

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

FRIDAY, THE 14TH DAY OF JANUARY 2022 / 24TH POUSHA, 1943

OP (KAT) NO. 13 OF 2022

AGAINST THE ORDER/JUDGMENT IN OA 350/2017 OF KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS:

- 1 THE DIRECTOR OF GENERAL EDUCATION/ PUBLIC INSTRUCTIONS,
OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS, JAGATHY,
THIRUVANANTHAPURAM, PIN-695 014
 - 2 THE DEPUTY DIRECTOR OF EDUCATION,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM,
CIVIL STATION, KAKKANAD, KOCHI, PIN-682 030
 - 3 THE TREASURY OFFICER,
PENSION PAYMENT TREASURY, ERNAKULAM, PIN-682 012
- BY ADV GOVERNMENT PLEADER

RESPONDENTS:

- 1 SHERLY THOMAS
AGED 58 YEARS
W/O. K.P.THOMAS, RESIDING AT 'KONNOTH HOUSE',
PERUMANOOR P.O., KOCHI, ERNAKULAM, PIN-682 015
- 2 SUMITHRA.K.THOMAS
AGED 30 YEARS
D/O. K.P.THOMAS, RESIDING AT 'KONNOTH HOUSE',
PERUMANOOR P.O., KOCHI, ERNAKULAM, PIN-682 015
- 3 JISHNU.K.THOMAS,
AGED 24 YEARS
S/O. K.P.THOMAS, RESIDING AT 'KONNOTH HOUSE',
PERUMANOOR P.O., KOCHI, ERNAKULAM, PIN-682 015

ADV SRI.P.NANDAKUMAR

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 14.01.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ALEXANDER THOMAS & VIJU ABRAHAM, JJ.

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OP(KAT) No.13 of 2022

(against the order dated 02.12.2019 in OA No.350/2017 of the KAT, TVPM Bench)

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Dated this the 14th of January, 2022

J U D G M E N T

Alexander Thomas, J.

The respondents herein have preferred the instant Ext.P1 Original Application OA No.350/2017 before the Kerala Administrative Tribunal, Thiruvananthapuram Bench, with the following prayers:

“(i) To call for the records leading to Annexure A10 and quash the same.

(ii) To issue direction to the respondents to release the entire amount of DCRG due to the applicant as per Annexure A1 forthwith.

(iii) To direct the respondents 1 and 2 to pay 12% interest till the DCRG amount is disbursed to the applicant.

(iv) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The Tribunal after hearing both sides has rendered the impugned Ext.P7 final order on 02.12.2019, finally disposing of the said OA No.350/2017. That it is clear from the admitted pleadings and materials on record that the alleged liabilities has turned out to be nil liabilities and hence the respondents in the OA are now obliged to pay interest at the rate of 7% on the belated payment of DCRG, (Death Cum Retirement Gratuity), for the period from 08.07.2014 to the date of actual payment. It is this final verdict of the Tribunal at Ext.P7 in the above said OA that is under challenge in the instant Original Petition filed at the behest of the Director

of Public Instructions and the other Departmental Officials concerned of the Education Department. The prayers in the instant Original Petition filed under Articles 226 and 227 of the Constitution of India are as follows:

- “1. To set aside the Ext.P7 order of the Kerala Administrative Tribunal in OA No.350/2017.*
- 2. To dismiss the Ext.P1 Original Application No.350/2017 filed by the Respondent before the KAT.*
- 3. To declare that the Respondent is not eligible to get the interest at the rate of 7% awarded by the Tribunal in Ext.P7 order.*
- 4. Any other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

3. Heard Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the petitioners in the OP/respondents in the OA and Sri.P.Nandakumar, learned Counsel appearing for the sole respondent in the OP/legal heir of the diseased applicant in the OA. The instant OA was filed by the diseased husband of the sole respondent herein. It appears that after the rendering of the impugned Ext.P7 verdict, the Original Applicant has died and hence his widow, as the legal heirs of the diseased Original Applicant, has been impleaded in this OP as the respondents herein (widow and children who are the legal heirs of the diseased Original Applicant). Hence, his widow and his children, who are his legal representatives have been arrayed as respondents in this OP. For the sake of convenience, the diseased pensioner will be referred for short as the Original Applicant.

4. The Original Applicant retired from service as Senior Superintendent from the Education Department of the Government of

Kerala on 31.12.2013. The payment of DCRG due to him was delayed by the Departmental Authorities citing the ground of liability fixation process. Hence, the Original Applicant had voluntarily submitted and executed an indemnity bond, as conceived in Rule 116 of the KSR Part III for release of the DCRG. The said plea for release of DCRG, in spite of execution of indemnity bond by the applicant was refused by the Departmental authorities concerned. It appears that R2 in the OA, (Deputy Director of Education) had initially issued Annexure A5 and Annexure A6 notices, both dated 27.01.2016 to the applicant regarding certain liabilities proposed to be fixed against him. Thereafter R2 in the OA has issued Annexures A7 and A8 orders, both dated 23.03.2016, fixing and directing certain liabilities on different Officers, including the Applicant. It is after this process that R1 in the OA (DPI) has issued Annexure A10 dated 29.11.2016 styling it as a liability certificate, alleging that the total liability fixed against the petitioner is Rs.11,65,605/-. It appears that the Original Applicant has preferred appeals against the liabilities fixed as per Annexures A7, A8 etc and after consideration of those appeals, Annexure A11 dated 08.11.2018 has been issued by R1 in the OA (DPI), holding that the only liability alleged therein is Rs.9,634/-. Thereafter, it has been ordered by the respondents in the OA that even the said liability of Rs.9634/- is not in existence and cannot be fixed against the applicant, about which factual aspects are admitted in Annexure MA1 proceedings dated 27.07.2018,

issued by R1 in the OA (DPI) (see pages 95 to 99 of the paperbook of this OP). This aspect of the matter that the re-fixed liability of Rs.9634/- has also been later withdrawn and that there is nil liability against the Original Applicant has been conceded by the respondents in the OA before the Tribunal as can be seen from paragraph no.6 of the impugned Ext.P7 verdict. Thus a huge amount of Rs.11,65,605/- alleged as liability against the Original Applicant has been reduced to nil liability. True that it is in this background, the Tribunal has said that the applicant is entitled for interest atleast at the rate of 7% p.a. for the period from 18.07.2014(date of execution of indemnity Bond by the original applicant) etc. True that the liability is originally fixed against the petitioner as referred to in Annexures A7 and A8 dated 23.03.2016 and totally computed and finalized as per Annexure A10 dated 29.11.2016 had been so ordered within the statutory outer time limit of three years from the date of retirement as mandated in Note 3 to Rule 3 Part III KSR inasmuch as the applicants had retired from service on 31.12.2013, but appeals had been preferred by the Original Applicant against the liabilities alleged in Annexures A7, A8 and A11 and the higher authority (R1 in the OA ie, DPI) has allowed those appeals and the liability was reduced from Rs.11,65,605/- to Rs.9634, which was later withdrawn as can be seen from Annexure MA1 and paragraph no.6 of the impugned verdict. The main contention urged by the petitioners in the OP is that certain delay has occurred on the part of the diseased pensioner in

not immediately responding to the notices fixing liability and further that the appeals have been preferred belatedly etc. But the fact of the matter is that huge alleged liabilities to the tune of Rs.11,65,605/-, alleged in Annexures A7, A8 and A10 etc has been reduced to cipher by none other than the respondents in the OA. Hence it can be seen that even going by the conceded version of the respondents in the OA, there is no real substantial basis for them to allege such huge liabilities against the diseased pensioner. Hence, the decision taken in the appeals will relate back to the original proceedings and it goes without saying that the liabilities alleged against the petitioner will be nil liability. This process should have been finalized by the Departmental authorities, well before the retirement of the petitioner/applicant at any rate immediately thereafter. Nothing prevented the respondents in the OA to atleast release the DCRG amount due to the petitioner after he had submitted indemnity bond on 18.07.2014 , which is permitted by Rule 116 of KSR Part III. In the light of these aspects, the findings made by the Tribunal that the Original Applicant is entitled for interest at the rate of 7% p.a., atleast from 18.07.2014 (date of submission of indemnity bond), upto the date of actual payment, cannot be seriously faulted by us. We are told that the DCRG amount was released to the petitioner only on 11.12.2018. We are told by Sri.P.Nandakumar, learned Counsel appearing for the respondents in the OP/applicant in the OA that full amount of DCRG deducted to the amount of Rs.9634/- was released to

the Original Applicant only on 11.12.2018. In view of the admitted stand of the respondents in the OA, the Tribunal was also right in directing that the said withheld amount of Rs.9634/- is also released to the applicant. So we see grounds to interfere with the well considered verdict of the Tribunal.

For these reasons, the petition fails and the Original Petition will stand dismissed.

Sd/-

ALEXANDER THOMAS

JUDGE

Sd/-

VIJU ABRAHAM

JUDGE

Nsd

APPENDIX OF OP (KAT) 13/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE OA 350/2017 ALONG WITH ANNEXURES
ANNEXURE A1	TRUE COPY OF VERIFICATION REPORT DATED 09.07.2014
ANNEXURE A2	TRUE COPY OF INDEMNITY BOND DATED 18.07.2014 EXECUTED BY THE HUSBAND OF THE FIRST RESPONDENT
ANNEXURE A3	TRUE COPY OF AWARDING LETTER DATED 18.07.2014 OF ASSISTANT EDUCATIONAL OFFICER, ERNAKULAM
ANNEXURE A4	TRUE COPY OF LETTER DATED 12.02.2015 ISSUED BY THE FIRST PETITIONER TO THE SECOND PETITIONER
ANNEXURE A5	TRUE COPY OF THE NOTICE NO.OA6/22933/2012 DATED 27.01.2016 ISSUED BY THE SECOND PETITIONER
ANNEXURE A6	TRUE COPY OF THE NOTICE NO.OA6/17708/2013 DATED 27.01.2016 ISSUED BY THE SECOND PETITIONER
ANNEXURE A7	TRUE COPY OF THE PROCEEDINGS NO.OA 6/22933/12 DATED 23.03.2016 OF THE SECOND PETITIONER
ANNEXURE A8	TRUE COPY OF THE PROCEEDINGS NO.OA 6/17708/13 DATED 23.03.2016 OF THE SECOND PETITIONER
ANNEXURE A9	TRUE COPY OF THE LETTER NO.PB2/93012/2013/DPI DATED 02.12.2016 ISSUED BY THE FIRST PETITIONER TO THE THIRD PETITIONER
ANNEXURE A10	TRUE COPY OF THE LIABILITY CERTIFICATE DATED 19.11.2016 ISSUED BY THE FIRST PETITIONER
Exhibit P2	TRUE COPY OF THE REPLY STATEMENT FILED BY THE SECOND PETITIONER ON 27.07.2017

Exhibit P3	TRUE COPY OF THE REPLY STATEMENT FILED BY THE FIRST PETITIONER ON 31.07.2017
Exhibit P4	TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE SECOND PETITIONER ON 12.10.2017
Exhibit P5	TRUE COPY OF THE MISCELLANEOUS APPLICATION NO.2178/2018 FOR ADMISSION OF ANNEXURE MA1 AS ADDITIONAL DOCUMENT
ANNEXURE MA1	TRUE COPY OF THE ORDER A.W. (C4)/69621/2017/DPIK.DIS DATED 27.07.2018 ISSUED BY THE FIRST PETITIONER
Exhibit P6	TRUE COPY OF THE REJOINDER ON 16.10.2018 ALONG WITH ANNEXURES
ANNEXURE A11	TRUE COPY OF LIABILITY CERTIFICATE ISSUED BY THE FIRST PETITIONER DATED 13.11.2018 RECEIVED VIDE LETTER NO.PB2/93012/2013/DPI
ANNEXURE A12	TRUE COPY OF ORDER NO.OA6/9303/2012 DATED 24.11.2014 ISSUED BY THE SECOND PETITIONER
Exhibit P7	TRUE COPY OF THE FINAL ORDER OF THE KERALA ADMINISTRATIVE TRIBUNAL DATED 02.12.2019 IN THE AFORESAID ORIGINAL APPLICATION