## GOVERNMENT OF KERALA

**Abstract**

Judgment of Hon'ble High Court of Kerala in WP(C)No.22675/2021 and connected cases - Complied - Orders Issued.

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**FINANCE [PENSION-B] DEPARTMENT**

**G.O.(Rt) No.7464/2022/Fin Dated, Thiruvananthapuram, 04/11/2022**

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Read:- 1. Judgment of Hon'ble High Court of Kerala dated 26.07.2022 in WP(C)No.22675/2021 & connected cases.
2. Judgment of Hon'ble High Court of Kerala dated 08.08.2022 in WP(C)No.22670/2021 & connected cases.
3. Judgment of Hon'ble High Court of Kerala dated 10.08.2022 in WP(C)No.30788/2021 & WP(C)No.20316/2022.
4. Judgment of Hon'ble High Court of Kerala dated 17.08.2022 in WP(C)No.26461/2022 & WP(C)No.26472/2022.
5. Judgment of Hon'ble High Court of Kerala dated 25.08.2022 in WP(C)No.27309/2021.
6. Judgment of Hon'ble High Court of Kerala dated 16.09.2022 in WP(C)No.29540/2022.

**ORDER**

The retired Aided College teachers coming under UGC Scheme had filed several Writ Petitions before the Hon'ble High Court of Kerala aggrieved by the order that arrears of pension revision for the period from 01.01.2016 to 30.06.2019 will be notional (Clause 6.1 of GO(P)No.38/2021/Fin. Dated 25.02.2021).

2) As per the judgments read above, the Hon'ble High Court of Kerala directed the Government to reconsider Clause 6.1 of GO(P)No.38/2021/Fin dated 25.02.2021 and issue an appropriate order after affording an opportunity of being heard to the petitioners or to their representatives as expeditiously as is possible, but not later than three months from the date of receipt of a copy of the judgment.

3) Based on the above judgments, the petitioners/representatives were heard by the Additional Secretary (Pension). Petitioners who retired prior to 01.01.2016 and after 01.01.2016 submitted their grievances during hearing. They requested to release the pension arrears for the period from 01.01.2016 to

30.06.2019 and the arrears of consequent commuted value of pension, leave surrender and DCRG without any further delay.

4) Government have examined the matter in detail and also have considered all aspects of directions issued by the Hon'ble High Court in the judgments. None of the petitioners were denied the pension and other pensionary benefits. They had received pension at pre-revised scale with Dearness Relief at Central rate (125% w.e.f 01.01.2016, 132% w.e.f 01.07.2016, 136% w.e.f 01.01.2017, 139% w.e.f 01.07.2017, 142% w.e.f 01.01.2018, 148% w.e.f 01.07.2018 and 154% w.e.f 01.01.2019) during the period 01.01.2016 to 30.06.2019. The petitioners who retired after 01.01.2016 had also received the benefit of DCRG, Commuted Value of Pension and Terminal Surrender at pre-revised scale. The only decision taken by the Government is that the monetary benefit of the revision of pension and other pensionary benefits was allowed to them we.f 01.07.2019. Government had taken this decision mainly because of the huge financial commitment involved due to the disbursement of arrears from 01.01.2016 and keeping in view the financial stringency of the State. It is the policy decision of the Government with the approval of the Cabinet.

5) The pension of State Government employees was revised by adding 98% of existing pension as per 10$^{th}$ Pension Revision Order (w.e.f 01.07.2014) and 38% of existing basic pension as per 11$^{th}$ Pension revision Order. But in the case of UGC/AICTE/MES pensioners, their pension was revised w.e.f 01.01.2016 by adding 157% of the existing pension as per 7$^{th}$ UGC Pension revision order. Hence even though the pension of UGC/AICTE/MES pensioners is revised once in every ten years, the benefit of single revision received by them is more than that of benefit received by the State Service Pensioners by virtue of two revisions.

6) It is because of heavy financial burden and there being financial constraints, the State is not in a position to bear the heavy burden of additional revised pension and therefore, the State formulated a policy decision to the effect that the revised pension shall be notional from 01.01.2016 to 30.06.2019 and the actual revision of pension shall be disbursed from 01.07.2019 only.

7) U.G.C regulations as pronounced by the Commission does not mandate granting of pension. But Government of Kerala have incorporated the condition of granting Pension to U.G.C scheme pensioners as applicable to State Govt Pensioners. Central Revision along with Central DR is applicable to UGC pensioners. Each State gives the pension, pension revision and other allowances based on the financial resources of the State. All the petitioners were allowed the arrears of pension revision from 01.07.2019. First two installments of the admitted arrears of pension had already been disbursed. Due to the financial crunch of the State, Government have ordered that the third and fourth installments of Arrears of Pension, Family Pension, DCRG and Terminal Surrender of all categories (State Service Pensioners, UGC/AICTE/MES

Pensioners, University Pensioners etc) shall be disbursed in the financial years 2022-23 (third installment) and 2023-24 (fourth installment) respectively vide GO(P)No.162/2021/Fin dated 02.12.2021.

8) As per UGC pay revision order (GO(P)No.18/2019/HEDN dated 29.06.2019), financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadres covered under the Scheme shall be limited, by way of reimbursement to the extent of 50% of the additional expenditure involved in the implementation of the pay revision. But the assistance from Government of India in this regard has not been received yet. Since there was no financial assistance from central Government for revision of pension, State has to bear the entire expenditure. Hence the additional financial commitment associated with the implementation of pension revision rests solely on the shoulders of State Government. The Covid-19 pandemic and natural calamities have resulted negative consequences in Government's financial capacity and the situation has been further exacerbated by Centre's irregular payment of GST compensation arrears and scaling down of Central share and borrowing limits.

9) In State of Punjab and Ors. Vs. Amar Nath Goyal and Ors.; (2005) 6 SCC 754 and State of Bihar and Ors. Vs. Bihar Pensioners Samaj; (2006) 5 SCC 65, the Hon'ble Supreme Court observed that the financial burden on the State can be a valid ground to fix a cutoff date for the purpose of payment of revision of pension. The Apex Court further observed that fixing of a cutoff date for granting of benefits is well within the powers of the Government as long as the reasons therefore are not arbitrary and are based on some rational consideration.

10) The issue raised in the Writ Petitions read above were covered in CIVIL APPEAL NO. 5114 OF 2022 (The State of Tripura & Ors. Vs Smt. Anjana Bhattacharjee & Ors.). In that particular case, the Hon'ble Supreme Court observed that a conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 01.01.2006 or from the date of superannuation till 31.12.2008 and to pay/grant the benefit of revision of pension actually from 01.01.2009, which was based on their financial crunch/financial constraint. Hence the Hon'ble Supreme Court allowed the appeal and set aside the order passed by the High Court striking down Rule 3(3) of the Tripura State Civil Services (Revised Pension) Rules, 2009. This stand taken by the Hon'ble Apex Court is the Settled Law.

11) By considering the above facts and the financial constraints being faced by the State, Government is not in a position to bear the additional burden of disbursing arrears of pension from 01.01.2016 and 30.06.2019. Hence Clause 6.1 of G.O(P) No.38/2021/Fin dated 25.02.2021 need to be retained and the claim of the petitioners cannot be considered favourably and is rejected.

12) The following Judgments of Hon'ble High Court of Kerala (read 1st to 6th above) thus stands complied with:

(a) Judgment dated 26.07.2022 in WP(C)Nos.22675/2021, 636/2022, 1107/2022, 6991/2022, 7860/2022, 9450/2022, 19905/2022, 20124/2022, 20324/2022, 20581/2022, 20758/2022, 20945/2022, 21161/2022, 21226/2022, 21251/2022, 21502/2022, 21650/2022, 21661/2022, 23022/2022, 23536/2022, 23541/2022, 23752/2021, 23326/2021, 24263/2021, 24688/2021, 24990/2021, 24686/2021, 26593/2021, 28828/2021.

(b) Judgment dated 08.08.2022 in WP(C) Nos.22670/2021, 2031/2022, 3061/2022, 5877/2022, 10132/2022, 17734/2022, 17736/2022, 18681/2022, 19872/2022, 21298/2022.

(c) Judgment dated 10.08.2022 in WP(C)No.30788/2021 and WP(C)No.20316/2022.

(d) Judgment dated 17.08.2022 in WP(C)No.26461/2022 and WP(C)No.26472/2022.

(e) Judgment of Hon'ble High Court of Kerala dated 25.08.2022 in WP(C)No.27309/2021.

(f) Judgment dated 16.09.2022 in WP(C)No.29540/2022.

(By order of the Governor)
**BISHWANATH SINHA IAS**
**ADDITIONAL CHIEF SECRETARY**

To

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