
(2024) 07 KL CK 0089

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24793 Of 2019

Dr.Philip Mathew VsUniversity Of Calicut

Date of Decision : 18-07-2024

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 8, 9

Citation : (2024) 07 KL CK 0089

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : Sivan Madathil, P.C.Sasidharan, Preetha K.K.

Final Decision : Allowed

Judgement

Mohammed Nias C.P., J

1. Petitioners 1 to 14 are retired Professors, while the 15th petitioner is the retired Director of Physical Education at the University of Calicut University. The writ petition is essentially filed with a prayer to direct the respondents to restore the pensionary benefits that were given to the petitioners vide Exts.P4 and P6.

2. The State Government used to revise the pension and related benefits consequent on the revision of the scale of pay of State Government employees and teachers every five years. However, the UGC revision occurs every ten years, and therefore, it was a practice that after the State revision orders, the Government used to issue an interim revision for the UGC pensioners. Accordingly, the petitioners were granted interim State revised pension as per Ext.P1 from 1.7.2004. The first UGC pension revision was issued by the Government vide GO(P)No.211/2011/Fin. dated 7.5.2011 (Ext.P3). The issue involved in this case is with respect to the fixation of UGC revision of pension/family pension.

3. The petitioners had earlier approached this Court by filing WP(C)No.24761/2012, wherein, they challenged the order which had the effect of reducing their pension. This Court interfered and set aside the order and directed orders to be passed with notice to the petitioners and consequently

Ext.P20 was passed which the petitioners challenge to the extent it reduced the quantum of pensionary benefits. The petitioners contend that the UGC Pension granted to them as per Exts.P4 and P5 is in accordance with the existing Government Orders and the re-fixation of the same as per Ext.P20 is illegal. They also submit that the pension is granted in compliance with Ext.P3 Government Order, in particular, clause 3.1 of the same. They submit that to arrive at the revised UGC pension, the revised basic pension enjoyed by the petitioners by adding the intermittent pension to the fitment benefit and Dearness allowance and the calculation made as per the UGC revised pension vide Exts.P4 and P5 must be reckoned, and there is no reason to vary the same through Ext.P20. It is also their submission that the other Universities had calculated pension on the basis of the basic pension and not on the basis of the pre-revised pension. The petitioners also contend that the University could not have taken a decision contrary to the decision taken by the Syndicate vide Ext.P17 that directed the restoration of Exts.P4 and P5. They also submit that a reduction in the pension could not have been made without notice to them and that going by the provisions of the CCS (Pension) Rules, 1972, in particular, Rules 8 and 9, a pension once sanctioned after final assessment shall not be revised to the disadvantage of the Government servant unless such a revision becomes necessary on account of a clerical error subsequently found out.

4. The contentions of the petitioners are resisted by the Government by pointing out that the rate of pension is governed by clause 3.1 of Ext.P3 that provides for revision of pension in respect of those who retired or expired prior to 1.1.2006 and the revised basic pension should be determined by adding the existing basic pension that is the basic pension drawn before undergoing any revision or in other words, before the interim revision consequent on State revision, which was extended to the UGC pensioners in this case by Ext.P1, adding the fitment benefit and the Dearness Allowance. Similarly, for calculating family revised pension, clause 4.1 of Ext.P3 applies. It is also stated that clause 3.2 of the Government Order states that if the total of the above calculation is less than 50% of the minimum of the corresponding revised scale of post from which the pensioner had retired, provided he had a qualifying service of 30 years or more, the pension shall be stepped up to 50% of the maximum of the revised scale, together with the academic grade pay for the post, in case of others with qualifying service of less than 30 years, pension proportionate to the qualifying service alone will be admissible as indicated in the Schedule one of the order.

5. The University also sought clarification from the Government, which was issued as per Ext.P24, clarifying that the revised pension can be calculated by taking into account the unrevised basic pension and not by the basic pension. In light of this, the University passed Ext.P20, which, according to them, complies with Ext.P3.

6. The Government also contends that while issuing Ext.P20, a report was called for from all the Universities which revealed that even though they committed

mistakes while calculating the revised pension, subsequently it was rectified by applying Ext.P3 Government Order, and recovery was initiated against them from their monthly pension and the petitioners can only be given identical treatment. It is also the contention of the Government that, the University is not in a position to decide on its own without obtaining the concurrence from the Government while dealing with financial matters as stipulated in Circular No.24176/B1/12/H.Edn. dated 8.8.2012 of the Higher Education Department, which directed the Universities to strictly observe the existing Rules and Regulations of the Government while making decisions involving financial commitments and also directed them to refrain from overruling audit objections of the Local Fund Audit Department and the Accountant General, relying on Syndicate decisions. The Government further contends that while sanctioning the revised pension under Ext.P1 an undertaking was given by the petitioners agreeing to recovery of any amount found to be excess from their future pension. It is also their submission that CCS (Pension) Rules, 1972, does not apply and that even if the same applies the power of the public authorities to correct apparent mistakes even without any specific provision had to be upheld. They also rely on the decision of this Court in P.V.Prakasini v. KPSC and others [1993 (1) KLJ 632] and Krishnan Kutty K.P. v. State of Kerala [2022 (5) KLT 481], which held that the law implies an obligation on the payee to repay the money, wrongly obtained otherwise it amounts to unjust enrichment. It is also stated that Ext.P4 is dated 16.11.2021, and the mistake was immediately found out by Ext.P6 on 13.4.2012, and therefore the petitioner never enjoyed the mistakenly calculated pension except for six months.

7. Heard Sri.Sivan Madathil, the learned counsel for the petitioners, Smt.Nisha Bose, the learned Senior Government Pleader and Sri.P.C.Sasidharan, the learned Standing Counsel for the University. Before proceeding further, it is relevant to extract the prayers sought by the petitioners in the writ petition:-

“(i) call for the records leading to Exhibit P1 to Exhibit P26

(ii) and issue writ of certiorari or any other writ order or direction to quash Exhibit P20 order to the extent of denying the pensionary benefits which have already been given to the petitioners, as per Exhibit P1 to P3 orders to those who retired prior to 01.01.2006 with retrospective effect from 01.03.2010

(iii) issue a writ in the nature of mandamus commanding the respondents 2 to 4 to restore the pensionary benefits which have already been given to the petitioners as per Exhibit P1 to P3 orders; with retrospective effect from 01.03.2010 to those petitioner's who have retired prior to 01.01.2006

(iv) to declare that the petitioners are legally entitled to get their revised pensionary benefits as per Exhibit P1 to P3 orders and also the subsequent decision arrived by the Syndicate Committee of the 1st respondent University.

(v) direct the 2nd and 4th respondents to give administrative sanction for restoring the petitioners pensionary benefits in the light of the decision arrived

by the Syndicate of the 1st respondent University as per Exhibit P16 proceedings and

(vi) any other relief on this Hon'ble Court found deem fit and proper in the circumstances of the case.”

8. It is to be noted that the petitioners are claiming the pensionary benefits that have already been given to them as per Exts.P1 to P3 orders. If that is so, Ext.P3 order specifically states how the existing pension is to be calculated. It is pertinent to note that there is no challenge at all to the said provision, which deals with how the existing basic pension is to be reckoned. In that view of the matter, it cannot be said that the stand of the Government that the pension has to be calculated in terms of clause 3.1 of GO(P)No.211/2011/ Fin dated 7.5.2011 is per se wrong, in the absence of a challenge to the definition of existing pension. Exts.P20 and P24 orders also clarified the position based on the stipulations in Ext.P3 Government Order. The contention of the petitioners that the Syndicate of the University had decided otherwise in Ext.P16 cannot be of any avail to the petitioners as ultimately it is for the Government to decide the matters involving financial commitment and the Universities were bound to comply with the directions of the Government in that regard.

9. That said, the specific contention of the petitioners that the reduction in the pension is such that it takes away the two increments given to those petitioners who had acquired Ph.D prior to 1.1.1996, is not seen countered in the counter affidavit filed. If as a matter of fact by reducing the pension, the increments to which they are entitled were also reduced, the said action has to be held to be illegal. It is also relevant to note that there is nothing on record to substantiate the government contention that the petitioners were offered only an interim revision pending the UGC revision and therefore the same cannot be reckoned for calculating existing pension. It is trite that the law as on the date of retirement has to be reckoned for computing the pension. All the petitioners retired years back and are in the evening of their lives and to make them fight a litigation is unfair and unjust.

10. Under such circumstances, the Government will also have to see whether as regards the other Universities, the benefits which were taken away from the petitioners have been granted to similarly situated persons, in the light of the documents produced by the petitioners have as Exhibits P8(a), P8(b) and P8(c), concerning the University of Kerala, Mahatma Gandhi University and Sree Sankaracharya University of Sanskrit respectively though the Government contends that those benefits wrongly given were recovered. These are all matters to be considered by the Government while taking a call on the entitlement of the pension more particularly, the quantum. Given the fact that this is the second round of litigation and that the petitioners have retired from the service years back, a decision has to be taken by the Government at the earliest, and any rate, within five weeks from the date of receipt of a copy of this judgment. The petitioners or their representatives shall be heard before a

decision is taken. It will be open to the petitioners to produce such materials to substantiate their contentions which will be adverted to by the respondents while taking a decision. To enable the above exercise, the impugned orders are quashed.

The writ petition is allowed as above.