration the facts circumstances of the case.

27. As already noticed hereinbefore, in **Sant Longowal Institute [(2013) 10 SCC 411]**, only after noticing that there is no clear-cut provision in the bond executed by the respondent on 05.05.1999 either expressly referring to Rule 63 of the Central Civil Services (Leave) Rules, 1972 or strictly imposing a condition that if a candidate fails to complete the course of study during the period of sanctioned leave, he will have to refund to the appellant Institute the total amount of leave salary and other benefits availed of by him during the period of study leave, the Two-Judge Bench held that a candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the

students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in the public interest. Public money cannot be spent unless there is mutual benefit. Therefore, the decision of the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]** is not one rendered, either in the context of the provisions contained in Rule 63 of the Central Civil Services (Leave) Rules, 1972 or the specific provision later incorporated in the bond by the Board of Governors of the appellant Institute in its 22nd meeting held on 28.06.2002. In that view of the matter, conclusion is irresistible that the Division Bench in **Ajitha C.K. [2021 (2) KHC 1]** went wrong in arriving at a conclusion that the decision of the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]** was on a factual situation substantially different from the case considered by the Division Bench.

28. In the instant case, the original appellant was awarded Teacher Fellowship for doing Ph.D, under IX Plan Faculty Development Programme of the UGC, vide letter dated 01.02.2001, which was followed by the letter dated 28.09.2002 granting extension of time. As already noticed hereinbefore at paragraph 11, the award of Teacher Fellowship as well as grant of extension

of time was subject to the specific condition stipulated in those letters that the Teacher Fellow shall have to submit his/her Ph.D Thesis compulsorily in order to account for audit as well as for the purpose for which the grants are paid by the UGC, failing which the entire amount incurred to the Scheme will have to be borne by the Teacher Fellow.

29. The Division Bench of this Court in **Premasukumar [2019 (3) KLT 912]**, after taking note of the law laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]**, rightly answered the reference by holding that in the event of a teacher awarded Fellowship for Ph.D course failing to complete the course and acquiring the degree within the Fellowship period, he/she would be liable to refund the salary and other benefits received during the fellowship period and that serving the college without successful completion of Ph.D course will not absolve the bounden from the liability under the bond. Therefore, the law laid down by the Division Bench in **Ajitha C.K. [2021 (2) KHC 1]**, which is contrary to the objective of the Faculty Improvement Programme, the terms of the bond, the law laid down by the Apex Court in **Sant Longowal Institute [(2013) 10 SCC 411]** and the law laid down by the Division Bench in **Premasukumar [2019 (3) KLT 912]**, is declared as not good law.

30. The question referred to the Full Bench, by the order of reference dated 07.07.2022 of the Division Bench in W.A.No.139 of 2022, is answered as above.

31. Registry is directed to place the writ appeal before the Division Bench as per roster. The 1st respondent State shall file an application in the writ appeal, invoking the provisions under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to mark the documents produced along with the memo dated 23.10.2024, as additional documents in the writ appeal. The supplemental appellants 2 to 4 shall file an application in the writ appeal to implead the University Grants Commission as an additional respondent.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

VIJU ABRAHAM, JUDGE

Sd/-

G. GIRISH, JUDGE

Drgn/bkn/AV