

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA, 1944

WP(C) NO.694 OF 2022

PETITIONERS :-

- 1 CHERIAN VARGHESE,
 (RETIRED CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM),
 ADATTE MADOM, THURUTHICADE P.O., MALLAPPALLY,
 PATHANAMTHITTA.
- 2 R.SUPRABHA,
 (RETIRED DISTRICT JUDGE, FAMILY COURT, NEDUMANGAD),
 ASA BUILDING, CHANTHAVILA, NEDUMANGAAD P.O.,
 THIRUVANANTHAPURAM DISTRICT.
- 3 S.S.VASSAN,
 (RETIRED PRINCIPAL DISTRICT JUDGE, MANJERI),
 GEETHA, TRA 81, THOZHUVANCODE TEMPLE LANE,
 VATTIYOORKAVU P.O., THIRUVANANTHAPURAM DISTRICT-695 013.
- 4 NARAYANAN.R.,
 (RETIRED DISTRICT JUDGE, MACT, PATHANAMTHITTA),
 PUTHENPURAYIL HOUSE, MEVELLORE P.O., VAIKOM TALUK,
 KOTTAYAM DISTRICT-686 609.
- 5 R.REGHU,
 (RETIRED PRINCIPAL DISTRICT JUDGE, THALASSERY, KANNUR),
 CHENNATTU HOUSE, KULASEKHARAMANGALAM, VAIKOM,
 KOTTAYAM DISTRICT-686 608.
- 6 K.DHARMAJAN,
 (RETIRED DISTRICT JUDGE), SREEPADAM,
 OORUTTUKALA, NEYYATTINKARA P.O.,
 THIRUVANANTHAPURAM DISTRICT-695 121.
- 7 S.SOMAN,
 (RETIRED ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
 KOTTAYAM), SAUPARNIKA, MARU, NORTH ALUMKADAVU P.O.,
 KARUNAGAPPALLY, KOLLAM DISTRICT.
- 8 S.SHAJAHAN,
 (RETIRED DISTRICT JUDGE), SHARON VILLA,
 VALACODU P.O., PUNALUR-691 331.
- 9 P.M.ABDUL SATHAR,
 (RETIRED DISTRICT JUDGE), PALLIPPATT HOUSE,
 NCC ROAD, THURAVOOR P.O., ALAPUZHA DISTRICT.

- 10 P.C.PAULACHEN,
(RETIRED DISTRICT JUDGE), PONTHEMPILLY HOUSE,
CHENGAL, KALADY P.O., ERNAKULAM DISTRICT-683 574.
- 11 SANTHOSHKUMAR.S.,
(RETIRED SPECIAL JUDGE (SPE/CBI) COURT NO.1,
KALOOR, ERNAKULAM), KALABHAM, MINI COTTAGE,
PADINJAREKKARA P.O., VAIKOM,
KOTTAYAM DISTRICT-686 146.
- 12 FELIX MARYDAS,
(RETIRED DISTRICT JUDGE), MARET VADAKETHOP, PUTHUSSERY
SOUTH P.O., MALLAPPALLY,
PATHANAMTHITTA DISTRICT.
- 13 M.SASIKUMAR,
(RETIRED DISTRICT JUDGE), MADAVIKA,
PALLOM P.O., KOTTAYAM DISTRICT.
- 14 P.S.ANANTHA KRISHNAN,
(RETIRED DISTRICT JUDGE), NANDANAM, PARAKOTE LANE,
PATTURAIKAL, THRISSUR DISTRICT-680 022.
- 15 VASANTHA KUMARI.G.,
(RETIRED DISTRICT JUDGE), VNRAC, 246,
BETHELEHAM, SABEER LANE, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM DISTRICT-695 013.
- 16 D.AJITHKUMAR,
(RETIRED PRINCIPAL DISTRICT JUDGE),
PEARL VILLA, JAYALAKSHMI ROAD, CHIRAKKAL P.O.,
PALLIKKULAM, KANNUR-670 011.
- 17 K.P.JOHN,
(RETIRED PRINCIPAL DISTRICT JUDGE),
LIZ VILLA, PEARL PARK, AYYANTHOLE, THRISSUR-03.
- 18 M.V.GEORGE,
(RETIRED DISTRICT AND SESSIONS JUDGE), VELLARAMKUNNIL,
BHAGAT SINGH NAGAR K.11, MUKKOLAKKAL P.O.,
THIRUVANANTHAPURAM DISTRICT-695 043.
- 19 N.RAVISANKAR,
(RETIRED DISTRICT JUDGE), RESMI, ARUVIPPURAM P.O.,
NEYYATTINAKRA, THIRUVANANTHAPURAM DISTRICT-695 126.
- 20 Y.THAJUDEEN KOYA,
(RETIRED ADDL.DISTRICT AND SESSIONS JUDGE),
HAPPY DALE, CHANDANTHOPE P.O., KOLLAM DISTRICT-691 014.

21 GOPAKUMAR.A.K. ,
(RETIRED DISTRICT JUDGE (SELECTION GRADE) , MACT, PUNALUR) ,
MOLIYOORKONAM KATTAKKADA, KATTAKKADA P.O. ,
THIRUVANANTHAPURAM DISTRICT-695 572.

22 P.D.DHARMARAJ,
(RETIRED DISTRICT JUDGE, FAMILY COURT, KASARAGODE) , JAI
BAHVAN, PALLIVILA, KARUMANOOR, PARASSALA, PARASSALA P.O. ,
THIRUVANANTHAPURAM DISTRICT-695 502.

BY ADVS.
JACOB P.ALEX
JOSEPH P.ALEX
MANU SANKAR P.
AMAL AMIR ALI

RESPONDENTS :-

1 STATE OF KERALA,
REPRESENTED BY ITS ADDL.CHIEF SECRETARY,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.

2 ACCOUNTANT GENERAL (A & E) ,
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFFICE OF THE ACCOUNTANT GENERAL (A & E) , MG ROAD, PB
NO.5607, THIRUVANANTHAPURAM, PIN-695 001.

3 HIGH COURT OF KERALA REPRESENTED BY
ITS REGISTRAR (SUBORDINATE JUDICIARY) ,
HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031.

BY ADVS.
SRI.ELVIN PETER P.J.
SRI.N.MANOJ KUMAR, STATE ATTORNEY
SRI.K.R.RANJITH, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2022, ALONG WITH WP(C).6098/2022, 12888/2022, 13336/2022 AND
17016/2022, THE COURT ON 18.01.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA, 1944

WP(C) NO.6098 OF 2022

PETITIONERS :-

- 1 THOMAS PALLICKAPARAMPIL, AGED 69 YEARS
RETIRED DISTRICT JUDGE, S/O.MANI GEORGE,
EVA'S HOUSE, RIVER GATE VILLAS, MANAKKAD P O,
THODUPUZHA, PIN-685 608.
- 2 K.GEORGE OOMMEN, AGED 65 YEARS,
RETIRED DISTRICT JUDGE, S/O.GEORGE K.OOMMEN,
KALAMANNIL HOUSE, 11/281(1), CRASH ROAD,
VAZHAKKALA, ERNAKULAM, KOCHI-682 021.

BY ADVS.
MATHEW SKARIA
JOY JOSEPH (MANAYATHU)
THOMAS MATHEW (KOPPARA)

RESPONDENTS :-

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA, PIN-695 001.
- 2 THE ACCOUNTANT GENERAL (A & E)
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFFICE OF THE ACCOUNTANT GENERAL (A & E),
THIRUVANANTHAPURAM, KERALA, PIN-695 001.
- 3 THE HIGH COURT OF KERALA,
REPRESENTED BY ITS REGISTRAR (DISTRICT JUDICIARY),
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.

BY ADVS.
SRI.K.R.RANJITH, GP
SRI.ELVIN PETER P.J.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2022, ALONG WITH WP(C).694/2022 AND CONNECTED CASES, THE COURT
ON 18.01.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA, 1944

WP(C) NO.12888 OF 2022

PETITIONER :-

SUNDARAM GOVIND, AGED 69 YEARS
S/O.LATE SUNDARAM NAIR, MANU MAYA,
EAST KADUNGALLOOR, ALUVA, PIN - 683 102

BY ADVS.
M.R.HARIRAJ
VISWAJITH C.K
GISHA G. RAJ
REJIVUE K.C.
VIDYA A.K
ALINA ANNA KOSE

RESPONDENTS :-

- 1 THE STATE OF KERALA REPRESENTED BY ITS PRINCIPAL
SECRETARY TO DEPARTMENT OF HOME GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001
- 2 THE ACCOUNTANT GENERAL (A & E)
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFFICE OF THE ACCOUNTANT GENERAL (A&E)
M.G. ROAD, P.B. NO. 5607,
THIRUVANANTHAPURAM, PIN - 695 001
- 3 THE HIGH COURT OF KERALA
REPRESENTED BY ITS REGISTRAR (DISTRICT JUDICIARY)
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031

BY ADVS.
SRI.K.R.RANJITH, GP
SRI.ELVIN PETER P.J.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23.11.2022, ALONG WITH WP(C).694/2022 AND CONNECTED CASES,
THE COURT ON 18.1.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA, 1944

WP(C) NO.13336 OF 2022

PETITIONERS :-

- 1 KERALA JUDICIAL OFFICERS' ASSOCIATION
DISTRICT COURT ANNEX, KALOOR, ERNAKULAM - 682 017,
REPRESENTED BY ITS SECRETARY.
- 2 PRAMOD MURALI, AGED 45 YEARS
S/O.P.K. MURALEEDHARAN, PRINCIPAL MUNSIF ERNAKULAM,
RESIDING AT PRAYAGA, VELLAKKINAR, ALAPPUZHA - 688 001,
NOW RESIDING AT VILLA NO. 16, NEPTUNE COUNTRY,
PANDARACHIRA ROAD, KOCHI, ERNAKULAM - 682 020.

BY ADVS.

K.JAJU BABU (SR.)

M.U.VIJAYALAKSHMI

BRIJESH MOHAN

SACHIN RAMESH

T.S.ATHIRA

ARAVIND T RAMESH

RESPONDENTS :-

- 1 STATE OF KERALA REPRESENTED BY
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE HIGH COURT OF KERALA, KOCHI - 682 031, REPRESENTED BY
THE REGISTRAR GENERAL.
- 3 THE PRINCIPAL ACCOUNTANT GENERAL (AUDIT/A & E) KERALA,
THIRUVANANTHAPURAM - 695 001.

BY ADVS.

SRI.K.R.RANJITH, GP

SRI.B.G.HARINDRANATH

SRI.AMITH KRISHNAN H.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2022, ALONG WITH WP(C).694/2022 AND CONNECTED CASES, THE COURT
ON 18.01.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA, 1944

WP(C) NO.17016 OF 2022

PETITIONER :-

B RANJIT KUMAR, AGED 70 YEARS
S/O. LATE K.A. BHASKARAN, RETD. PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL (SEL. GRADE), 404,
GOVIND APARTMENTS, KALATHIPARAMBIL ROAD, KOCHI
PIN - 682 016

BY ADVS.
ENOCH DAVID SIMON JOEL
RONY JOSE
S.SREEDEV
LEO LUKOSE
SUZANNE KURIAN
CIMIL CHERIAN KOTTALIL

RESPONDENTS :-

- 1 STATE OF KERALA REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY, DEPARTMENT OF HOME,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001
- 2 THE ADDITIONAL CHIEF SECRETARY (FINANCE),
DEPARTMENT OF FINANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001
- 3 THE ACCOUNTANT GENERAL (A&E)
OFFICE OF THE ACCOUNTANT GENERAL (A & E),
KERALA, THIRUVANANTHAPURAM, PIN - 695 001

BY SRI.K.R.RANJITH, GP
BY SRI.B.G.HARINDRANATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.11.2022, ALONG WITH WP(C).694/2022 AND CONNECTED CASES, THE COURT
ON 18.1.2023 DELIVERED THE FOLLOWING:

'CR'

JUDGMENT

W.P.(C) Nos.694, 6098, 12888, 13336 & 17016 of 2022

Dated this the 18th day of January, 2023

The petitioners in these writ petitions are judicial officers who are either working or have retired from service as District and Sessions Judges. The 1st petitioner in W.P.(C) No.13336/2022 is the Kerala Judicial Officers Association. The substantial prayers in these writ petitions is with regard to re-fixation of pension payable to the petitioners and members of the Association by reckoning special pay which is paid to them as part of their emoluments. The documents are being referred to in this judgment as in W.P.(C) No.694/2022 for convenience, unless otherwise specifically mentioned.

2. Heard Sri.Jaju Babu, the learned Senior Counsel appearing for the petitioners in W.P.(C) No.13336/2022, Sri.Jacob P. Alex, the learned counsel appearing for the petitioners in W.P.(C) No.694/2022, Sri.Mathew Skaria, the learned counsel appearing for the petitioners in W.P.(C) No.6098/2022, Sri.Hariraj Madhav Rajendran, the learned counsel appearing for the petitioner in W.P.(C) No.12888/2022

and Sri.Enoch David Simon Joel, the learned counsel appearing for the petitioner in W.P.(C) No.17016/2022, Sri.K.R.Ranjith, the learned Government Pleader and Sri.B.G.Harindranath and Sri.Elvin Peter P. J., the learned counsel appearing for the High Court of Kerala.

3. The learned Senior Counsel appearing for the petitioners in W.P.(C) No.13336/2022 submits that all the individual petitioners in these batch of writ petitions except the 2nd petitioner in W.P.(C) No.13336/2022 are retired judicial officers who were receiving special pay at the time of their retirement. The dispute is with regard to counting of the said special pay as well as the Dearness Allowance receivable thereon while calculating the pension and pensionary benefits due. The learned Senior Counsel would contend that the orders passed by the Government treating special pay as a special allowance and that it need not be reckoned for the purpose of fixation of pensionary benefits is *per se* against the directions issued of the Apex Court in the decision reported in **All India Judges Association and ors. v. Union of India and ors.** [(2002) 4 SCC 247]. It is submitted that the said action is violative of Exts.P6 and P7 judgments of this Court where the

refusal to reckon the special pay for pensionary benefits by Ext.P5 order had been set aside by this Court which had been affirmed in appeal. It is submitted that after declaration of law by this Court in Exts.P6 and P7 judgments, it was not open to the Government to pass an order granting the benefits to the petitioner in the writ petition alone as a special case and to deny the benefit to identically situated persons.

4. It is submitted that in compliance with the judgment in All India Judges Association case [(2002) 4 SCC 247], the 1st respondent implemented many of the recommendations of the Shetty Commission by issuing GO (MS) No.231/2001/Home dated 12-12-2001. However, the implementation was not complete and the Supreme Court, by its order dated 20.7.2006, pointed out the shortcomings in the orders issued by the State Governments and directed the Chief Secretaries to rectify them. Thereafter, by Ext.P1 Government Order dated 30-08-2006 additional benefits in accordance with the recommendations of the Pay Commission were granted to members of the District Judiciary. In Ext.P1, it was specifically stated as follows :-

“Special Pay

9. Decision on payment of special pay will be taken urgently on the Hon'ble High Court of Kerala's proposal on evolving the principle in the matter (as directed by the Hon'ble Supreme Court of India), received only on 28/8/06 vide reference cited sixth above.”

It was further provided in Ext.P1 that 50% of the last pay drawn shall be the pension.

5. It is submitted that on 28.3.2009, the Hon'ble Supreme Court vide separate order appointed Justice E. Padmanabhan as One Man Commission to determine the Pay, Allowances and Pension of serving and retired Judicial Officers. With regard to quantum of pension and calculation, the Commission, in paragraph 34(b) recommended to follow the recommendation of Shetty Commission. It is stated that as per order dated 4-5-2010, the Hon'ble Supreme Court directed all the State Governments to implement the recommendations of the Justice E.Padmanabhan Commission Report with effect from 1.1.2006. In compliance with the said direction, the 1st respondent issued Ext.P2 Government Order dated 7.5.2010 and thereafter, Ext.P3 Government Order dated 2.11.2010 determining the pension and allowances. It is submitted that

in Ext.P3 also, it is stated that the quantum of pension will be 50% of the last pay drawn.

6. It is submitted that a Government Order had been issued on 31.10.2006 on the proposal forwarded by the High Court sanctioning 'special allowance' for extra administrative work (special pay) with effect from 1.9.2006. The rates of special pay were provided in the Government Order. All the petitioners were receiving special pay at the time of their retirement on the basis of the said order. A Government Order was issued on 29.11.2010 which is produced as Ext.P5 along with W.P.(C) No.694/2022 ordering that the special pay for extra administrative work sanctioned as per Government Orders dated 31.10.2006 and 20.5.2009 will count for all purposes except for fixation of pay and for reckoning pensionary benefits.

7. This was challenged by a judicial officer before this Court by filing W.P.(C) No.36379/2017. The petitioner had prayed that the special pay received by him should be counted as pay for the purpose of calculation of his pension. This Court considered the contentions and found that Rule 12(23) of Part I KSR defines 'pay' which includes 'personal pay' and 'special

pay'. Rule 12(31) of Part I KSR specifically defines 'special pay'. Rule 62 of Part III KSR defines 'emoluments' comprising pay as defined in Rule 12(23) of Part I KSR as well and dearness pay. Considering the contentions raised on either side, this Court found that Ext.P10 order dated 29.11.2010 and Ext.P9 letter of the Senior Accounts Officer are untenable and that the petitioner is entitled to reckon special pay received prior to retirement as part of his pay and for calculation of pension accordingly.

8. The said judgment was taken in appeal and confirmed by Ext.P7 where the Division Bench specifically considered all the contentions raised and held that financial constraints are not a justifiable reason that can be raised for not granting the due benefits to judicial officers who are carrying out the essential judicial functions of the republic. It was held that special pay being a part of pay should be considered for calculation of pension as well. It is submitted that thereafter, Ext.P9 order was passed referring to the judgments, but according sanction to recalculate the pensionary benefit in respect of the petitioner alone as a special case for the "limited purpose of complying with the

judgment of the Hon'ble High Court and it shall not be a precedent for admitting such claims in future”.

9. The learned Senior Counsel for the petitioners submits that in the light of the declaration of law by this Court in the judgments, the act of the Government in limiting the benefit to the petitioner in that case alone is an affront to the orders and authority of this Court. It is contended that the specific order which directed the treating of the special pay as special allowance having been set aside by this Court, the Government had absolutely no justification in not treating the special pay drawn by all judicial officers, who were entitled to the same as part of pay for the purpose of pension and that the refusal to do so is completely unsustainable.

10. The learned Senior Counsel also placed reliance on a judgment of this Court in **Abraham Mathew K and others v. State of Kerala and others** [2012 (1) KLT 280]. This Court held that the National Judicial Commission did not decide the issue with regard to payment of special pay to judicial officers for the reason that the Commission was having no sufficient data/materials in this regard. The task of evolving a policy/principle for paying special pay to eligible judicial

officers who had considerable administrative work outside court hours was left for the High Court to decide. Therefore, once the High Court had decided that special pay is to be granted to judicial officers who perform additional administrative work, the Government could not deny the benefits to such officers found eligible by the respective High Courts.

11. Adv. Jacob P. Alex, the learned counsel appearing for the petitioners in W.P.(C) No.694/2022 would also rely on the decision of the Apex Court in **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others** [(2015) 1 SCC 347] to contend that when a particular set of employees is given relief by the court all other identically situated persons need to be treated alike by extending the same benefit and not going so would amount to discrimination and would be violative of Article 14 of the Constitution of India. The decision of a learned Single Judge of this Court in **Amrut Distilleries Ltd. (M/s.), Palakkad v. State of Kerala and others** [2015 (3) KHC 154] is also relied on by the learned counsel to contend that though a particular judgment is not in *rem*, the principle decided therein squarely applies to similarly placed persons

under all situations and that they could not be compelled to approach the court inviting the self-same order once again, which is nothing but duplication of judicial work.

12. Detailed counter affidavits have been placed on record by respondents 2 and 3 in W.P.(C) No.694/2022. It is stated at paragraphs 4, 5, 6 and 7 of the counter affidavit filed by the 3rd respondent as follows :-

“4. As per the recommendations of Shetty Commission, special pay is sanctioned to “Such of those judicial officers who have considerable administrative work outside court hours”. The High Court, after considering the nature of duties attached to each category of officers in the state Judiciary, had identified that the presiding officers of Principal Courts and independent courts with filing owners are attending administrative work after the office hours and are therefore eligible for special Pay. The Government, vide G.O.(MS) No.181/2006/Home dated 31.10.2006 had sanctioned Special Allowance for extra administrative work to Judicial Officers, as proposed by the High Court. True copy of the G.O.(MS) No. 181/2006/Home dated 31.10.2006 is produced herewith and marked as Exhibit-R3(a). Later, the Government as per G.O. (MS) No. 76/2010/Home dated 23.03.2010, renamed the “Special Allowance for extra administrative work” as Special Pay and ordered that the same shall be treated as Special Pay for all purposes. True copy of the G.O.(MS) No. 76/2010/Home dated 23.03.2010 is produced herewith and marked as Exhibit R3(b).

5. Subsequently, the Government, based on the intimation received from the Accountant General that at the time of fixation of pay on cadre to cadre promotion and also on fixation of pay on granting Assured Career Progression scales of pay, reckoning of special Allowance as Special Pay might lead to junior-senior anomaly and other such issues, ordered that Special Pay for extra administrative work will count for all purposes, except for fixation of pay and for reckoning pensionary benefits. True copy of the G.O.(MS) No.262/2010/Home dated 29.11.2010 is produced herewith and marked as Exhibit-R3(c).

6. It may be noted that, as per Government order dated 31.10.2006, only certain posts of Judicial Officers in the Subordinate Judiciary are sanctioned Special Pay. Thus, all officers in the cadre of District and Sessions Judge and Chief Judicial Magistrates/Sub Judges do not enjoy the benefit of Special Pay. Moreover, seniority is not a criterion for posting officers to such posts.

7. Hence, if Special Pay is reckoned for pensionary benefits, a junior officer enjoying the benefit of Special Pay might get higher pensionary benefits than a senior who does not enjoy the benefit of Special Pay, for the sole reason that he was not holding the post of Presiding Officer of a Principal Court/Independent Court with filing powers, at the time of his retirement. Moreover, all Officers may opt to retire from such posts which may lead to administrative inconvenience and unhealthy competition among Officers.”

13. The 1st respondent has also placed a counter affidavit on record, wherein the same contentions as had been taken in

the earlier round of litigation are reiterated. It is stated at paragraph 8 of the counter affidavit as follows :-

“8. It is submitted that Government as per G.O.(MS) No.181/2006/Home dated 31.10.2006 have accorded sanction for special allowance for extra administrative work for various categories of judicial officers. Later as G.O.(MS) No.76/2010/Home dated 23.03.2010, the name of this perk has been changed as special pay and counted for all purposes. This benefits has been extended to judicial officers who are working on deputation. As per G.O.(MS) No.262/2010/Home dated 29.11.2010 Government have ordered that the special pay for extra administrative work will count for all purpose if special pay is reckoned for fixation, it would lead to various anomalies, namely junior-senior and anomaly in pensionary benefits. The special allowance for extra administrative work sanctioned as per G.O.(MS) No.181/2006/Home dated 31.10.2006 which later renamed as special pay will not come under the purview of special pay defined in Rule 12(31) Part I KSRs. Hence vide G.O. (MS) No.48/2022/Home dated 14.03.2022 renaming the Special pay as Special Allowance by amending the orders issued in G.O. (MS) No.181/2006/Home dated 31.10.2006 and G.O.(MS) No.175/2011/Home dated 08.08.2011. If the judicial officer is the head of office to which he is attached, then only eligible for Special Pay subjected to conditions in G.O. dated 31.10.2006. If the petitioners in the Writ Petitions are the head of office to which he is attached, then only eligible for Special Pay subject to the conditions in G.O. dated 31.10.2006.”

The petitioners have also produced Government Order dated 23.3.2010, a communication dated 8.6.2010 as well as a later Government Order dated 14.3.2022 stating that the special pay

sanctioned to judicial officers is to be treated as special allowance.

14. The learned counsel appearing for the petitioners contends that the action of the respondents in issuing Government Orders which are completely at variance with the directions contained in the judgment of this Court amounts to an open challenge to the orders and authority of this Court and that the said directions are completely illegal and violative of the directions of this Court.

15. I have considered the contentions advanced. This Court in the earlier round of litigation had specifically considered the nature of the special pay granted to judicial officers pursuant to the directions of the Shetty Commission. It was found that special pay would come within the definition of pay under Rule 12(23). Special Pay is a benefit which is granted to officers posted in specific posts having administrative responsibilities for the extra work which is done by them. The argument that grant of special pay to some officers will lead to a junior-senior anomaly had been agitated in the earlier litigation also but did not find favour with this Court. The argument cannot be sustained for a moment in

view of the fact that the principles on which a difference in pay between a senior and junior is to be considered to be an anomaly are provided in the very same Rule itself. Grant of special pay for administrative duties would not, by any stretch of imagination, result in any junior-senior anomaly since it is a special emolument given for extra work done.

16. The Division Bench in Ext.P7 judgment specifically held that the whole problem has arisen on account of the subjective understanding of the Accountant General that the grant of special pay will lead to senior-junior anomaly in the grant of pensionary benefits. After considering all the contentions, it was held by the Division Bench as follows :-

“15. The upshot of the above discussion is that the learned Single Judge is fully right in taking the view, as per the impugned judgment dated 28.03.2019, that rejection of the claim of the petitioner, as per Ext.P9 on the basis of the legally flawed understanding discernible from Ext.P10, is a grave illegality, which would deserve interdiction in the judicial review proceedings. Hence, the learned Single Judge is right in setting aside the impugned orders and issuing the mandatory directions to the respondents in the W.P(C)/appellants herein to grant the benefits by reckoning the special pay given to the writ petitioner while holding the post of University Appellate Tribunal, as part of his pay for the purpose of computing his pension and pensionary benefits. We hope and trust that the appellants would put a

quietus to this issue, so that, objections of this nature are not unnecessarily raised as against the judicial officers concerned.”

The impugned orders passed by the Government, without considering the declaration of law by this Court, are completely unsustainable. The contention of the respondents that special pay cannot be reckoned for the purpose of fixation of pension is without any merit whatsoever. The said contentions are repelled. The orders and letters impugned in these writ petitions are, therefore, set aside. It is declared that the special pay granted to judicial officers is a part of their pay and that it is to be reckoned for the purpose of calculation of pension. The respondents shall take appropriate steps to see that the pension of the judicial officers who drew special pay at the time of their retirement is revised and the arrears are disbursed to them forthwith, at any rate, within three months from the date of receipt of a copy of this judgment.

These writ petitions are ordered accordingly.

**Sd/-
ANU SIVARAMAN
JUDGE**

APPENDIX OF WP(C) 694/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF GO(MS) NO.157/2006/HOME DATED 30.08.2006.
- Exhibit P2 TRUE COPY OF THE GO(MS) NO.106/2010/HOME DATED 07.05.2010.
- Exhibit P3 TRUE COPY OF THE GO(MS) NO.236/2010/HOME DATED 02.11.2010.
- Exhibit P4 TRUE COPY OF THE GO(MS) NO.181/2006/HOME DATED 31.10.2006.
- Exhibit P5 TRUE COPY OF GO(MS) NO.262/2010/HOME DATED 29.11.2010.
- Exhibit P6 TRUE COPY OF THE JUDGMENT DATED 28.03.2019 IN WPC NO.36379 OF 2017 OF THIS HON'BLE COURT.
- Exhibit P7 TRUE COPY OF THE JUDGMENT DATED 04.02.2021 IN WA NO.1925 OF 2019 OF THIS HON'BLE COURT.
- Exhibit P8 TRUE COPY OF THE REPRESENTATION DATED 10.06.2021 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST AND 2ND RESPONDENTS.
- Exhibit P9 TRUE COPY OF THE GO(RT) NO.3250/2021/HOME DATED 23.11.2021.
- Exhibit P10 TRUE COPY OF THE REPRESENTATION DATED 23.12.2021 SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENTS 1 AND 2.
- Exhibit P11 TRUE COPY OF G.O(MS) N. 48/2002/HOME DATED 14/03/2022
- Exhibit P12 TRUE COPY OF TH G.O(MS) NO. 76/2010/HOME DATED 23/03/2010
- Exhibit P13 TRUE COPY OF THE COMMUNICATION BEARING NO. 41046/C3/2008/HOME DATED 08/06/2010 ISSUED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT TO THE 3RD RESPONDENT

APPENDIX OF WP(C) 6098/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 28.03.2019 IN WPC NO.36379/2017 OF THIS HON'BLE COURT.
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 04.02.2021 OF THE DIVISION BENCH OF THIS HON'BLE COURT IN W A NO.1925/2019.
- Exhibit P3 TRUE COPY OF G O (RT) NO.3250/2021/HOME DATED 23.11.2021.
- Exhibit P4 TRUE COPY OF THE REPRESENTATION DATED 16.12.2021 SUBMITTED BY THE 1ST PETITIONER BEFORE THE ADDL.CHIEF SECRETARY, DEPARTMENT OF HOME, GOVERNMENT OF KERALA.
- Exhibit P5 TRUE COPY OF THE REPRESENTATION DATED 31.12.2021 SUBMITTED BY THE 2ND PETITIONER BEFORE THE ADDL, CHIEF SECRETARY, DEPARTMENT OF HOME, GOVERNMENT OF KERALA.

APPENDIX OF WP(C) 12888/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF JUDGEMENT DATED 28.03.2019, IN
W.P.(C) 36379/2017
- Exhibit P2 THE TRUE COPY OF JUDGEMENT DATED 04.02.2021 IN
WRIT APPEAL NO. 1925 OF 2019 (STATE OF KERALA &
ANR. V. P. MURALEEDHARAN AND ANR., 2021 KHC
242) OF THIS HONOURABLE COURT
- Exhibit P3 TRUE COPY OF THE LETTER DATED 18.01.2022
SUBMITTED BY THE PETITIONER
- Exhibit P4 TRUE COPY OF LETTER NO. P9/3/210/389862/663
DATED 4/3/2022 OF 2ND RESPONDENT
- Exhibit P5 A TRUE COPY OF LETTER NO PEN-B3/1/2022-FIN (E-
1987575) DATED 8/2/2022

APPENDIX OF WP(C) 13336/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE GOVERNMENT ORDER GO (MS) NO. 157/2006/HOME DATED 30.08.2006.
- Exhibit P2 TRUE COPY OF THE GOVERNMENT ORDER VIDE GO (MS) NO.181/2006/HOME DATED 31.10.2006.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 05.02.2008 IN ALL INDIA JUDGES ASSOCIATION AND OTHERS VS. UNION OF INDIA PASSED BY THE HON'BLE SUPREME COURT.
- Exhibit P4 TRUE COPY OF THE GOVERNMENT ORDER VIDE GO (RT) NO. 1416/2009/HOME DATED 20.05.2009.
- Exhibit P5 TRUE COPY OF THE GOVERNMENT ORDER VIDE NO.GO (MS) NO. 76/2010/HOME DATED 23.03.2010.
- Exhibit P6 TRUE COPY OF THE COMMUNICATION VIDE NO. 41046/CE/2008/HOME DATED 08.06.2010 FORWARDED TO THE 3RD RESPONDENT BY THE 1ST RESPONDENT.
- Exhibit P7 TRUE COPY OF THE GOVERNMENT ORDER VIDE NO.GO (MS) NO. 262/2010/HOME DATED 29.11.2010.
- Exhibit P8 TRUE COPY OF THE GOVERNMENT ORDER VIDE NO.GO (MS) NO. 175/2011/HOME DATED 08.08.2011.
- Exhibit P9 TRUE COPY OF THE GOVERNMENT ORDER VIDE NO.GO (MS) NO. 286/2012/HOME DATED 14.11.2012.
- Exhibit P10 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT IN WP (C) NO. 36379/2017 BEFORE THIS HON'BLE COURT.
- Exhibit P11 TRUE COPY OF THE JUDGMENT DATED 28.03.2019 IN WP (C) NO. 36379/2017 OF THIS HON'BLE COURT.
- Exhibit P12 TRUE COPY OF THE GOVERNMENT ORDER GO (MS) NO. 48/2022/HOME DATED 14.03.2002.

DATE OF EXHIBIT P12 STANDS CORRECTED AS 14/03/2022 INSTEAD OF 14/03/2002 AS PER ORDER DATED 19/04/2022 IN I.A.2/2022 IN WP(C)

APPENDIX OF WP(C) 17016/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE JUDGMENT DATED 05.06.2008 AND CIVIL APPEAL NO. 4104/2004 ON THE FILES OF THE HON'BLE SUPREME COURT OF INDIA AND REPORTED IN 2008 (3) KLT 33.
- Exhibit P2 A TRUE COPY OF G.O.(P) NO: 154/2016/FIN DTD. 15.10.2016 ISSUED BY FROM THE OFFICE OF THE 2ND RESPONDENT.
- Exhibit P3 A TRUE COPY OF GO (MS) NO.262/2010/HOME DATED 29.11.2010 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P4 A TRUE COPY OF THE JUDGMENT DATED 28.03.2019 IN W.P. (C) NO. 36379/2017 ON THE FILES OF THIS HON'BLE COURT.
- Exhibit P5 A TRUE COPY OF THE JUDGMENT DATED 04.02.2021 IN W.A.NO. 1925/2019 ON THE FILES OF THIS HON'BLE COURT.
- Exhibit P6 A TRUE COPY OF THE PAY SLIP OF THE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER, NUMBERED AS GE25/E/R1-BLR/6535 AND DATED 07.12.2015.
- Exhibit P7 A TRUE COPY OF THE VERIFICATION REPORT DATED 29.06.2012 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT.
- Exhibit P8 A TRUE COPY OF THE LETTER NUMBERED AS NO.GE25/E/TBNL/4377 AND DATED 27.09.2016 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT.
- Exhibit P9 A TRUE COPY OF THE LETTER DATED 12.11.2021 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P10 A TRUE COPY OF THE LETTER DATED 27.01.2022 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- Exhibit P11 A TRUE COPY OF THE LETTER NUMBERED AS. PWC-A2/21/2022/FIN. DATED 05.05.2022 ISSUED FROM THE

OFFICE OF THE 2ND RESPONDENT.

Exhibit P12 A TRUE COPY OF THE G.O(MS)NO.48/2022/HOME DATED,
THIRUVANANTHAPURAM, 14.03.2022.

Exhibit P13 A TRUE COPY OF THE JUDGMENT DATED 03.09.2019 IN
W.P(C) NO: 35554/2009 ON THE FILES OF THIS
HON'BLE COURT.