



2025:KER:15294

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 20TH DAY OF FEBRUARY 2025 / 1ST PHALGUNA, 1946

WP(C) NO. 31505 OF 2023

PETITIONER:

BINSU JACOB
AGED 47 YEARS, S/O K. JACOB,
HIGHER SECONDARY SCHOOL TEACHER
(COMPUTER SCIENCE) ST. GEORGE HIGHER SECONDARY
SCHOOL, MUTTAR MUTTAR P.O, ALAPPUZHA DISTRICT -
PIN 689574 (RESIDING AT ALUMMOOTIL,
KAKKAMTHODE HOUSE, CHANGANMACHERRY.P.O.
KOTTAYAM DISTRICT) PIN - 686101.

BY ADVS.
V.A.MUHAMMED
V.RAJASEKHARAN NAIR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN - 695001.
- 2 THE DIRECTOR OF GENERAL EDUCATION
JAGATHY, THIRUVANANTHAPURAM,
PIN - 695014.

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- 3 THE REGIONAL DEPUTY DIRECTOR OF
HIGHER SECONDARY EDUCATION
CHENGANNUR.P.O, ALAPPUZHA DISTRICT,
PIN - 689121.
- 4 THE PRINCIPAL
ST. GEORGE HIGHER SECONDARY SCHOOL,
MUTTAR, MUTTAR.P.O, ALAPPUAZHA DISTRICT,
PIN - 689574.

BY ADV.SRI.PREMCHAND R NAIR,
SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.02.2025, ALONG WITH WP(C).1406/2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)Nos.31505 of 2023 &
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 20TH DAY OF FEBRUARY 2025 / 1ST PHALGUNA, 1946

WP(C) NO. 1406 OF 2024

PETITIONER:

UNNIKRISHNAN NAIR A.R
AGED 54 YEARS, S/O.LATE RAMAN NAIR,
HSST (JUNIOR) PHYSICS, IU HIGHER SECONDARY
SCHOOL, PARAPPUR, MALAPPURAM, PIN - 676503.

BY ADVS.
AUGUSTINE JOSEPH
TONY AUGUSTINE
GEORGE RENOY

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 2 REGIONAL DEPUTY DIRECTOR
HIGHER SECONDARY EDUCATION, CIVIL STATION,
MALAPPURAM, PIN - 676505.
- 3 PRINCIPAL
IU HIGHER SECONDARY SCHOOL, PARAPPUR,
MALAPPURAM, PIN - 676503.

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BY ADV.SRI. PREMCHAND R. NAIR,
SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.02.2025, ALONG WITH WP(C).31505/2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



COMMON JUDGMENT

Dated this the 20th day of February, 2025

[WP(C) Nos.31505 of 2023 and 1406 of 2024]

Both the cases raise the same question of law and hence they are heard together and are disposed of by a common judgment.

2. In W.P.(C) No.31505 of 2023, the petitioner has approved service as HSST (Junior) Computer Science from 26.08.2002 against a regular vacancy in SBHSS, Changanacherry. On completion of 15 years of service as HSST (Junior) Computer Science, the petitioner was granted Selection Grade. While working as HSST (Junior) Computer Science, the petitioner was appointed as HSST (Computer Science) from 11.12.2017 onwards against a regular vacancy in St.George HSS, Muttar, another School under the same



Corporate Management. The appointment as HSST was also approved by the Regional Deputy Director of Higher Education.

3. The petitioner states that his pay in the post of HSST (Computer Science) was fixed at ₹52,800/- with effect from 11.12.2017 by protecting his pay on promotion against post carrying lower scale, as per special rules. The petitioner was also granted annual increments during subsequent years. However, in Ext.P5, it was stated that next increment is due on 01.12.2018. The Regional Deputy Director of Higher Education informed the Principal that since appointment as HSST Computer Science from 11.12.2017 is against a post carrying lower scale, the petitioner is entitled only the fixation and hence pay alone will be protected and increment date will not be protected.

4. The petitioner approached the authorities for opting a date of next increment pursuant to the pay fixation. The petitioner had approached this Court earlier filing W.P.(C)



No.33313 of 2022. This Court, as per Ext.P14 judgment, found that the legal issue raised by the petitioner is covered by the judgment of this Court in W.A. No.1556 of 2021. This Court, therefore, directed to reconsider the matter in the light of judgment dated 13.12.2021 in W.A. No.1556 of 2021.

5. The petitioner contends that in spite of the directions given by this Court to consider the issue in the light of the judgment in W.A.No.1556 of 2021, the 1st respondent rejected the request of the petitioner stating the same reason. Ext.P15 is unsustainable. In the facts of the case the respondents are compellable to permit the petitioner to opt for appropriate date of next increment / re-fixation benefit.

6. W.P.(C) No.1406 of 2024 has been filed by the petitioner, who was working as HST. The petitioner was promoted and appointed by transfer as HSST on 31.08.2015. The petitioner has not been given the re-fixation benefits. The 2nd respondent has issued a letter stating that pay protection



and consequential increments granted to the petitioner were wrong and the petitioner has to refund the amount. The petitioner, therefore, seeks to set aside Ext.P3 and to declare that the petitioner is entitled to protection of salary, consequential increments and grades based on Rule 37(b) of Part I of the Kerala Service Rules.

7. I have heard the learned Counsels for the petitioners and the learned Senior Government Pleader representing the respondents.

8. The question of grant of protection benefits after refixation of pay when a person is appointed to a post having lower scale, has been considered by this Court in W.P.(C) No.14753 of 2020. A learned Single Judge of this Court, considered the impact of Rule 37 of Part-I, Kerala Service Rules and held as follows:-

However, the Government decision No.4 under Rule 37 (b) specifically provides that an officer officiating in a post, when appointed to a higher post on the advice of the



Public Service Commission or otherwise, is eligible for his initial pay being fixed under this Rule and is also entitled to the benefit of re-fixation contemplated in the last sentence of sub-rule (a). It is therefore evident that in every case where there is an appointment to a higher post by direct recruitment or otherwise, the benefit of re-fixation of pay by granting a notional increment as provided in Rule 28A is contemplated. It is clear that Government decision No.4 which did not give this benefit even for appointments through Public Service Commission had been substituted by the present provision on 21.10.1988 to have effect from 31.10.1986. It is clear that the Government decision was inserted to give the benefit of re-fixation even to officers who are appointed in terms of the special Rules or through Public Service Commission to posts carrying a lower time scale of pay than the posts they were holding. It is therefore to rectify the widespread anomalies in senior officers being granted lower scales of pay, if the benefit of re-fixation is denied to them that the Government decision No.4 under Rule 37 (b) and Government decision No.1(2) under Rule 28 A were amended by the Government. There is nothing in the Government decision No.4 under Rule 37 (b) to suggest that the benefit would be available only where a person is being appointed by transfer from a lower time scale of pay to a higher time scale of pay. As a matter of fact, the Government decisions specifically applies in a case like the petitioner's, since otherwise the re-fixation would be available under Rule 28A itself.

9. The State took up the matter in appeal and a Division Bench of this Court in Ext.P13 judgment in W.A No.1556 of 2021, upheld the decision of the learned Single Judge. SLP filed against Ext.P13 judgment was rejected by the



Hon'ble Apex Court.

10. It is in the light of these judgments that the Single Judge of this Court disposed of W.P.(C) No.33313 of 2022 filed by the petitioner as per Ext.P14 judgment, directing to consider the issue in the light of W.A.No.1556 of 2021. However, the 1st respondent has rejected that request of the petitioner holding that such benefits were given to others only due to court orders.

11. When this Court has considered a legal issue and has declared the law as has been done in Ext.P13 judgment, the 1st respondent is bound to follow the law laid down by this Court in all cases irrespective of whether they are supported by a judgment of this Court.

In the circumstances, these writ petitions are allowed. Exts.P6 and P15 orders in W.P.(C) No.31505 of 2023 and Ext.P3 order in W.P.(C) No.1406 of 2024 are quashed. It is declared that the petitioners shall be governed by the judgment

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of this Court in W.P.(C) No.14753 of 2020 and W.A. No.1556 of 2021 in the matter of physical benefits on their promotion. The 1st respondent is directed to reconsider the matter in the light of the afore judgments and pass orders afresh within a period of three months.

Sd/-
N. NAGARESH
JUDGE

ams

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APPENDIX OF WP (C) 31505/2023

PETITIONER EXHIBITS

- Exhibit P-1 TRUE COPY OF THE PROCEEDINGS OF THE
DIRECTOR OF HIGHER SECONDARY EDUCATION,
VIDE ORDER NO.ACD.B4-20104HSE/01(2)
DATED 17.03.2006
- Exhibit P-2 TRUE COPY OF THE STATEMENT OF FIXATION
OF PAY FOR FIXING HER HIGHER GRADE PAY
VIDE NO.A5/838/RDD EKM DATED 31.05.2012
- Exhibit P-3 TRUE COPY OF THE ORDER OF THE STATMENT
OF FIXATION OF PAY FOR FIXING HER
SELECTION GRADE PAY VIDE
NO.B4/7586/RDD/17 DATED 28/12/2017
- Exhibit P-4 TRUE COPY OF THE PROCEEDINGS OF THE RDD
HSE, CHENGANNUR VIDE ORDER NO.
NO.2961/C6/2018/RDD/CNGR DATED
16.10.2018
- Exhibit P-5 TRUE COPY OF THE ORDER OF THE STATEMENT
OF FIXATION OF PAY VIDE
NO.4784/C8/2021/RDD/CNGR
- Exhibit P-6 TRUE COPY OF THE LETTER OF THE RDD
ADDRESSING THE PRINCIPAL VIDE
NO.4784/C8/2021/RDD/CNGR DATED
10.09.2021
- Exhibit P-7 TRUE COPY OF THE LETTER OF THE DIRECTOR
OF GENERAL EDUCATION, HSE ADDRESSING
THE RDD, HSE, VIDE
NO.ACDA3/200604/2021/HSE DATED
12.07.2021

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Exhibit P-8	TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 15.10.2021
Exhibit P-9	TRUE COPY OF THE JUDGMENT IN WP(C) NO. 23111/2021 DATED 26.10.2021
Exhibit P-10	TRUE COPY OF THE G.O. (RT) .1145/2022/G.EDN DATED 26.02.2022
Exhibit P-11	TRUE COPY OF THE LETTER OF THE RDD ADDRESSING THE PRINCIPAL VIDE NO. 4784/C8/2021/RDD/CNGR DATED 11.03.2022
Exhibit P-12	TRUE COPY OF JUDGMENT IN WP(C) NO. 14753/2020 DATED 11.11.2020
Exhibit P-13	TRUE COPY OF JUDGMENT IN WA NO. 1556/2021 DATED 13.12.2021
Exhibit P-14	TRUE COPY OF JUDGMENT IN WP(C) NO. 33313/2022 DATED 13.04.2023
Exhibit P-15	TRUE COPY OF THE G.O. (RT) .5069/2023/G.EDN DATED 13.09.2023
Exhibit P-16	TRUE COPY OF THE JUDGMENT IN SLA NO. 4420/2023 DATED 28.02.2023

RESPONDENT EXHIBITS

EXHIBIT R1(a)	A TRUE COPY OF JUDGMENT DATED 05/01/2015 OF THE HONOURABLE HIGH COURT OF KERALA IN WP(C) NO. 27485/2008
EXHIBIT R1(b)	A TRUE COPY OF JUDGMENT DATED 18/02/2020 OF THE HONOURABLE HIGH COURT OF KERALA IN WP(C) NO. 37379/2016

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1406 of 2024

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APPENDIX OF WP(C) 1406/2024

PETITIONER EXHIBITS

Exhibit-P1	TRUE COPY OF THE PROCEEDINGS NO.F/ 8237/2015/RDD/HSE/MLPM DATED 24.6.2016 OF THE 2ND RESPONDENT.
Exhibit-P2	TRUE COPY OF THE DETAILS OF PAY REVISION FIXATION PROPOSAL DATED 22.4.2021 OF THE PETITIONER WITH THE ENDORSEMENT OF APPROVAL OF THE 2ND RESPONDENT.
Exhibit-P3	TRUE COPY OF THE LETTER FROM THE 2ND RESPONDENT ADDRESSING THE PRINCIPAL VIDE NO.F/2773/23 DATED 28.10.2023.
Exhibit-P4	TRUE COPY OF THE JUDGMENT IN W.P. (C).NO.14753/2020 DATED 11.11.2020.
Exhibit-P5	TRUE COPY OF THE JUDGMENT IN W.A.NO.1556/2021 DATED 13.12.2021.
Exhibit-P6	TRUE COPY OF THE JUDGMENT IN SLA NO.4420/2023 DATED 28.2.2023.
Exhibit-P7	TRUE COPY OF THE ORDER DATED 26.9.2023 IN W.P. (C) .NO.31505/2023