2024:KER:88865

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY,THE 27TH DAY OF NOVEMBER 2024/6TH AGRAHAYANA, 1946

WP(C) NO. 38696 OF 2022

PETITIONERS:

1 DR. P V SREENIVASAN ,
AGED 61 YEARS
S/O. P.K. VELAYUDHAN, SANTHINIKETHAN, AISWARYA LANE, MALIKAMPEEDIKA, ALANGAD - 683 511 (RETIRED AS ASSOCIATE PROFESSOR IN CHEMISTRY, UNION CHRISTIAN COLLEGE, ALUVA).

2 DR. AJITH PRASAD,
KARAMEL, AVANEESWARAM R.S.P.O., KOLLAM-691 506 (RETIRED PRINCIPAL IN CHARGE, N.S.S. COLLEGE, RAJAKUMARI).

3 MOHANARAJ. P.K.,
SREELAKAM VALIYAPARAMPIL, VALLIYARA P.O., AYOOR (N), PATHANAMTHITTA-689 612, (RETIRED PRINCIPAL, SAS SNDP YOGAM COLLEGE, KONNI).

4 DR. SABU GEORGE,
PEACEVILLA, ERAVANKARA P.O., MAVELIKARA, ALAPPUZHA - 690 108, (RETIRED ASSOCIATE PROFESSOR OF MATHEMATICS & STATISTICS, BISHOP MOORE COLLEGE, MAVELIKARA).

5 DR. JACOB. K.,
PANCHIYIL HOUSE, MUTTOOR P.O., THIRUVALLA, PATHANAMTHITTA-689 107 (RETIRED PRINCIPAL, MARTHOMA COLLEGE, THIRUVALLA).

BY ADV M.S.RADHAKRISHNAN NAIR

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2 THE ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

3 THE ADDITIONAL CHIEF SECRETARY,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

4 THE DIRECTOR OF COLLEGIATE EDUCATION,
OFFICE OF THE DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 033.

5 THE ACCOUNTANT GENERAL (A & E),
OFFICE OF THE ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM - 695 001.

BY SPL.GOVT. PLEADER (FINANCE) SRI.P.K.BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 27.11.2024, ALONG WITH WP(C).5173/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2024 / 6TH AGRAHAYANA, 1946

WP(C) NO. 5173 OF 2023

PETITIONERS:

1 ROSE PHILO K.J
AGED 61 YEARS
W/O ANDREW MARSHAL K.J, ROSES SUNSHINE VALLEY, CSEZ PO, KAKKANAD, ERNAKULAM - 682037 (RETIRED ASSOCIATE PROFESSOR OF CHEMISTRY, ST. PAUL'S COLLEGE, KALAMASSERY)

2 RAJAN MALAYIL
AGED 59 YEARS
S/O KUNHIKANARAN M, SINDOORAPPU, VENGERI PO, KOZHIKODE - 673010. (RETIRED ASSOCIATE PROFESSOR AND HOD OF COMMERCE, THE ZAMORIN'S GURUVAYURAPPAN COLLEGE, KOZHIKODE

3 DR. SREEKUMAR
AGED 60 YEARS
S/O DR. KRISHNAN NAMBUDIRI, ASHOKAPURAM, KOZHIKODE - 673001 (RETIRED ASSOCIATE PROFESSOR AND HOD OF SANSKRIT, THE ZAMORIN'S GURUVAYURAPPAN COLLEGE, KOZHIKODE)

BY ADVS.
ELIZEBATH GEORGE
M.S.RADHAKRISHNAN NAIR

RESPONDENT/S:

1 THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

2 THE ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

3 THE ADDITIONAL CHIEF SECRETARY
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

4 THE DIRECTOR OF COLLEGIATE EDUCATION
OFFICE OF THE DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM, PIN - 695033

5 THE ACCOUNTANT GENERAL (A & E)
OFFICE OF THE ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM, PIN - 695001

BY SPL.GOVT. PLEADER (FINANCE)SRI.P.K.BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 27.11.2024, ALONG WITH WP(C).38696/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.Krishna Kumar, J.

Petitioners in these writ petitions are former Principals and Associate Professors of Aided Colleges. They retired from service between 01/01/2016 and 30/06/2019. The petitioners were receiving UGC scale of pay while they were in service and when the 7th UGC Regulation came into force with effect from 01/01/2016, the Government of Kerala implemented the revision of pay of teachers in the Universities and affiliated colleges as per Ext.P1 order dated 29/06/2019. As per clause 4.1 of Ext.P1, it was stipulated that the revised pay and revised rates of Dearness Allowance would be effective from 01/01/2016. Later, the State Government issued Ext.P3 Government order dated 05/11/2020 and thereby revised the pension and family pension of officers coming under the UGC Scheme. In Clause 1.1. of Ext.P3, it is provided as follows:

> "1.1. Pensionary benefits in respect of those who retired/expired while in service on or after 01.01.2016, may be calculated with respect to the revised pay introduced w.e.f.01.01.2016 by applying the existing formula/rules applicable to the State Government Pensioners/Family Pensioners. The present system of computation of pension at 50% of ten months average emolument in all cases, subject to the satisfaction of the condition of earning full pension or part thereof (depending on the length of qualifying service) may be continued. As per Pay revision order in respect of UGC Scheme read above, basic pay is the Academic level pay of revised pay matrix."

2. However, by issuing Ext.P4 order dated 25/02/2021, the Government took a stand that the revised pension would be granted in cash with effect from 01/04/2021 and arrears of pension for the period from 01/01/2016 to 30/06/2019 would be notional. Thus, the petitioners, who retired after

01/01/2016 challenged the restrictive clause in Ext.P4 and subsequent orders issued by the Government (Exts.P5 and P7), which are contrary to the stipulation in clause 1 of Ext.P3. The petitioners further challenge the said order in view of the law laid down by the Honourable Supreme Court in **U.P.Raghavendra Acharya and Others v. State of Karnataka and Others [(2006) 9 SCC 630]** and various other decisions as well as the provisions contained in Part III of Kerala Service Rules, wherein it is provided that the pension is to be fixed on the basis of fifty percentage of last ten months' average emoluments. According to them, when the Kerala Service Rules are applicable to the Aided College teachers, the rule governing the field of their pension cannot be overridden by fixing a cut-off date through an executive order.

3. The learned Government pleader defended the action of the Government by contending that it was the policy decision of the Government that the

monetary benefit of the revision of pension is to be given with effect from 01/07/2019 only. According to him, the Government was constrained to take such a decision because of the heavy financial burden and the peculiar circumstances in the aftermath of the COVID-19 pandemic.

4. This court has disposed of cases filed by similarly placed persons as per order dated 27/11/2024 in O.P.(KAT)No.376/2022 & W.P.(C)No.38975/2022. The questions raised in the said cases are also identical to the present cases, though the period of the revision of pay and the pension is different. The relevant part of the said judgment is extracted below :

> "7. As per Ext.P4 Government Order dated 27/03/2010, the Government has revised the pay and allowance of college/University teachers with effect from 01/01/12006 (see clause 4.1). All the petitioners in O.A. (Ekm)No.569/2016 were retired from service after 1/1/2006. They are undisputedly entitled to a pension as provided under part III of the KSR. The relevant portion of Rule

65 of Part III KSR is extracted below:

(a) Maximum Pension	Fifty percentage of last ten months' average emoluments subject to the maximum limit for pension prescribed by the Government from time to time.

In the above factual settings, the remaining question is whether the petitioners in the said original application are entitled to get their pension fixed on the basis of their last pay as revised by the said Government Order. Paragraph 2.1 of Annexure A1 Government Order reads as follows:

> "Pension in respect of those who retired/expired while in service on or after 01/01/2006, shall be calculated with reference to the revised pay introduced with effect from 01/01/2006 by applying the existing formulae/rules. The present system of computation of pension at 50% of then months's average emolument in all cases, subject to the satisfaction of the condition of earning full pension or part thereof (depending on the length of qualifying service) will continue."

8. It is true that, as per Order dated 27.03.2010, the government has revised only *the pay and dearness allowance* for teachers in colleges and universities w.e.f. 01.01.2006, and it does not extend to the *revision of pension*. But when Annexure A1 specifically

provides that pension in respect of those who retired while in service on or after 01/01/2006 has to be calculated with reference to the revised pay introduced with effect from 01/01/2006 by applying the existing formulae/rules, there is no rhyme or reason to postpone the payment of the revised pension up to 01/07/2009, as explained in Annexures A4 and A5. If it is done so, it will violate the statutory provisions contained in Part III of the KSR. An employee is entitled to a pension based on the average emoluments he received in the last 10 months. When the pay is retrospectively revised, the last 10 months' salary is to be reckoned as per the revised pay, for calculating the pension.

9. The contention that the respondents did not obtain the benefit of pay revision while they were in service is wholly misplaced in view of the law settled in this regard by the Honourable Supreme Court in **Raghavendra Acharya**'s case (supra). The question considered in that case is also the eligibility of pay revision of teachers with UGC scale. The Karnataka Government has taken an identical defence in the said case. The relevant part of the observation of the court is as follows:

> "It is now well settled that a notification can be issued by the

> State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. **Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the employees concerned despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scale of pay as on 1-1-1996. By reason of such notification, as the appellants had been deprived of a vested right, they could not have been deprived therefrom and that too by reason of executive instructions.**
>
> The contention of the State that the matter relating to the grant of pensionary benefits vis-a-vis the revision in the scales of pay stands on a different footing, thus, must be rejected."

(emphasis added)

The situation is not different in the present case. As per Annexure A1 Government Order, the pension in respect of those who retired while in service on or after 01/01/2006 shall be calculated with reference to the revised pay introduced with effect from 01/01/2006, by applying the existing formulae/rules.

10. It is contented that the Tribunal is not empowered to interfere with the policy decision of the government. When the KSR makes

it clear that every pensioner is entitled to get his pension fixed on the basis of the average of the last ten months' pay drawn by him, the Government is not justified in postponing the benefit to a later date for the mere reason that the pension of the other State Government employees was revised from that date.

11. The decisions relied on by the learned Special Government Pleader were made entirely on different factual and legal circumstances. The decision in **Anjana Bhattacharjee**'s case (supra) was passed in the light of a specific statutory provision in support of the action taken by the Government. The Honourable Supreme Court held that the High Court concerned ought not to have struck down that rule as arbitrary. In SLP No. 24287/2018, the challenge raised before the Apex Court was the inaction of the Government of Kerala in enhancing the retirement age of the appellants therein, despite the recommendations in the UGC regulations. It was contended that the Government of Kerala implemented and adopted the pay scale of UGC and thus the said UGC Regulations are also to be followed. The Apex Court did not accept the said contention. Those decisions have no relevance in the present case.

12. It is interesting to note that in Annexures A4 and A5, the Government has examined

only one aspect for not providing the enhanced pension till 01/07/2009 i.e. the State pension revision was ordered with effect from that date. The law is settled that when the pay is revised retrospectively, that revised pay should be taken into account when calculating the pension, even if the pensioner retired prior to the issuance of the pay revision order, provided he is entitled to get the revised pay. Thus, the Government is not at all justified in taking a contrary stand in Annexures A4 and A5. Therefore, the arguments advanced by the learned Special Government Pleader do not justify departing from the principles laid down in **Raghavendra Acharya**'s case (supra)."

5. The principles laid down above are equally applicable to the present cases. The Government has no justification for issuing Ext.P4 order contrary to the statutory provisions and the law settled by the Honourable Supreme Court. Therefore, Ext.P4 is set aside. We direct the respondents to disburse the pension of the petitioners based on the revised pay. The entire arrears shall be paid to the petitioners within a period of two months from

today, considering the time elapsed after the issuance of Ext.P3.

The writ petitions are disposed of accordingly.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE

sv

APPENDIX OF WP(C) 5173/2023

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF G.O. (P) NO.18/2019/H.EDN. DATED 29.6.2019**
Exhibit P2	**TRUE COPY OF THE G.O.(P) NO. 30/2021/FIN. DATED 12.2.2021**
Exhibit P3	**TRUE COPY OF G.O.(P) NO.151/2020/FIN DATED 5.11.2020**
Exhibit P4	**TRUE COPY OF G.O.(P) NO. 38/2021/FIN DATED 25.2.2021**
Exhibit P5	**TRUE COPY OF CIRCULAR NO. 2/2021-22/ UGC REVISION DATED 23.4.2021**
Exhibit P6	**TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 22675/2021 AND CONNECTED CASES DATED 26.7.2022**
Exhibit P7	**TRUE COPY OF ORDER G.O.(RT) NO. 7464/2022/FIN DATED 4.11.2022**

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APPENDIX OF WP(C) 38696/2022

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF THE ORDER G.O.(P) NO.18/2019/H.EDN. DATED I29.6.2019 ISSUED BY THE HIGHER EDUCATION (C) DEPARTMENT.**
Exhibit P2	**TRUE COPY OF THE G.O.(P) NO. 30/2021/FIN. DATED 12.2.2021 ISSUED BY THE FINANCE DEPARTMENT.**
Exhibit P3	**TRUE COPY OF THE G.O.(P) NO.151/2020/FIN DATED 5.11.2020 ISSUED BY FINANCE (PENSION-B) DEPARTMENT.**
Exhibit P4	**TRUE COPY OF THE G.O.(P) NO. 38/2021/FIN DATED 25.2.2021 ISSUED BY THE FINANCE (PENSION-B.**
Exhibit P5	**TRUE COPY OF THE CIRCULAR NO. 2/2021-22/UGC REVISION DATED 23.4.2021 ISSUED BY 4TH RESPONDENT.**
Exhibit P6	**TRUE COPY OF JUDGMENT DATED 26.7.2022 IN W.P.(C) NO. 22675/2021 OF THIS HONOURBALE COURT.**
Exhibit P7	**TRUE COPY OF G.O.(RT) NO. 7464/2022/FIN. DATED 4.11.2022 ISSUED BY THE FINANCE (PENSION-B) DEPARTMENT.**