

Geetha G vs the State of Kerala

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Court : Kerala

Decided On : Feb-26-2024

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WP(C)/25839/2022

Appellant : Geetha G

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
MONDAY, THE 26TH DAY OF FEBRUARY 2024 / 7TH PHALGUNA,
1945 WP(C) NO. 25839 OF 2022 PETITIONER: GEETHA G, AGED 56
YEARS W/O.D. VENUGOPAL, RESIDING AT "AVANI" ANAKKAL P.O.,
KANJIRAPPALLY, KOTTAYAM., PIN - 686507 BY ADVS.
PIRAPPANCODE V.S.SUDHIR AKASH S. GIRISH KUMAR M S
V.S.VARALEKSHMI RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY ITS CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001 2 SECRETARY TO GOVERNMENT FINANCE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 3

SECRETRY TO GOVERNMENT HIGHER EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 4 THE
DIRECTOR OF TECHNICAL EDUCATION DIRECTORATE OF
TECHNICAL EDUCATION, FORT P.O, PAZHAVANGADI,
THIRUVANANTHAPURAM, PIN - 695023 5 THE PRINCIPAL NSS
POLYTECHNIC COLLEGE, PANDALAM, PERUMPULICKAL,
PATHANAMTHITTA, PIN - 689501 BY SMT.NISHA BOSEM SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -

2- MOHAMMED NIAS C.P.J
..... Dated this the 26th day of February, 2023

JUDGMENT

The petitioner entered service as Junior Lecturer in Mathematics on

10.12.1987 in the NSS Polytechnic College Pandlam, and consequent to the abolition of the post of Junior Lecturer, he commenced continuous service in the post of Lecturer from 1.6.1988. On completion of ten years, the petitioner was promoted to the post of Non Cadre Professor Grade II with effect from 1.7.1998. The first respondent, by Ext.P3 order dated 20.2.2014, implemented the AICTE Scheme in the Government and aided Polytechnics from 1.7.2023 and since the post of Professor Grade I (non Cadre) and Professor Grade II (non Cadre) in non Engineering subjects in Polytechnics were not incorporated in the said order, the same was rectified by the issuance of Ext.P4 order dated 5.8.2015 reinstating the non cadre promotion to the non Engineering Lecturers in the Aided Polytechnic Colleges retrospectively from 1.1.1998 till the date of implementation of AICTE pay scale in the State. The petitioner submits that her scale of pay was correctly fixed in the AICTE scale Professor Grade I with effect from

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1.7.2013, and the arrears of pay in such scale were also disbursed following the re-fixation of pay with effect from 1.7.2013. The petitioner is aggrieved by Ext.P9

order dated 5.12.2021, without notice to her when the scale of pay of the petitioner was revised, taking a stand of the arrears of pay in the AICTE scale is liable to be disbursed only with effect from 5.8.2015 and not from 1.7.2013.

2. The fourth respondent also passed orders directing to recover

the alleged excess pay granted to the petitioner for the period between 1.7.2013 and 5.8.2015. The petitioner submits that she was entitled to be paid on the basis of the fixation already made, and after the benefits were disbursed, Ext.P9 dated 5.2.2021 was issued, which cannot be retrospective.

3. The Government has filed a counter stating that it was only

from 5.8.2015 that the petitioner was directed to be paid the benefits, though she was placed under the AICTE scale from 1.7.2013 onwards. There is no intention to pay monetary benefits from 1.7.2013 but only from 5.8.2015.

4. It is seen that all these orders were passed behind the back of the petitioner without putting the petitioner on notice. It is also to be noticed that Ext.P9 was issued only on 5.2.2021 after the petitioner was -4-

given all the benefits. The petitioner also has a case that all the other similarly situated persons were granted benefits from 1.7.2013. This is a matter to be decided by the third respondent after affording an opportunity of hearing to the petitioner. The petitioner will be free to take up all contentions available to her to defend the pay fixation as well as the disbursement of benefits to her from 1.7.2013. The third respondent will also consider whether any recovery has to be made from the petitioner, who has been paid the benefits under the fixation done, which, according to the petitioner, was correct and whether recovery should be effected after her retirement on 31.05.2021. A decision as aforesaid shall be taken within a period of three months. To enable the above exercise, Exts.P9, to the extent it applies to the petitioner and also Ext.P10, which pertains to the petitioner alone, are quashed.

The writ petition is allowed as above. Sd/- MOHAMMED NIAS C.P. JUDGE dlk
26.2.2024 -5- APPENDIX OF WP(C) 25839/2022 PETITIONERS EXHIBITS

EXHIBIT P1 TRUE COPY OF THE G.O.(MS)NO.912/79 (118)/FIN DATED 04.10.1979, EXHIBIT P2 TRUE COPY OF THE G.O.(MS)NO.862/80(256)/FIN DATED 11.11.1980 EXHIBIT P2(A) TRUE COPY OF THE G.O(MS)NO.38/85/H.EDN. DATED 25.02.1985 EXHIBIT P2(B) TRUE COPY OF THE LETTER NO.30449/L2/01/H.EDN. DATED 28.06.2002 OF THE 3RD RESPONDENT EXHIBIT P3 TRUE COPY OF THE RELEVANT EXTRACT OF THE G.O(MS)NO.75/2014/FIN DATED 20.02.2014 EXHIBIT P4 TRUE COPY OF THE G.O.(MS)NO.521/15/H.EDN DATED 05.08.2015, EXHIBIT P5 TRUE COPY OF THE G.O.(MS)NO.47/2019/FIN DATED 24.01.2019 EXHIBIT P6 TRUE COPY OF THE G.O.(MS)NO.348/2017/(70)/FIN DATED 26.07.2017 EXHIBIT P7 TRUE COPY OF THE ORDER NO.AICTE-EC/27978/17/DTE DATED 20.12.2019 OF THE 4TH RESPONDENT EXHIBIT P8 TRUE COPY OF THE REVISED AICTE PAY FIXATION

STATEMENT DUE TO NON CADRE PROMOTION OF TEACHING FACULTIES ON NON ENGINEERING SUBJECTS IN AIDED POLYTECHNIC COLLEGES

EXHIBIT P9 TRUE COPY OF THE G.O.(RT)NO.223/2021/G.EDN. DATED 05.02.2021 EXHIBIT P10 TRUE COPY OF THE LETTER NO.DP5/16315/20/DTE DATED 10.12.2021 OF THE 4TH RESPONDENT EXHIBIT P11 TRUE COPY OF THE STATEMENT CONTAINING THE DETAILS OF THE ARREARS OF PAY GRANTED TO THE -6- PETITIONER FROM 01.07.2013 TO 30.11.2019 EXHIBIT P11(A) TRUE COPY OF THE RELEVANT EXTRACT OF G.O. (P)NO.85/2011/FIN DATED 26.02.2011 EXHIBIT P12 TRUE COPY OF THE LETTER NO.DP5- AICTE/35806/15/DTE DATED 04.12.2015 OF TEH 4TH RESPONDENT ADDRESSED TO THE 5TH RESPONDENT EXHIBIT P13 TRUE COPY OF THE ORDER NO.DP 6/32443/17 DATED 19.10.2017 OF THE 4TH RESPONDENT RESPONDENTS ANNEXURES ANNEXURE R1(A) TRUE COPY OF THE ORDER GO(P)NO.169/2019/FIN DATED 13/12/2019 ISSUED BY THE FINANCE DEPARTMENT

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