2025:KER:31295

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WP(C) NO. 6426 OF 2024

PETITIONERS:

1 GOPALAKRISHNAN P.,
AGED 58 YEARS,
S/O. KRISHNAN P.,
WORKING AS ASSISTANT REGISTRAR,
CENTRAL UNIVERSITY OF KERALA, PERIYE,
KASARAGOD, RESIDING AT MUTHATHY,
KORAM P.O., KANNUR DISTRICT, PIN - 670307

2 A.R.VENKITARAMAN,
AGED 54 YEARS,
S/O. A.P. RAMAN,
WORKING AS ASSISTANT REGISTRAR (PURCHASE),
CENTRAL UNIVERSITY OF KERALA,
PERIYE, KASARAGOD,
RESIDING AT TRANSIT QUARTER-21,
CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS,
PERIYE KASARAGOD, PIN - 670307

BY ADVS.
SAJITH KUMAR V.
VIVEK A.V.
AMMU M.
SREEHARI V.S.
SHERIN DAVIS

RESPONDENTS:

1 CENTRAL UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR,
TEJASWINI HILLS, PERIYE P.O.,
KASARGOD, PIN - 671320

2 THE VICE CHANCELLOR,
CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS,
PERIYE P.O,
KASARGOD, PIN - 671320

BY ADVS.
SRI.RAMPRASAD UNNI T., SC
SRI.K.RAMAKUMAR (SR.)(R-245)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.03.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of April, 2025

The petitioners seek extension of benefit of pay protection approved and ordered by the Executive Council of the Central University of Kerala. The petitioners state that they have been working as regular employees of Banaras Hindu University. When the 1st respondent-Central University of Kerala notified vacancies of Section Officer and Private Secretary, the petitioners appeared in the written examination and skill test and were issued with appointment orders in November and December 2011 respectively as per Exts.P2 and P2(a).

2. The petitioners state that they have joined the 1st respondent-University after obtaining separate relieving letter from Banaras Hindu University, as is evidenced by Ext.P3. The petitioners joined the 1st respondent-University retaining their

lien to the post in the Banaras Hindu University. The initial pay of the petitioners in the 1st respondent-University was fixed reckoning a last pay certification issued by the Banaras Hindu University. Exts.P5 and P5(a) would show that the petitioners were granted pay protection.

3. The petitioners state that the petitioners were following under the Statutory Pension Scheme and therefore requested for protection of pay during the selection process and the University accepted the same. The petitioners would not have accepted employment with the 1st respondent-University had they refused the protection of pay before expiry of the lien. The probation of the petitioners was not declared for over two years. For the said reason, the lien of the petitioners in the Banaras Hindu University were also extended.

4. The petitioners state that the petitioners enjoyed the benefit of pay protection granted by the 1st respondent-University during the entire service period. The

probation of the petitioners was declared by the 2nd respondent on 19.02.2015 only. When the probation was declared, the petitioners submitted request for technical resignation to their former employer Banaras Hindu University and the same was accepted as can be seen from Exts.P8 and P8(a) respectively.

5. Though the previous employer Banaras Hindu University granted pro-rata terminal benefits and other benefits including leave encashment, 1st respondent was not required to reckon previous service for the purpose of service benefits and to carry GPF and other Pension Scheme which was enjoyed by the petitioners at Banaras Hindu University. The petitioners were forced to accept 10% deduction from the salary towards contribution of NPS.

6. The petitioners submitted Exts.P11 and P11(a) representation to the 2nd respondent seeking to implement pay protection after the technical resignation. The Executive Council of the University considered Exts.P11 and P11(a) and acceded

the request. However, the Officer of the 1st respondent-University was reluctant to implement the decision of the Executive Committee.

7. The petitioners would submit that the 1st respondent had already extended the benefit of pay protection to not less than seven employees in the establishment. In pursuant to Ext.P1 decision of the Executive Committee, the respondents had issued an order dated 25.09.2023 directing the petitioners to submit their acceptance of the orders issued by the Executive Council. The petitioners joined the 1st respondent-University and submitted request for technical resignation only due to the fact that the earlier pay was protected and reckoned for disbursal of salary by the 1st respondent. Therefore, there is no justification to deny Statutory Pension Scheme to the petitioners, urged the petitioners.

8. For the afore reasons, the petitioners sought to command the 1st respondent to extend the benefit ordered in

Ext.P1 decision and Exts.P12 and P13 orders to the petitioners by granting protection of pay and reimburse the amount unlawfully recovered from them. The counsel for the petitioners submitted that the petitioners are not insisting for relief no.2 in the writ petition relating to the Statutory Pension Scheme. The eligibility of the petitioners for Statutory Pension and legal issues may be left open.

9. The respondents resisted the writ petition filing counter affidavit. The respondents submitted that any decision having substantial financial implication has to be ratified by the Finance Committee. The Finance Committee is a statutory creation as per Section 24 of the Central University of Kerala Act, 2009. The Central of University of Kerala has no Statutory Pension Scheme.

10. Standing Counsel pointed out that while joining the Central University of Kerala, the petitioners had submitted Ext.P12(a) undertaking stating that if at any point of time any

loss to the exchequer is found or if any excess payment is found having made against the rule, it will be remitted back to the University and in the event of pay have been fixed in a manner contrary to the provisions contained in rules, any excess payment so made shall be refunded by the petitioners to the Government by adjustment against future payments. In view of the specific undertaking given by the petitioners, the petitioners cannot claim that their pay should not be adduced or recovery cannot be made. The issue relating to pay protection erroneously granted to the petitioners was placed before the Finance Committee for a decision. The clarification is awaited.

11. On the argument of the counsel for the petitioners that other persons working in the Central University of Kerala have also been extended similar benefits in the matter of initial Pay Fixation, the Standing Counsel submitted that the others who were granted pay protection were not similarly situated. The Standing Counsel reiterated that in view of the

Central University of Kerala Act and Statutes, such decision cannot be taken without the approval of the Finance Committee. The writ petition is without any merit and it is liable to be dismissed, contends the Standing Counsel representing the respondents.

12. I have heard the learned counsel for the petitioners and the learned Standing Counsel representing the respondents.

13. The writ petition is filed by the petitioners who were employees of the 1st respondent-Central University of Kerala seeking two reliefs. The petitioners prayed to direct the 1st respondent to extend the benefits ordered in Ext.P1 decision, Exts.P12 and P13 orders granting protection of pay and to reimburse the amount unlawfully recovered from them. The petitioners further prayed to command the 1st respondent to permit the petitioners to continue under the statutory pension scheme enjoyed by them with the previous employer. At the

time of hearing, the counsel for the petitioner submitted that the petitioners are not pressing for the relief as regards the statutory pension.

14. The petitioners were working as regular employees under the Banaras Hindu University. The 1st respondent-Central University notified vacancies of Section Officer and Private Secretary. The petitioners appeared in the written examination and skill test. They were selected and appointed in the months November and December, 2011 respectively. The 1st petitioner was appointed as Section Officer and the 2nd petitioner was appointed as Private Secretary.

15. When the petitioners were appointed in the 1st respondent-Central University, the pay drawn by them in the Banaras Hindu University were protected. This is evident from Exts.P5 and P5(a). Ext.P1 Minutes of the 61st Meeting of the Executive Council of the Central University would indicate that there was a conscious decision by the University to extend pay

protection to the petitioners. Exts.P5 and P5(a) would also reveal that the petitioners were granted the benefit of pay protection at the time of their appointment in the Central University.

16. The probation of the petitioners was declared only on 19.02.2015 as per Exts.P7 and P7(a). The petitioners were granted pro-rata terminal benefits by the former employer.

17. The 1st respondent was not prepared to reckon previous service of the petitioners for the purpose of service benefits. To the surprising predicament of the petitioners, the pay of the petitioners was retrospectively revised as per Ext.P9 order dated 31.01.2018. When the petitioners submitted representation against Ext.P9, the process of recovery was kept in abeyance for a couple of month. Thereafter, the recovery resumed.

18. The Executive Council of the University had taken a decision to grant pay protection to the petitioners.

Consequently, the petitioners were granted pay protection. Therefore, withdrawal of the pay protection and consequential recovery from salary is illegal and unsustainable. A number of other employees under the Central University are enjoying the benefit of pay protection. Therefore, similar treatment should be extended to the petitioners also.

19. The respondents submit that a Committee of experts was constituted to review the fixation of pay of the employees in the Central University. The Committee stated that since the petitioners had received pension from his previous employer, their initial pay is to be fixed as per entry pay of the reemployed post. There were irregularities in the fixation of pay. A Committee constituted subsequently re-examined the matter. On the basis of their reports, the Executive Council resolution dated 11.02.2023 resolved to approve the recommendations of the earlier Committee.

20. It may be noted that the petitioners were appointed in the Central University of Kerala about 14 years ago, in the year 2011. The petitioners were granted pay protection as they were working in the Banaras Hindu University before their joining in Central University. Exts.P5 and P5(a) orders show that the petitioners were granted pay protection. The probation of the petitioners was declared in the year 2015.

21. The pay of the petitioners was retrospectively revised by the 1st respondent in the year 2018 as per Ext.P9. The reason now advanced by the respondents is that since the petitioners had received terminal benefits from the previous employer, they are not entitled to pay protection. The Finance Committee has discussed the issue and has resolved to refer the matter to Ministry of Education and UGC for further comments/clarifications, as per Ext.R1(a).

22. As the respondents are yet to take a final decision after obtaining clarification from Ministry of Education

and UGC, it would be only just and proper that proceedings of recovery initiated against the petitioners are deferred till the respondents take a final decision after obtaining clarification from the Ministry of Education and UGC.

The writ petition is accordingly disposed of directing the respondents to stop recovery proceedings against the petitioners till the respondents take a final decision after obtaining clarifications from the Ministry of Education and UGC. The question of refund of amounts recovered from the petitioners will depend upon the final decision to be taken by the respondents. If the final decision goes against the petitioners, the petitioners will be at liberty to challenge the same in accordance with law. The issue relating to the statutory pension raised by the petitioners is left open.

Sd/-
N. NAGARESH
JUDGE

SR/aks

APPENDIX OF WP(C) 6426/2024

PETITIONERS' EXHIBITS:

Exhibit P1	**A TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE 61ST MEETING OF THE EXECUTIVE COUNCIL OF THE UNIVERSITY HELD ON 11.02.2023**
Exhibit P2	**A TRUE COPY OF THE APPOINTMENT ORDER NO. CUK/ADMN/APP/3/2011/863 DATED 30.11.2011 ISSUED TO 1ST PETITIONER ON BEHALF OF THE 1ST RESPONDENT**
Exhibit P2(a)	**A TRUE COPY OF THE APPOINTMENT ORDER NO. CUK/ADMN/APP/3/2011 DATED 02.12.2011 ISSUED TO 2ND PETITIONER ON BEHALF OF THE 1ST RESPONDENT**
Exhibit P3	**A TRUE COPY OF THE RELIEVING ORDER DATED 21.12.2011 ISSUED TO THE 1ST PETITIONER BY LETTER NO. AB/2M—905/47841 DATED 22.12.2011**
Exhibit P4	**A TRUE COPY OF THE LETTER NO. AB/2-M-905/47767 DATED 21.12.2011 ISSUED TO 1ST PETITIONER BY THE ASSISTANT REGISTRAR, BANARAS HINDU UNIVERSITY, VARANASI**
Exhibit 4(a)	**A TRUE COPY OF THE LETTER NO. AB/15-M-761/48140 DATED 23.12.2011 ISSUED TO THE 2ND PETITIONER BY THE ASSISTANT REGISTRAR, BANARAS HINDU UNIVERSITY, VARANASI**
Exhibit P5	**A TRUE COPY OF THE ORDER NO. CUK/NT/PF-22/GK/2011 DATED 25.01.2012 ISSUED TO THE 1ST PETITIONER**
Exhibit P5(a)	**A TRUE COPY OF THE ORDER NO. CUK/NT/PF-20/ARV/2011 DATED 16.10.2012 ISSUED TO**

	THE 2ND PETITIONER
Exhibit P6	**A TRUE COPY OF THE LETTER NO. AB/2-M-905 DATED 10.06.2014 ISSUED BY THE ASSISTANT REGISTRAR, BANARAS HINDU UNIVERSITY TO THE 2ND RESPONDENT HEREIN COMMUNICATING THE EXTENSION OF LIEN OF THE 1ST PETITIONER**
Exhibit P6(a)	**A TRUE COPY OF THE LETTER NO. AB/15-M-761/10224 DATED 12.06.2014 ISSUED BY THE ASSISTANT REGISTRAR, BANARAS HINDU UNIVERSITY TO THE 2ND RESPONDENT HEREIN COMMUNICATING THE EXTENSION OF LIEN OF THE 2ND PETITIONER**
Exhibit P7	**A TRUE COPY OF THE LETTER NO. CUK/NT/PF-22/GP/2011/A-3887 DATED 19.02.2015 ISSUED TO THE 1ST PETITIONER**
Exhibit P7(a)	**A TRUE COPY OF THE LETTER NO. CUK/NT/PF-20/ARV/2011/A.3886 DATED 19.02.2015 ISSUED TO THE 2ND PETITIONER**
Exhibit P8	**A TRUE COPY OF THE LETTER NO. AB/2-M-905/10545 DATED 12.06.2015 ISSUED TO THE 1ST PETITIONER BY THE ASSISTANT REGISTRAR, BANARAS HINDU UNIVERSITY**
Exhibit P8(a)	**A TRUE COPY OF THE LETTER NO. AB/15-M-761/21276 DATED 20.08.2015 ISSUED TO THE 2ND PETITIONER BY THE ASSISTANT REGISTRAR, BANARAS HINDU UNIVERSITY**
Exhibit P9	**A TRUE COPY OF THE ORDER NO. CUK/NT/PF-22/GP/2011 DATED 31.01.2018 ISSUED ON BEHALF OF THE 1ST RESPONDENT**
Exhibit P10	**A TRUE COPY OF THE ORDER NO. CUK/NT/7TH CPC/2018(PART-II) DATED 27.07.2018 ISSUED ON BEHALF OF THE 1ST RESPONDENT**

Exhibit P11	**A TRUE COPY OF THE REQUEST DATED 29.04.2022 SUBMITTED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT**
Exhibit P11(a)	**A TRUE COPY OF THE REQUEST DATED 29.04.2022 SUBMITTED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT**
Exhibit P12	**A TRUE COPY OF THE ORDER NO. CUK/NT/PF-20/ARV/2011.VOL.II/J2855 DATED 25.09.2023 ISSUED TO THE 1ST PETITIONER**
Exhibit P12(a)	**A TRUE COPY OF THE UNDERTAKING SUBMITTED BY THE 1ST PETITIONER**
Exhibit P13	**A TRUE COPY OF THE ORDER NO. CUK/NT/PF-20/ARV/2011.VOL.II/J2856 ISSUED TO THE 2ND PETITIONER**

RESPONDENTS' EXHIBITS:

EXHIBIT R1(b)	**TRUE COPY OF PENSION PAYMENT ORDER NO. P.P. NO. B.H.U.R/F-7000 DATED 23..10..2017 ISSUED BY THE BANARAS HINDU UNIVERSITY**
EXHIBIT R1(a)	**TRUE COPY OF PENSION PAYMENT ORDER NO. P.P.O. NO. B.H.U.R/F-6999 DATED 23..10..2017 ISSUED BY THE BANARAS HINDU UNIVERSITY**
EXHIBIT R1(c)	**TRUE COPY OF MINUTES OF THE MEETING OF THE COMMITTEE OF THE EXPERTS HELD ON 6TH AND 8TH SEPTEMBER, 2019, OF THE R1 UNIVERSITY**
EXHIBIT R1(m)	**TRUE COPY OF LETTER NO. 51-1/2009(CU) DATED 13..01..2012 ISSUED BY UGC**
EXHIBIT R1(d)	**TRUE COPY OF ORDER NO. CUK/NT/PF-**

	22/GP/2011 DATED 03..03..2020 ISSUED TO THE FIRST PETITIONER BY R1
EXHIBIT R1(e)	**TRUE COPY OF ORDER NO. CUK/NT/PF-20/ARV/2011 DATED 03..03..2020 ISSUED TO THE SECOND PETITIONER BY R1**
EXHIBIT R1(f)	**TRUE COPY OF REPORT DATED NIL SUBMITTED BY THE COMMITTEE CONSTITUTED TO EXAMINE THE GRIEVANCES OF THE PETITIONERS**
EXHIBIT R1(f)(a)	**TRUE COPY OF REPORT DATED NIL SUBMITTED BY THE COMMITTEE CONSTITUTED TO EXAMINE THE GRIEVANCES OF THE PETITIONERS**
EXHIBIT R1(g)	**TRUE COPY OF MINUTES OF THE COMMITTEE TO LOOK INTO ALL MATTERS RELATED TO RE-EMLOYMENT/RE-ABSORPTION AND PAY FIXATION OF EMPLOYEES OF CUK MET ON 02..09..2022**
EXHIBIT R1(g)(a)	**TRUE COPY OF MINUTES OF THE COMMITTEE TO LOOK INTO ALL MATTERS RELATED TO RE-EMLOYMENT/RE-ABSORPTION AND PAY FIXATION OF EMPLOYEES OF CUK MET ON 02..09..2022**
EXHIBIT R1(h)	**TRUE COPY OF REPORT DATED 26..11..2022 SUBMITTED BY THE EXTERNAL EXPERT**
EXHIBIT R1(i)	**TRUE COPY OF MINUTES OF THE SIXTY FIRST MEETING OF THE EXECUTIVE COUNCIL OF R1 UNIVERSITY HELD ON 11..02..2023**
EXHIBIT R1(J)	**TRUE COPY OF LETTER NO. 61-19/2015-DESK(U) DATED 03..03..2016 SENT BY THE MINISTRY OF HUMAN RESOURCES TO THE CHAIRMAN OF UGC**
EXHIBIT R1(k)	**TRUE COPY OF MINUTES OF THE 44TH MEETING OF THE FINANCE COMMITTEE OF R1 UNIVERSITY HELD ON 12..12..2023**

EXHIBIT R1(l)	**TRUE COPY OF MINUTES OF THE 6TH MEETING OF THE EXECUTIVE COUNCIL OF R1 UNIVERSITY HELD ON 16..04..2024**

PETITIONERS' EXHIBITS:

Exhibit P14	**A TRUE COPY OF THE OM NO. 28020/1/2010-ESTT.(C) DATED 17/08/2016 ISSUED ON BEHALF OF THE DEPARTMENT OF PERSONNEL AND TRAINING.**