



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

OP (KAT) NO. 376 OF 2022

AGAINST THE ORDER DATED 30/03/2022 IN OA (EKM) NO.569 OF
2016 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS 1 TO 3 IN O.A.:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
FINANCE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
- 2 THE SECRETARY TO GOVERNMENT,
COLLEGIATE EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001
- 3 THE AUDIT AND ACCOUNTANT GENERAL (A&E),
KERALA, THIRUVANANTHAPURAM - 695001,
KERALA.

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

RESPONDENTS/APPLICANTS 3 TO 6 & 10 IN O.A.:

- 1 P.V. MOHAN,
S/O. P.V. SHANMUGHAN, AGED 64 YEARS,
ARA 21, KK PADMANABHAN ROAD,



- AYYAPPANKAVU,
ERNAKULAM DISTRICT - 682 018,
(RETIRED ASSISTANT PROFESSOR,
MAHARAJAS COLLEGE, ERNAKULAM,
COLLEGIATE EDUCATION DEPARTMENT),
KERALA.
- 2 NIRMALA K,
D/O. DR. K.V. NAMBOODIRIPAD,
AGED 64 YEARS, 802 A,
PURVA GRANDBAY, OPPOSITE PETROL PMP,
MARINE DRIVE, KOCHI- 682018
(RETIRED ASSISTANT PROFESSOR,
MAHARAJAS COLLEGE, ERNAKULAM,
COLLEGIATE EDUCATION DEPARTMENT),
KERALA.
- 3 VINAYA RAMAMOORTHY,
D/O. R.S. RAJU, AGED 64 YEARS.,
10E MAHALAKSHMI APARTMENT,
THEVARAKKAVU TEMPLE ROAD
THRIPUNITHURA- 682301
(RETIRED ASSISTANT PROFESSOR,
MAHARAJAS COLLEGE, ERNAKULAM,
COLLEGIATE EDUCATION DEPARTMENT),
KERALA.
- 4 JOSEPH G. NELLIKKAL,
S/O. LATE N.J. GEORGE,
AGED 64 YEARS, CARMEL VILLA,
NELLIKKAL HOUSE, PERUMADAPPU,
KOCHI- 682006
(RETIRED ASSISTANT PROFESSOR,
MAHARAJAS COLLEGE, ERNAKULAM,
COLLEGIATE EDUCATION DEPARTMENT),
KERALA- 682006
- 5 K.K. BALAKRISHNAN,
S/O.K. KRISHNAN, AGED 65 YEARS,
KAUSTHUBHAM, MARADU P.O.,
ERNAKULAM DISTRICT - 682 304
(RETIRED ASSISTANT PROFESSOR,
MAHARAJAS COLLEGE, ERNAKULAM,
COLLEGIATE EDUCATION DEPARTMENT)
KERALA.



ADDL.R6 THE UNIVERSITY GRANTS COMMISSION (UGC),
BAHADUR SHAH SAFAR MARG,NEW DELHI-110002.

ADDL.R7 UNION OF INDIA,
MINISTRY OF HUMAN RESOURCES DEVELOPMENT,
SHASTRI BHAVAN,NEW DELHI-110001.

ADDITIONAL R6 AND R7 ARE SUO MOTU IMPLEADED AS PER
ORDER DATED 10/1/2024 IN OP(KAT) 376/2022.

BY ADVS.

C.P.KUNJHIKANNAN

M.S.RADHAKRISHNAN NAIR

LAKSHMI RAMADAS

S.KRISHNAMOORTHY, SC, UNIVERSITY GRANTS
COMMISSION - UGC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR HEARING ON 04.11.2024 ALONG WITH WP(C).38975/2022, THE
COURT ON 27.11.2024 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. 38975 OF 2022

PETITIONERS:

- 1 KOSHY NINAN
AGED 68 YEARS
S/O. M.C.NINAN, MALLASERIL, KUTTAPUZHA P.O.,
THIRUVALLA, PATHANAMTHITTA-689 103 (RETIRED
PRINCIPAL, BISHOP MOORE COLLEGE, MAVELIKKARA).
- 2 PROF.JOSEPH PHILIP,
AGED 69 YEARS
S/O. LATE THOMAS PHILIP, KIZHAKEL, R.S.P.O.,
THIRUVALLA, PATHANAMTHITTA DISTRICT, PIN-689 111
(RETIRED PRINCIPAL, ST.THOMAS COLLEGE,
KOZHENCHERRY, PATHANAMTHITTA).

BY ADV M.S.RADHAKRISHNAN NAIR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001
- 2 THE ADDITIOANL CHIEF SECRETARY,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001



- 3 THE ADDITIONAL CHIEF SECRETARY,
FINANCE 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 PRINCIPAL ACCOUNTANT GENERAL (A & E),
OFFICE OF THE ACCOUNT GENERAL,
THIRUVANANTHAPURAM-695 001

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON
04.11.2024, ALONG WITH OP(KAT)NO.376/2022, THE COURT ON
27.11.2024 DELIVERED THE FOLLOWING:



JUDGMENT

P.Krishna Kumar, J.

OP (KAT)No.376/2022

As per Annexure A1 Government Order dated 07/05/2011, the Government revised the pension of teachers and professors of various colleges in the State who are receiving the UGC pay scale. It is stipulated in Annexure A1 that the pension in respect of those who retired 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 and the present system of computation of pension at 50% of ten months' average emoluments would continue.

2. Later, as per Annexures A4 letter and A5 order, the Government clarified that, as the UGC scheme does not contain a provision for payment of pension and the Government revised the pension of



other state government employees only with effect from 01/07/2009, those who are receiving UGC scale would also get the revised pension only with effect from 01/07/2009. By the impugned order, the Tribunal set aside Annexures A4 and A5, following the law laid down in **U.P.Raghavendra Acharya and Others v. State of Karnataka and Others [(2006) 9 SCC 630]**. The respondents are retired from the Collegiate Education Department and are covered under the UGC Scheme.

3. The Learned Special Government Pleader (Finance) Sri.P.K.Babu submitted an argument note to substantiate the challenges against the impugned order. According to him, as per clause 11.8 of the Government Order dated 27/03/2010 (which is one among the documents produced as Ext.P4), pension, family pension, gratuity, etc., have to be given based on the amount fixed by the State Government to its employees and thus, the pensionary benefits are to be decided on the basis of the scheme of the pension revision adopted by the State Government and not by



the fact that the pay revision for UGC teachers was given effect from 01/01/2006.

4. The learned Special Government Pleader attempted to distinguish the dictum in **Raghavendra Acharya's** case (supra) by contending that the respondents did not obtain the benefit of pay revision as per Ext.P1 Government Order and hence, they are not eligible for revision of pension based on the law settled in the said case. It is also argued that if the impugned order is upheld, it would award double benefits to the respondents because they had already received the benefits of the State pay revision with effect from 01/04/2005. With respect to the pension and arrears of pension to the UGC pensioners, there is no financial assistance on the part of the Central Government, and hence, the said amount has to be borne by the State Government from its Exchequer, and in that circumstance, the policy decision taken by the State Government as to the date of implementation of the pay revision scheme ought



not have been interfered with by the Tribunal, it is argued. A decision rendered by the Honourable Supreme Court in SLP No. 24287/2018 dated 02/08/2022 is also relied on by the learned Special Government Pleader for claiming that the financial assistance from the Central Government is an important criterion and thus the date of implementation of all the pension schemes are to be decided by the respective State Governments.

5. Referring to the decision reported in **Government of Andhra Pradesh v. N.Subbarayudu & Ors. [(2008) 14 SCC 702]**, it is further urged that when a cut-off date is fixed by the executive authority, considering the economic conditions, financial constraints, etc., ordinarily, the court should not interfere with the same. The decision in **State of Tripura v. Anjana Bhattacharjee [(2022 (4) KLT OnLine 1180 (SC)]** is also referred to by the learned Special Government Pleader for substantiating that, when the State Government took a conscious policy decision to



grant the benefit of revision of pension based on their financial constraints, the High Court should not interfere with the same.

6. The learned counsel appearing for the respondents submitted that in view of Part III Kerala Service Rules (for short, 'KSR'), the respondents are entitled to get their pension based on the last drawn salary and hence, once the Government decided to revise the pay of the respective officers with effect from 01/06/2006, the dictum in **Raghavendra Acharya's** case holds the field and thus the Government is bound to revise the pension with effect from 01/06/2006 and to pay the consequential arrears.

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 01/01/2006 (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.
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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).

13. In view of the above discussion, there is no reason to interfere with the order impugned. The directions of the Tribunal, including the one for payment of arrears, shall be complied within four weeks from today, considering the time elapsed since



the date of the pay revision order.

The Original Petition is dismissed.

W.P. (C)No.38975/2022

14.. The petitioners herein are former Principals of aided colleges. They also retired from service between 01/01/2006 and 30/06/2009. Annexure A1 (which is produced as Ext.P1 in this case) also covers the petitioners. Earlier, they challenged Annexure A5 Government Order dated 10/01/2014 (which is produced in this case as Ext.P2) by filing W.P. (C)No.19444/2022. This Court directed the Government to consider the issues raised by the petitioners in the light of the observations made in its judgment dated 26/07/2022. Thereafter, the Government issued Ext.P4 order dated 05/11/2022 reiterating its stand.

15. All the questions raised in this case are identical to the issues discussed in O.P. (KAT)No.376/2022, which is disposed of along with this case today. In the above factual background, no



further discussion is required for disposing of this case.

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 four weeks from today, considering the time elapsed after the issuance of Ext.P1.

The Writ Petition is disposed of accordingly.

Sd/-

A. MUHAMED MUSTAQUE
JUDGE

Sd/-

P. KRISHNA KUMAR
JUDGE



APPENDIX OF WP(C) 38975/2022

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER GO (P)
NO.211/2011/FIN DATED 7.5.2011 ISSUED BY
THE FINANCE (PENSION B) DEPARTMENT
- Exhibit P2 TRUE COPY OF THE ORDER GO (P)
NO.16/2014/FIN DATED 10.1.2014 ISSUED BY
THE FINANCE (PENSION B) DEPARTMENT
- Exhibit P3 TRUE COPY OF THE JUDGMENT DATED 26.7.2022
IN WPC NO.19444/2022 OF THIS HONOURABLE
COURT.
- Exhibit P4 TRUE COPY OF THE G.O (RT)NO.7485/2022/FIN
DATED 5.11.2022 ISSUED BY THE FINANCE
(PENSION-B) DEPARTMENT.

RESPONDENT'S EXHIBITS

- Exhibit R3(a) A true copy of the relevant pages of
GO(P)No 81/2007/Fin Dated 28-02-2007
- Exhibit R3(b) A true copy of the relevant pages of
GO(P) No 58/2010/H-EDn dated 27/03/2010



APPENDIX OF OP(KAT) 376/2022

PETITIONER ANNEXURES

- Annexure A1 A PHOTOCOPY OF THE G.O. (P)
NO.211/2011/FIN DATED 07.05.2011 ISSUED
BY THE 1ST RESPONDENT
- Annexure A2 A PHOTOCOPY OF THE COLLECTIVE
REPRESENTATION SUBMITTED BY THE
APPLICANTS DATED 15.11.2014
- Annexure A3 A PHOTOCOPY OF THE REMINDER DATED
12.01.2015 SENT BY THE APPLICANTS
- Annexure A4 A PHOTOCOPY OF THE COMMUNICATION
NO.99929/PWC-A2/14/FIN DATED 03.03.2015
- Annexure A5 PHOTOCOPY OF G.O. (P) NO.16/2014/FIN DATED
10.01.2014.
- Annexure A6 THE ORDER NO.GE10/F/COLL./J100/426 DATED
24.07.2013 DISBURSING PAY REVISION
ARREARS FROM 01.01.2006 TO 30.04.2006 TO
THE 4TH APPLICANT
- Annexure A7 THE PENSION VERIFICATION REPORT DATED
09.07.2013 ISSUED TO THE 4TH APPLICANT
FIXING THE REVISED PENSION AS RS.19,012/-
W.E.F. 01.05.2006
- Exhibit P1 A TRUE COPY OF THE ABOVE O.A. (EKM) NO.
569 OF 2016 ALONG WITH ANNEXURES
- Exhibit P2 TRUE COPY OF THE REPLY STATEMENT FILED BY
THE 1ST PETITIONER/1ST RESPONDENT DATED
06.02.2020
- Exhibit P3 TRUE COPY OF THE MISCELLANEOUS
APPLICATION ALONG WITH DOCUMENTS
- Exhibit P4 TRUE COPY OF THE MEMO FILED BY THE
GOVERNMENT PLEADER FOR PRODUCING
GOVERNMENT ORDERS 1.G.O. (P)



NO.81/2007/FIN. (PENSION B-DEPARTMENT)
THIRUVANANTHAPURAM DATED 28.02.2007. 2.
G.O.(P) NO.16/2014/FIN. (PENSION B-
DEPARTMENT) THIRUVANANTHAPURAM DATED
10.01.2014. 3. G.O.(P) NO.299/2010/FIN.
(PENSION B- DEPARTMENT)
THIRUVANANTHAPURAM DATED 24.05.2010 4.
G.O.(P) NO.58/2010/H.EDN.DATED
27.03.2010.

Exhibit P5

TRUE COPY OF THE IMPUGNED ORDER DATED
30.03.2022 PASSED BY THE TRIBUNAL IN O.A.
(EKM) NO.569/2016