

**2023 LiveLaw (SC) 468**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
K.M. JOSEPH; J., B.V. NAGARATHNA; J.**

16th May, 2023.

CIVIL APPEAL NO. 3752 OF 2023 (@Special Leave Petition (C) No.22633 of 2017)

**SREE SANKARACHARYA UNIVERSITY OF SANSKRIT & ORS. *versus* DR. MANU & ANR.**

**Interpretation of Statues - For a subsequent order / provision / amendment passed to be considered a clarification to the original provision, it must not expand or alter the scope of the original provision and that the original must be sufficiently vague or ambiguous so as to require such clarification.**

**Interpretation of Statues - While it was well established that a clarification or an explanation to clear any ambiguity or correct any glaring omissions in a statute would be applicable retrospectively, it had to consider the question of how such a clarification/ explanation to a statute could be identified and distinguished from a substantive amendment to a statute. A clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit.**

**Interpretation of Statues - Legal Principles - i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted. ii) In order for a subsequent order / provision / amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively. iii) An explanation / clarification may not expand or alter the scope of the original provision. iv) Merely because a provision is described as a clarification / explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.**

**University Law - the subsequent Government Order dated 29th March, 2001 cannot be declared as a clarification and therefore be made applicable retrospectively. The said order has substantively modified the Government Order dated 21st December, 1999 to the extent of stating that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade. The law provides that a clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit. However, the Government Order dated 29th March, 2001 has restricted the eligibility of lecturers for advance increments at the time of placement in the selection grade, only to those who do not have a Ph.D. degree at the time of recruitment and subsequently acquire the same.**

**University Law - Merely because the subsequent Government Order has been described as a clarification / explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said order is only clarificatory in nature. On an analysis of the true nature and**

**purport of the subsequent Government Order dated 29th March, 2001, it is not merely clarificatory, but is a substantial amendment which seeks to withdraw the benefit of two advance increments in favour of a certain category of lecturers.**

(Arising out of impugned final judgment and order dated 10-08-2016 in WA No. 254/2016 passed by the High Court of Kerala at Ernakulam)

*For Petitioner(s) Mr. Surendranath P V, Sr. Adv. Mr. Biju P Raman, AOR Mr. Sawan Kumar Shukla, Adv. Mrs. Lekha Sudhakar, Adv.*

*For Respondent(s) Mr. Raghenth Basant, Adv. Mr. P. V. Dinesh, AOR Ms. Roopali Lakhotia, Adv. Mr. Ajay Krishna, Adv. Ms. Nida K, Adv. Mr. Akhil K M, Adv. Mr. C. K. Sasi, AOR Mr. Abdulla Naseeh V T, Adv. Ms. Meena K Poulouse, Adv.*

## J U D G M E N T

### NAGARATHNA, J.

Leave granted.

**2.** The present appeal has been filed by the Appellant-University assailing the final judgment and order dated 10<sup>th</sup> August, 2016, passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 254 of 2016. By the impugned judgment, the Division Bench of the High Court dismissed the Writ Appeal filed by the Appellant-University and confirmed the judgment of the learned Single Judge of the High Court, dated 13<sup>th</sup> October, 2015 whereby the appellant-University was directed to grant two advance increments to Respondent No. 1 in terms of Clause 6.18 of the revised University Grants Commission (“UGC”) Scheme, 1998 and Government Order dated 21<sup>st</sup> December, 1999, on his placement as a Selection Grade Lecturer.

**3.** Succinctly stated, the facts giving rise to the present appeal are as under:

3.1. Respondent No.1, namely, Dr. Manu joined the service of the Appellant-University on 14<sup>th</sup> July, 1999, as a Lecturer in the Hindi language department. At the time, he had previously rendered over eleven years of service as a Lecturer of Hindi in Mahatma Gandhi Government Arts College, Mahe, Pondicherry for the period between 23<sup>rd</sup> December, 1988 and 13<sup>th</sup> July, 1999.

3.2. By an order dated 25<sup>th</sup> November, 2004, Respondent No. 1 was placed in the senior scale w.e.f. 14<sup>th</sup> July, 1999. Further, he was granted four advance increments by virtue of Clause 6.16 of the UGC Scheme dated 21<sup>st</sup> December, 1999 which provides that candidates who hold Ph.D. degree at the time of recruitment as lecturers would be eligible for four advance increments.

3.3. Thereafter, by an order dated 20<sup>th</sup> October, 2011, Respondent No. 1 was placed as a Selection Grade Lecturer w.e.f. 14<sup>th</sup> July, 2000, with the notional date of placement as 22<sup>nd</sup> December, 1999 and consequently, his pay was fixed by order dated 12<sup>th</sup> January, 2012 at Rs. 46,440-9000-55,440/-. In fixing the pay, two advance increments, payable on placement of a Lecturer holding a Ph.D. degree as a Selection Grade Lecturer, as per Clause 6.18 of the UGC Scheme dated 21<sup>st</sup> December, 1999, were not granted.

3.4. Respondent No. 1 filed a writ petition, being W.P. (C) No. 28567 of 2012 before the High Court of Kerala challenging the orders of the Appellant-University dated 20<sup>th</sup> October, 2011 and 12<sup>th</sup> January, 2012, on the ground that two advance increments, payable to him on placement as a Selection Grade Lecturer were erroneously withheld. The reliefs, *inter alia*, prayed for in the said writ petition are as under:

- i) To issue a direction in the nature of a writ of certiorari quashing the order dated 12<sup>th</sup> January, 2012 to the extent of denial of placement benefits from 22<sup>nd</sup> December, 1999 to 14<sup>th</sup> July, 2000.
- ii) To issue a writ of mandamus commanding the Appellant University to grant two advance increments to Respondent No. 1, in accordance with Clause 6.18 of the UGC Scheme dated 22<sup>nd</sup> December, 1999, at the time of his placement in the selection grade and accordingly re-fix his pay with effect from 22<sup>nd</sup> December, 1999.
- iii) To issue a writ of mandamus commanding the Appellant University to disburse the salary and arrears payable to Respondent No. 1 from 22<sup>nd</sup> December, 1999, i.e., the date on which he was placed in the selection grade to 14<sup>th</sup> July, 2000.

3.5. The Appellant-University filed a counter affidavit in the said writ petition taking the stand that Respondent No. 1 was not eligible to claim any further increments based on his Ph.D. degree, on his placement in the selection grade in light of the Government Order, G.O. (P) No. 44/2001/H.Edn. dated 29<sup>th</sup> March, 2001 which had clarified that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade. That since Respondent No. 1 had already been granted four advance increments by virtue of holding a Ph.D. degree, he would not be eligible to claim two more advance increments based on his Ph.D. degree, at the time of being placed in the selection grade.

3.6. The learned Single Judge of the High Court partly allowed W.P. (C) No. 28567 of 2012 and directed the Appellant-University to pay Respondent No.2 two advance increments in terms of Clause 6.18 of the Government Order dated 21<sup>st</sup> December, 1999. The other reliefs sought for by Respondent No.1 were left open to be decided in appropriate proceedings.

3.7. The findings and reasoning of the learned Single Judge of the High Court in partly allowing the writ petition filed by Respondent No.1, have been encapsulated as under:

- i) That there was no requirement to consider the validity of the orders of the Appellant-University dated 20<sup>th</sup> October, 2011 and 12<sup>th</sup> January, 2012. That the only question that would require consideration is as to the entitlement of Respondent No. 1 to two advance increments which had been denied to him only on account of the fact that a subsequent Government Order had been passed stipulating that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade.
- ii) That the subsequent Government Order dated 29<sup>th</sup> March, 2001 had modified the Government Order dated 21<sup>st</sup> December, 1999 to the extent of stating that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade. That an amendment cannot be stated to have retrospective effect unless it is expressly provided that it shall operate retrospectively, *vide Ex-Capt. K.C. Arora vs. State of Haryana, 1984 (3) SCC 281 (K.C. Arora)*. That a perusal of the Government Order dated 29<sup>th</sup> March, 2001 would not indicate that it was meant to operate retrospectively.
- iii) That since Respondent No.1 was notionally placed in the selection grade from 22<sup>nd</sup> December, 1999, i.e., before the subsequent Government Order dated 29<sup>th</sup> March, 2001 was passed, he would be entitled to the benefit of Clause 6.18 of the Government Order dated 21<sup>st</sup> December, 1999.

3.8. The Appellant-University challenged the judgment passed by the learned Single Judge of the High Court by filing a writ appeal, numbered as W.A. No. 254 of 2016, before the Division Bench of the High Court.

3.9. By the impugned judgment dated 10<sup>th</sup> August, 2016, the Division Bench of the High Court of Kerala dismissed the said writ appeal filed by the Appellant-University and confirmed the judgment of the learned Single Judge of the High Court, dated 13<sup>th</sup> October, 2015 whereby the Appellant-University was directed to grant two advance increments to Respondent No.1 in terms of Clause 6.18 of the Government Order dated 21<sup>st</sup> December, 1999.

The pertinent findings of the Division Bench of the High Court in the impugned judgment dated 10<sup>th</sup> August, 2016 have been culled out as under:

i) That admittedly, the Government, by way of the order dated 29<sup>th</sup> March, 2001 had modified the Government Order dated 21<sup>st</sup> December, 1999 by specifying certain conditions for eligibility for grant of advance increments on being placed in the selection grade. Simply because the order dated 29<sup>th</sup> March, 2001 had been passed when a clarification was sought as to whether teachers who had already got the benefit of advance increments for having a Ph.D. degree, would be eligible for advance increments at the time of their placement in the selection grade, the said order cannot be termed as a clarificatory order and be made effective retrospectively.

ii) Reliance was placed on the decision of a co-ordinate Bench of the High Court in Writ Appeal (C) No.749 of 2013 wherein the contention of the Government that a Lecturer who was already granted advance increments at the time of her recruitment, would not be eligible for further increments on moving to the selection grade in light of the order dated 29<sup>th</sup> March, 2001, was repelled.

iii) That the Government Order dated 29<sup>th</sup> March, 2001 could not be made applicable to Respondent No.1 who had been placed in the selection grade notionally from 22<sup>nd</sup> December, 1999 with actual benefits accruing from 14<sup>th</sup> July, 2000.

Aggrieved by the said judgment, the present appeal has been filed by the Appellant-University.

***Submissions:***

**4.** We have heard learned Senior Counsel Sri P.V. Surendranath for the Appellant-University and Sri Raghenth Basant, learned counsel for Respondent No. 1 and perused the material on record.

4.1. Sri P.V. Surendranath, learned Senior Counsel appearing on behalf of the Appellant-University at the outset submitted that the judgments of the learned Single Judge and the Division Bench of the High Court of Kerala dated 13<sup>th</sup> October, 2015 and 10<sup>th</sup> August, 2016 respectively, were based on an incorrect appreciation of the law and facts of the case and, therefore, deserve to be set-aside by this Court.

4.2. It was further contended that a close reading of Clauses 6.16 to 6.19 of the Government Order dated 21<sup>st</sup> December, 1999 would indicate that the maximum number of advance increments that a teacher having a Ph.D. degree could avail is limited to four, under all circumstances. That is to say that a teacher who had a Ph.D. degree at the time of recruitment as a Lecturer and had therefore been granted four advance increments, would not be eligible for advance increments on the basis of the Ph.D. degree on being placed in the selection grade.

4.3. Referring to the text of Clauses 6.16 to 6.19 of the said Government Order, it was contended that the said provisions do not contemplate a double benefit by virtue of a Ph.D. qualification. That the provisions do not seek to confer the benefit of advance increments based on a Ph.D. qualification, at the time of recruitment and also at the time of being placed in the selection grade. That having availed the benefit of advance increments at the time of recruitment by virtue of holding a Ph.D. qualification, a Lecturer cannot once again claim increments based on his/her Ph.D. qualification at the time of being placed in the selection grade.

4.4. It was contended that the subsequent Government Order dated 29<sup>th</sup> March, 2001 clarified that teachers who had already got the benefit of advance increments for having a Ph.D. qualification, would not be eligible for advance increments at the time of their placement in the selection grade. That the Government Order dated 29<sup>th</sup> March, 2001 was a clarificatory order and not one that would vest or withdraw any substantive rights. That the Government Order dated 29<sup>th</sup> March, 2001 clearly records that the same was being issued pursuant to a clarification sought with respect to the incentives for persons possessing/acquiring Ph.D. and M.Phil. qualifications. Therefore, the said clarification would relate back to the date on which the previous Government Order dated 21<sup>st</sup> December, 1999 came into effect.

4.5. It was further contended that the clarificatory order dated 29<sup>th</sup> March, 2001 was issued only for the purpose of removal of ambiguities in the implementation of the earlier Government Order dated 21<sup>st</sup> December, 1999. Therefore, it is to be read as a part and parcel of the Government Order dated 21<sup>st</sup> December, 1999 and must not be construed as a separate order which seeks to modify or alter the rights conferred by way of the order dated 21<sup>st</sup> December, 1999.

4.6. It was submitted that when an order itself records in no unclear terms that it has been issued as a clarification of a previous order, it must be construed as a clarification and not as an amendment/modification. Accordingly, such an order must be made applicable retrospectively from the date on which the order sought to be clarified came into effect.

4.7. It was next contended that since it was specifically stated in the order dated 29<sup>th</sup> March, 2001 that the same was a clarificatory order, it was needless to specify expressly that the said order would operate retrospectively. Hence, the learned Single Judge had erred in recording a finding that since the order dated 29<sup>th</sup> March, 2001 did not specifically state that it would operate retrospectively, the same could not be held to have retrospective operation.

In order to buttress this contention, Sri Surendranath has placed reliance on the decisions of this Court in **Zile Singh vs. State of Haryana, (2004) 8 SCC 1; Commissioner of Income Tax, Ahmedabad vs. Gold Coin Health Food Pvt. Ltd., (2008) 9 SCC 622** and **State of Bihar vs. Ramesh Prasad Verma (Dead) through LRs, (2017) 5 SCC 665 (Ramesh Prasad Verma)** regarding the retrospective application of a clarificatory amendment to a statute.

4.8. Reliance was placed on the decision of this Court in **S. Sundaram Pillai vs. V.R. Pattabiraman, A.I.R. 1985 SC 582** wherein this Court observed that an explanation added to a statutory provision is not a substantive provision, but as the plain meaning of the word itself suggests, it is merely meant to explain or clarify certain ambiguities which may have crept into interpreting the statutory provision. In this context, it was contended that a perusal of the order dated 29<sup>th</sup> March, 2001 would make it abundantly clear that it was meant to clear ambiguity in the application of Clauses 6.16 to 6.19 of the order dated 21<sup>st</sup>

December, 1999 and not to withdraw any substantive rights. Therefore, there would be no bar to allow the said clarification to operate retrospectively.

With the aforesaid contentions, it was prayed that the present appeal be allowed and the judgments of the learned Single Judge and the Division Bench of the High Court of Kerala dated 13<sup>th</sup> October, 2015 and 10<sup>th</sup> August, 2016 respectively be quashed and set aside.

**5.** *Per contra*, learned Senior Counsel, Sri Raghenth Basant, appearing on behalf of Respondent No. 1 submitted that the impugned judgment of the High Court is based on an unimpeachable understanding of the law and facts of the present case and therefore, does not call for interference by this Court.

5.1. It was further submitted that a conjoint reading of Clauses 6.16, 6.18 and 6.19 would reveal that a Lecturer with a Ph.D. degree at the time of recruitment as a Lecturer would be eligible for six advance increments, i.e., four advance increments at the time of recruitment and two additional increments at the time of being placed in the selection grade. Further, a Lecturer who does not possess a Ph.D. degree at the time of his recruitment, but subsequently obtains one while serving as a Lecturer before placement in the selection grade, would be eligible for four advance increments, i.e., two advance increments on obtaining a Ph.D. degree and two more increments on being placed in the selection grade.

5.2. It was further submitted that merely because increments granted at the time of recruitment as well as those that could be availed at the time of placement in the selection grade, were all based on the Ph.D. qualification, the former tranche of increments was not to be granted to the exclusion of the latter. That though granted on the basis of a Ph.D. qualification, the increments were made effective at different phases of a Lecturer's career. Hence, Clauses 6.16, 6.18 and 6.19 could not be construed to imply that a Lecturer who had already got the benefit of four advance increments at the time of recruitment, would not be eligible for two more advance increments on being placed in the selection grade.

5.3. It was contended that a reading of Clauses 6.16, 6.18 and 6.19 would not suggest that a Lecturer who had already got the benefit of four advance increments at the time of recruitment, would not be eligible for two more advance increments on being placed in the selection grade. Therefore, the Government Order dated 29<sup>th</sup> March, 2001 which significantly modified/amended the meaning of Clauses 6.16, 6.18 and 6.19, could not be stated to be a clarification and therefore made applicable retrospectively.

5.4. Reliance was placed on the decision of this Court in **K.C. Arora** to contend that an amendment cannot be stated to have retrospective effect unless it is expressly provided that it shall operate retrospectively (or by necessary implication). That the Government Order dated 29<sup>th</sup> March, 2001 did not indicate that the same was to operate retrospectively and hence, cannot be stated to have retrospective effect.

5.5. It was submitted that the High Court rightly held that simply because the order dated 29<sup>th</sup> March, 2001 had been passed when a clarification was sought as to whether teachers who had already got the benefit of advance increments for having a Ph.D. degree, would be eligible for advance increments at the time of their placement in the selection grade, the said order cannot be termed as a clarificatory order and be made effective retrospectively. If the order dated 29<sup>th</sup> March, 2001 is made applicable retrospectively, it would have the effect of withdrawing vested rights of Lecturers such as Respondent No. 1 and would hence be in contravention of settled principles of law that an amendment

could not be made applicable retrospectively, if such application would have the effect of nullifying vested rights.

With the aforesaid submissions, it was prayed that the present appeal be dismissed as being devoid of merit and the judgments of the learned Single Judge and the Division Bench of the High Court of Kerala dated 13<sup>th</sup> October, 2015 and 10<sup>th</sup> August, 2016 respectively be affirmed.

***Points for consideration:***

**6.** Having heard learned Senior Counsel and learned counsel for the respective parties and on perusal of the material on record, we find that the following points would arise for our consideration:

- i) Whether the High Court was right and justified in directing grant of two advance increments to Respondent No. 1 in terms of Clause 6.18 of the Government Order dated 21<sup>st</sup> December, 1999, on his placement as a Selection Grade Lecturer?
- ii) What order?

***Discussion and analysis:***

**7.** This matter calls for a determination as to whether the 29<sup>th</sup> March, 2001 was a clarification of Clauses 6.16 to 6.19 of the Government Order dated 21<sup>st</sup> December, 1999, or whether, it amended or modified the same. If the subsequent Government Order is declared to be in the nature of a clarification of the earlier order, it may be made applicable retrospectively. Conversely, if the subsequent Government Order is held to be a modification/amendment of the earlier order, its application would be prospective as retrospective application thereof would result in withdrawal of vested rights which is impermissible in law and the same may also entail recoveries to be made.

7.1. For a ready reference, the relevant clauses of the Government Order bearing number G.O. (P) No. 171/99/H.Edn. dated 21<sup>st</sup> December, 1999 have been extracted hereinunder:

**“Incentives for Ph.D./M.Phil.**

6.16. Four and two advance increments will be admissible to those who hold Ph.D. and M. Phil. degrees, respectively at the time of recruitment as Lecturers. Candidates with D.Litt./D.Sc. should be given benefit on par with Ph.D. and M.Litt. on par with M.Phil.

6.17. One increment will be admissible to those teachers with M.Phil. who acquire Ph.D. within two years of recruitment.

6.18. A Lecturer with Ph.D. will be eligible for two advance increments when she/he moves into Selection Grade/Reader.

6.19. A teacher will be eligible for two advance increments as and when she/he acquires a Ph.D. degree in her/his service career.”

7.2. On a conjoint reading of the aforesaid Clauses of the Government Order dated 21<sup>st</sup> December, 1999, the following aspects would emerge:

- i) A Lecturer, who at the time of recruitment has a Ph.D. degree to his/her credit, would be eligible to four increments. Such a candidate, on being placed in the Selection Grade or as a Reader, would be eligible to two additional advance increments. Therefore, a Lecturer with a Ph.D. degree at the time of recruitment as a Lecturer and is later placed in the selection grade would be eligible for a total six advance increments.
- ii) A Lecturer, who possesses an M.Phil. degree at the time of recruitment, would be eligible for two increments. If such a Lecturer acquires a Ph.D. degree within two years of

recruitment, he/she would be eligible for one additional increment. On being placed in the selection grade such a Lecturer would be eligible for two additional advance increments. Therefore, a Lecturer who possessed an M.Phil. degree at the time of recruitment, but later acquired a Ph.D. degree and is placed in the selection grade would be eligible for a total five advance increments.

iii) A Lecturer who possessed neither an M.Phil. degree nor a Ph.D. degree at the time of recruitment, but acquires a Ph.D. degree during his/her career, would be eligible for two advance increments on acquiring a Ph.D. degree. Further, on being placed in the selection grade, such a Lecturer would be eligible for two additional advance increments. Therefore, a Lecturer who possessed neither an M.Phil. degree nor a Ph.D. degree at the time of recruitment, but acquires a Ph.D. degree during his/her career and is placed in the selection grade would be eligible for a total four advance increments.

The entitlements of different categories of lecturers, as defined under the Government Order dated 21<sup>st</sup> December, 1999 has been presented in a tabular form as under:

<b>Qualification of the Lecturer at the time of recruitment</b>	<b>Advance increments accrued at the time of recruitment</b>	<b>Advance increments accrued on acquiring Ph.D. degree</b>	<b>Advance increments accrued on being placed in the Selection Grade</b>	<b>Total number of advance increments</b>
<b>A Lecturer, who has a Ph.D. degree to his/her credit at the time of recruitment</b>	Four advance increments	Not applicable	Two advance increments	Six advance increments
<b>A Lecturer, who possesses an M.Phil. degree at the time of recruitment</b>	Two advance increments	One advance increment on acquiring a Ph.D. within two years of recruitment	Two advance increments	Five advance increments
<b>A Lecturer who possessed neither an M.Phil. degree nor a Ph.D. degree at the time of recruitment</b>	No advance increments would accrue at the time of recruitment	Two advance increments	Two advance increments	Four advance increments

7.3. Having discussed the import of the aforesaid Clauses of the Government Order dated 21<sup>st</sup> December, 1999, it is necessary to examine the extent to which it was modified by way of the subsequent Government Order dated 29<sup>th</sup> March, 2001 numbered as G.O. (P) No. 44/2001 H. Edn. which reads as under:

“GOVERNMENT OF KERALA  
ABSTRACT

UNIVERSITIES AND COLLEGES – UGC SCHEME – REVISION OF PAY SCALES –  
CLARIFICATIONS – MODIFIED – ORDERS ISSUED.

HIGHER EDUCATION (C) DEPARTMENT  
G.O.(P) No.44/2001/H.Edn. Dated:29.03.2001.

Read:

1. G.O.(P) No.171/99/H.Edn. dated 21.12.1999.
2. G.O.(P) No.110/2000/H.Edn. dated 04.07.2000
3. Letter Nos.GE/10/390/2316 dated 14.08.2000
4. G.E. 10/E/Genl/486/2097 dated 21.09.2000
5. GE-10/E/Genl/518/3493 dated 24.10.2000 from the Accountant General, Thiruvananthapuram.
6. Govt. Letter No.24292/C3/2000/H.Edn. dt. 13.10.2000.

ORDER

The Accountant General, Thiruvananthapuram in his letters read above informed government that since second I.R. is reckoned for fixation notionally, reckoning of first interim relief alone is necessary for calculating the arrears from 1-1-96 to 31-1-97 and hence he has prepared a ready reckoner taking first interim relief only and forwarded to government for approval. He also pointed out an error occurred in the reckoner for the pre-revised scale of pay Rs.3700-5700 in the G.O. read as second paper above. He has also sought some clarifications in the incentive for Ph.D/M.Phil laid down in Cl.6.16 to 6.19 in the G.O. read as first paper above. Government have examined the matter in detail and are pleased to order the following:

1. The ready reckoner furnished by the Accountant General, Thiruvananthapuram along with his letter read above, for calculating the arrears of pay from 1-1-96 to 31-1-97, reckoning the first interim relief alone, is approved by government and is appended to this Order.
2. Teachers drawing pay at 10<sup>th</sup> stage in the pre-revised scale of Rs.3700-5700 i.e. from Rs.4825/- onwards will get their increments after one year and not on the normal dates of their increments.
3. Teachers holding both M.Phil and Ph.D at the time of their entry in service are entitled to 4 advance increments.
4. The incentives specified in para 6.16 to 6.18 of the government order dated 21.12.99 are not eligible simultaneously.
5. Teachers who have got the benefit of advance increments for having Ph.D will not be eligible for advance increments at the time of their placement in the selection grade. But the teachers who got Ph.D. subsequently and who had not got the benefit earlier will be eligible for 2 advance increments when he/she moves into selection Grade Reader. The date of effect of this benefit will be from 1.1.96. Those who have acquired/will acquire Ph.D. on or after 1.1.96 will become eligible for advance increment from the date of award of Ph.D degree. The period spent for Ph.D. on deputation will also be reckoned as qualifying service for placement in senior scale/selection grade. The advance increment will be sanctioned in the lower scale for fixing the pay in the higher scale.
6. A teacher is not simultaneously eligible for the incentives as stated in para 6.18 and 6.19.
7. A teacher is not eligible for benefits specified both in paras 6.17 and 5.19 (should read as 6.19) simultaneously.
8. Teachers who get advance increments will not be eligible for fixation as per Rule 28-A part I K.S.Rs.
9. The government orders read as first and second papers stand modified to this extent.

By Order of the Governor

Sd/-  
N. Chandrasekharan Nair,  
Principal Secretary  
(Higher Education)”

**(Underlining by us)**

7.4. The following aspects emerge on studying the Government Order dated 29<sup>th</sup> March, 2001:

i) That the said order was issued pursuant to clarifications being sought by the Accountant General, Thiruvananthapuram, regarding the incentives under Clauses 6.16 to 6.19 of the Government Order dated 21<sup>st</sup> December, 1999.

ii) According to the order dated 29<sup>th</sup> March, 2001, lecturers who had got the benefit of four advance increments at the time of their recruitment, by virtue of holding a Ph.D. degree, would not be eligible for two more increments on being placed in the selection grade. Those lecturers who obtained a Ph.D. degree subsequent to their recruitment would be eligible for two increments on moving to the selection grade.

iii) A Lecturer would not be simultaneously eligible for the incentives under Clause 6.16 and 6.19.

7.5. It is necessary to contrast the entitlements of different categories of lecturers on being placed in the selection grade, under the Government Order dated 21<sup>st</sup> December, 1999, *vis-à-vis*, the subsequent Government Order dated 29<sup>th</sup> March, 2001. The same is presented in a tabular form as under:

<b>Qualification of the Lecturer at the time of recruitment</b>	<b>Total number of advance increments under the Government Order dated 21<sup>st</sup> December, 1999</b>	<b>Total number of advance increments under the Government Order dated 29<sup>th</sup> March, 2001</b>
<b>A Lecturer, who has a Ph.D. degree to his/her credit at the time of recruitment</b>	Six advance increments	Four advance increments
<b>A Lecturer who acquired a Ph.D. degree during service</b>	Four advance increments	Four advance increments

7.6. As noted from the table above, a Lecturer who has a Ph.D. degree to his/her credit at the time of recruitment was entitled to six advance increments on being placed in the selection grade, as stipulated under Clauses 6.16 and 6.18 of the Government Order dated 21<sup>st</sup> December, 1999. However, the number of advance increments that would accrue to such a Lecturer on being placed in the selection grade was reduced to four, *vide* Government Order dated 29<sup>th</sup> March, 2001. The Government Order dated 29<sup>th</sup> March, 2001 restricted the eligibility of lecturers to the advance increments which would accrue on being placed in the selection grade by providing that a teacher who had got the benefit of advance increments by virtue of having a Ph.D. degree at the time of recruitment, would not be eligible for advance increments on being placed in the selection grade. The benefit of increments on being placed in the selection grade was restricted to those lecturers who obtained a Ph.D. degree subsequent to their recruitment. As noted above, the Government Order dated 29<sup>th</sup> March, 2001 modifies the Government Order dated 21<sup>st</sup> December, 1999 by providing, *inter-alia*, that Lecturer would not be simultaneously eligible for the incentives under Clause 6.16 and 6.19 thereof. On a reading of the Government of

Kerala's Order dated 29<sup>th</sup> March, 2001, it is evident that teachers holding both M.Phil. degree and Ph.D. degree at the time of their entry in service are entitled to four advance increments which is as per the Government Order dated 21<sup>st</sup> December, 1999 extracted above. However, the incentives specified in paragraphs 6.16 to 6.18 of the aforesaid Government Order are not to be given simultaneously. In other words, a teacher is not simultaneously eligible for the incentives as stated in paragraphs 6.18 and 6.19. Similarly, a teacher is not eligible for benefits specified in paragraphs 6.17 and 6.19 simultaneously. This would mean that this is the only modification made to the Order dated 21<sup>st</sup> December, 1999.

It is also to be noted that the object of providing four advance increments to a Lecturer holding Ph.D. degree and two advance increments to a Lecturer holding M.Phil. degree at the time of recruitment as Lecturer is in recognition of the higher qualification that they possess, as ordinarily a Lecturer must possess a post-graduation degree to be recruited as a Lecturer. Therefore, if a person has an M.Phil. degree at the time of recruitment as a Lecturer, he or she would be entitled to two advance increments and if any Lecturer possesses a Ph.D. degree at the time of appointment as a Lecturer, four advance increments are admissible. This, is in contrast to, being eligible for two advance increments when a Lecturer acquires a Ph.D. degree during the course of service/career. On the other hand, if a Lecturer with an M.Phil. degree acquires a Ph.D. degree within two years of recruitment would be admissible to one increment. Also, a Lecturer with Ph.D. degree would be eligible for two advance increments when promoted as a Selection Grade Lecturer/Reader.

In fact, in the subsequent State Government Order dated 29<sup>th</sup> March, 2001 also, paragraph 3 reiterates that teachers holding both M.Phil. degree and Ph.D. degrees at the time of their entry in service are entitled to four advance increments which is on par with paragraph 6.16 of the Government Order dated 21<sup>st</sup> December, 1999. Paragraphs 4 and 6 of the said Order categorically state that the incentive specified in paragraphs 6.16 to 6.18 and paragraphs 6.18 and 6.19 of the earlier Government Order would not be simultaneously applicable. Even paragraph 7 of the said Order states that the teacher is not eligible for the benefits specified both in paragraphs 6.17 and 6.19 simultaneously.

**8.** The next aspect that requires consideration is whether such a modification could be made applicable retrospectively., i.e., whether the Government Order dated 29<sup>th</sup> March, 2001 to the extent that it modifies the Government Order dated 21<sup>st</sup> December, 1999 would be applicable to those lecturers who had acquired a Ph.D. degree at the time of their recruitment, such as, Respondent No. 1, who were placed in the selection grade before 29<sup>th</sup> March, 2001.

8.1. It is trite that any legislation or instrument having the force of law, which is clarificatory or explanatory in nature and purport and which seeks to clear doubts or correct an obvious omission in a statute, would generally be retrospective in operation, *vide Ramesh Prasad Verma*. Therefore, in order to determine whether the Government Order dated 29<sup>th</sup> March, 2001 may be made applicable retrospectively, it is necessary to consider whether the said order was a clarification or a substantive amendment.

8.2. In order to effectively deal with the aspect as to retrospective operation of the Government Order dated 29<sup>th</sup> March, 2001 it may be useful to refer to the following extract from the treatise, *Principles of Statutory Interpretation*, 11th Edition (2008) by Justice G.P. Singh on the sweep of a clarificatory/declaratory/explanatory provision:

"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act

may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any Statute. Such acts are usually held to be retrospective.

[...] An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law.”

[Emphasis by us]

8.3. This Court in **Commissioner of Income Tax, Bombay vs. Podar Cement Pvt. Ltd., (1997) 226 ITR 625 (SC)** noted that circumstances under which an amendment or modification was introduced and the consequences thereof would have to be borne in mind while deciding the issue as to whether the amendment was clarificatory or substantive in its nature and whether it would have retrospective effect or not.

8.4. In **Allied Motors Pvt. Ltd. vs. Commissioner of Income Tax, Delhi, (1997) 224 ITR 677 (SC)**, this Court found that certain unintended consequences flowed from a provision enacted by the Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. This Court held that if the amendment was not read into the relevant provision retrospectively, it would be impossible to reasonably interpret the said provision. That since there was an obvious omission in the provision, an amendment was necessitated which would clarify/declare the law retrospectively.

9. The proposition of law that a clarificatory provision may be made applicable retrospectively is so well established that we do not wish to burden this judgment by referring to rulings in the same vein. However, it is necessary to dilate on the role of a clarification/explanation to a statute and how the same may be identified and distinguished from a substantive amendment.

9.1. An explanation/clarification may not expand or alter the scope of the original provision, *vide* **Bihta Cooperative Development Cane Marketing Union Ltd. vs. Bank of Bihar, A.I.R. 1967 SC 389**. Merely describing a provision as an “Explanation” or a “clarification” is not decisive of its true meaning and import. On this aspect, this Court in **Virtual Soft Systems Ltd. vs. Commissioner of Income Tax, Delhi, (2007) 289 ITR 83 (SC)** observed as under:

“Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement in the statute itself, but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.”

This position of the law has also been subscribed to in **Union of India vs. Martin Lottery Agencies Ltd., (2009) 12 SCC 209** wherein it was stated that when a new concept of tax is introduced so as to widen the net, the same cannot be said to be only clarificatory or declaratory and therefore be made applicable retrospectively, even though such a tax was introduced by way of an explanation to an existing provision. It was further

held that even though an explanation begins with the expression “for removal of doubts,” so long as there was no vagueness or ambiguity in the law prior to introduction of the explanation, the explanation could not be applied retrospectively by stating that it was only clarificatory.

9.2. From the aforesaid authorities, the following principles could be culled out:

- i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
- ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
- iii) An explanation/clarification may not expand or alter the scope of the original provision.
- iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

**10.** Applying the law as discussed hereinabove to the facts of the present case, we are of the view that the subsequent Government Order dated 29<sup>th</sup> March, 2001 cannot be declared as a clarification and therefore be made applicable retrospectively. The said order has substantively modified the Government Order dated 21<sup>st</sup> December, 1999 to the extent of stating that teachers who had already got the benefit of advance increments for having a Ph.D. degree, would not be eligible for advance increments at the time of their placement in the selection grade. As noted above, the law provides that a clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit. However, the Government Order dated 29<sup>th</sup> March, 2001 has restricted the eligibility of lecturers for advance increments at the time of placement in the selection grade, only to those who do not have a Ph.D. degree at the time of recruitment and subsequently acquire the same.

10.1. The purpose of the incentives in question seems to be twofold: *First*, to incentivize persons with advanced educational qualifications to apply for the post of lecturers. *Second*, in order to retain in the teaching profession, persons with advanced qualifications. In order to secure the first of the aforesaid objectives, Clause 6.16 of the Government Order dated 21<sup>st</sup> December, 1999 provided for increments that would accrue on recruitment. In order to secure the second of the aforesaid purposes, Clause 6.19 thereof provided for incentives that would accrue at the time of placement in the selection grade. Therefore, it could not be said that the original intention of the Government while issuing the order dated 21<sup>st</sup> December, 1999 was that a Lecturer would not be simultaneously eligible for the incentives under Clause 6.16 and 6.19.

10.2. Further, as evident from the tabular comparison presented hereinabove, the number of advance increments that would accrue in favour of a Lecturer who has a Ph.D. degree to his/her credit at the time of recruitment, was reduced by way of the Government Order dated 29<sup>th</sup> March, 2001 from six to four. Therefore, permitting retrospective application of the said order would result in withdrawing vested rights of lecturers who had a Ph.D. at the

time of their recruitment and who were placed in the selection grade before 29<sup>th</sup> March, 2001 with four plus two advance increments.

10.3. Further, merely because the subsequent Government Order has been described as a clarification/explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said order is only clarificatory in nature. On an analysis of the true nature and purport of the subsequent Government Order dated 29<sup>th</sup> March, 2001, we are of the view that it is not merely clarificatory, but is a substantial amendment which seeks to withdraw the benefit of two advance increments in favour of a certain category of lecturers. The benefit withdrawn was not anticipated under the previously existing scheme. Therefore, such an amendment cannot be given retrospective effect.

**11.** For the reasons set out above, lecturers such as Respondent No. 1 who were placed in the selection grade before 29<sup>th</sup> March, 2001 would be entitled to all the incentives stipulated in the Government Order dated 21<sup>st</sup> December, 1999.

**12.** The present appeal is dismissed. The judgments of the learned Single Judge and Division Bench of the High Court of Kerala, dated 13<sup>th</sup> October, 2015 and 10<sup>th</sup> August, 2016 respectively are affirmed.

Parties to bear their respective costs.

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