

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 27<sup>TH</sup> DAY OF JANUARY 2023 / 7TH MAGHA, 1944

WA NO. 1865 OF 2022

AGAINST THE JUDGMENT IN WP(C) 4012/2022 OF HIGH COURT OF

KERALA

APPELLANTS/RESPONDENTS 2, 4, & 5 IN WPC:

- 1 STATE OF KERALA  
REP. BY THE ADDITIONAL CHIEF SECRETARY,  
DEPARTMENT OF HIGHER EDUCATION,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM- 695 001.
- 2 THE DIRECTOR OF COLLEGIATE EDUCATION  
VIKAS BHAVAN, VIKAS BHAVAN P.O.,  
THIRUVANANTHAPURAM, KERALA - 695 033.
- 3 THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,  
KOZHIKODE, NORTH ZONE, MANANCHIRA,  
NEAR HEAD POST OFFICE, KOZHIKODE,  
KERALA - 673 001.

BY SENIOR GOVERNMENT PLEADER B.VINITHA

RESPONDENTS/PETITIONER AND RESPONDENT NOS.1&3 IN WPC:

- 1 DR.LOUIS J. KATTADY  
ASSOCIATE PROFESSOR (RETD.),  
FORMER HEAD DEPARTMENT OF ECONOMICS,  
MALABAR CHRISTIAN COLLEGE, AND PRESENTLY  
RESIDING AT KATTADY HOUSE, MALAPARAMBA P.O.,  
CALICUT, KERALA- 673009, PIN - 673009
- 2 MALABAR CHRISTIAN COLLEGE  
REP. BY ITS MANAGER, MCC CROSS ROAD, CALICUT,  
KERALA- 673 001., PIN - 673001

3 UNIVERSITY OF CALICUT  
REP. BY THE REGISTRAR, CALICUT UNIVERSITY P.O.,  
MALAPPURAM, KERALA, PIN- 673 635, PIN - 673635

BY ADVS.

ABHAY FERDINAND

SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY

C.V.ALEXANDER(K/11/2013)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
27.01.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**C.R.**

**P.B.SURESH KUMAR & C.S.SUDHA, JJ.**

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**Writ Appeal No.1865 of 2022**  
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**Dated this the 27<sup>th</sup> day of January, 2023**

**JUDGMENT**

**P.B.Suresh Kumar, J.**

This writ appeal is directed against the judgment dated 17.06.2022 in W.P.(C) No.4012 of 2022. Respondents 2, 4 and 5 in the writ petition are the appellants. Parties and documents are referred to in this judgment for convenience, as they appear in the writ petition.

2. The petitioner was a teacher in an aided college affiliated to the University of Calicut (the University). The matter relates to the claim made by the petitioner for non-compounded increments on the strength of the Ph.D acquired by him while in service.

3. The petitioner entered service as Lecturer on 08.11.1996 and retired as Associate Professor on 31.05.2020. When the petitioner entered service, he had M.Phil degree to his credit in addition to the qualifications required for

appointment as Lecturer. At the relevant time, the Fifth Scheme of the University Grants Commission (UGC) as accepted by the State Government was applicable to the teachers of affiliated colleges. Ext.P2 is the relevant pages of the order issued by the State Government in this regard. In terms of Ext.P2 order, two advance increments were admissible to those who hold M.Phil. degree at the time of recruitment as Lecturer, and the petitioner was extended the said benefit. While in service, on 16.06.2008, the petitioner acquired Ph.D degree. Though Ext.P2 order provided for one more advance increment for those teachers with M.Phil who acquire Ph.D degree within two years of recruitment, the petitioner was not extended the benefit of the said additional increment, as he could not acquire Ph.D degree within two years of recruitment. In terms of Ext.P2 order, two advance increments were admissible to teachers who acquire Ph.D degree while in service. Insofar as the petitioner was given two advance increments on the strength of the M.Phil degree possessed by him at the time of recruitment and since he could not acquire Ph.D degree within two years of recruitment, he was not entitled to the benefit of the two advance

increments provided for those who acquire Ph.D while in service, and he did not raise any claim also for the said benefit.

4. While so, with effect from 01.09.2008, the Government implemented the Sixth UGC Scheme in the State. Ext.P4 is the relevant pages of the order issued by the State Government in this regard. Ext.P4 order provided that teachers who complete their Ph.D degree while in service shall be entitled to three non-compounded increments, if such Ph.D is in the relevant discipline and has been awarded by a University complying with the process prescribed by the UGC for enrolment, course work, evaluation etc. It was clarified in Ext.P4 order that teachers in service who have been awarded Ph.D at the time of coming into force of the Sixth UGC Scheme shall also be entitled to the award of three non-compounded increments even if the University awarding such Ph.D has not yet been notified by the UGC as having complied with the process prescribed by the UGC. Having found that there were a few anomalies in Ext.P4 order as regards the award of non-compounded increments for acquiring Ph.D/M.Phil degrees, the Government issued Ext.P5 order rectifying those anomalies. According to the petitioner, as he was a teacher in service who

has been awarded Ph.D degree at the time of coming into force of the Sixth UGC Scheme, he is entitled to three additional non-compounded increments as provided for in Ext.P4 order also. The request made by the petitioner in this regard was turned down by the Director of Collegiate Education as per Ext.P3 order stating that as far as the incentives provided to the teachers for acquiring Ph.D are concerned, the petitioner is governed by Ext.P2 order, and insofar as he has already been given two advance increments on the strength of his M.Phil degree, he is not entitled to any more increments on the strength of his Ph.D degree, as he could not acquire Ph.D within two years of the recruitment. Ext.P3 is the communication issued by the Director of Collegiate Education in this regard on 16.08.2014. It is seen that after about four years, the petitioner made a fresh representation before the Director of Collegiate Education for one more additional increment in terms of Ext.P4 order on the ground that Ext.P5 order provides for the same. The said request was also turned down by the Director of Collegiate Education reiterating the stand taken in Ext.P3. Ext.P9(a) is the communication issued to the petitioner in this regard on 17.01.2019. The writ petition

was instituted after two years of the retirement of the petitioner challenging Exts.P3 and P9(a) communications of the Director of Collegiate Education. The petitioner also sought in the writ petition a direction to the State and its officials to sanction to him three non-compounded increments also on the strength of the Ph.D acquired by him while in service and disburse the consequential benefits.

5. The concerned Deputy Director of Collegiate Education filed a counter affidavit in the writ petition reiterating the stand taken in Exts.P3 and P9(a) communications. It was also contended by the Deputy Director in the counter affidavit that it was clarified by the Government in Ext.P5 order that those who have already availed the benefits of advance increments under the earlier Scheme of the UGC like the petitioner for possessing Ph.D/M.Phil at the entry level shall not be entitled to the benefit of non-compounded increments provided for under the Sixth UGC Scheme.

6. The learned Single Judge allowed the writ petition taking the view that the issue is covered in favour of the petitioner by Exts.P6, P6(a) and P7 judgments of this Court

and consequently, allowed the writ petition directing the State and its officials to sanction three non-compounded increments also to the petitioner and disburse the consequential monetary benefits. The State and its officials are aggrieved by the said decision of the learned Single Judge and hence, this appeal.

7. Heard the learned Senior Government Pleader as also the learned counsel for the petitioner.

8. The learned Senior Government Pleader reiterated the stand taken by the official respondents in Exts.P3 and P9(a) communications and contended that the petitioner who has already been given two advance increments on the strength of his M.Phil degree and who could not secure Ph.D degree within two years of the recruitment to claim an additional increment in terms of Ext.P2 order, is not entitled to the non-compounded increments provided for in Ext.P4 order. The learned Senior Government Pleader relied on the decision of the Division Bench of this Court in W.A.No.332 of 2018, in support of the said argument.

9. Per contra, the learned counsel for the petitioner contended that he is entitled to three non-compounded increments in terms of Clause 10.4 of Ext.P4



order. It was also argued by the learned counsel that the case of the petitioner is squarely covered by Ext.P6 judgment which was affirmed by the Division Bench in Ext.P6(a) judgment. According to the learned counsel, in the light of Exts.P6 and P6(a) judgments, no interference is called for in the impugned judgment.

10. We have examined the arguments advanced by the learned counsel for the parties on either side.

11. As noted, the matter relates to the claim made by the petitioner on the basis of Ext.P4 order for non-compounded increments on the strength of the Ph.D acquired by him while in service. Ext.P4 order came into force with effect from 01.09.2008. As noted, the petitioner has not been extended the benefit of the non-compounded increments provided for in Ext.P4 order. There is nothing on record to indicate as to when the petitioner raised a claim for the same. Be that as it may, the claim of the petitioner was turned down by the Director of Collegiate Education as early as on 16.08.2014. The materials indicate that the petitioner has not pursued the matter further for about four years. Later on 19.10.2018, he made a fresh representation to the Principal

claiming one non-compounded increment on the basis of Ext.P4 order stating that in light of Ext.P5 order, he is entitled to such a benefit. Ext.P8 is the representation preferred by the petitioner in this regard. The said claim was turned down by the Director of Collegiate Education on 17.01.2019. The petitioner did not further pursue the said claim also till his retirement. The writ petition was filed after almost two years of the retirement of the petitioner on 04.02.2022, claiming three non-compounded increments on the basis of Ext.P4 order allegedly due to him with effect from 01.09.2008. In light of the facts narrated above, according to us, the claim of the petitioner is *per se* stale and this Court ought not have entertained the writ petition [See **Union of India and Others v. A.Durairaj (Dead) by Lrs.**, 2011 KHC 78]. Be that as it may, as the learned Single Judge upheld the claim of the petitioner, we propose to examine the correctness of the decision of the learned Single Judge.

12. The fact that the petitioner entered service while Ext.P2 order was in force, is not in dispute. Incentives for Ph.D and M.Phil as provided for in Ext.P2 order read thus:

“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 decree in her/his service career."

It is in light of Clause 6.16 of Ext.P2 order that the petitioner was given two advance increments on the strength of his M.Phil degree. As noted, even though another advance increment was also admissible to teachers like the petitioner who acquire Ph.D within two years of recruitment in terms of Clause 6.17, the petitioner was not extended the benefit of the said additional advance increment, as he could not acquire Ph.D within two years of the recruitment. Although Clause 6.19 of Ext.P2 order provided that a teacher will be eligible for two advance increments as and when she/he acquires a Ph.D degree in her/his service career, the petitioner was not entitled to the benefit of the said Clause as it was applicable only to those teachers who have not been given the benefit of advance increment at the entry level on the strength of his/her Ph.D/M.Phil degree. The petitioner does not dispute this fact,



6.16 of Ext.P2 order would indicate that there has been no change in the scheme of Ext.P4 order as regards the increments to be awarded at the entry level to M.Phil holders. However, as regards the increments to be awarded at the entry level to Ph.D holders, while Ext.P2 order provided for award of only four advance increments to such teachers, Ext.P4 order provided for award of five non-compounded increments to them. Ext.P4 order does not contain any provision corresponding to Clause 6.17 of Ext.P2 order which provided that an additional increment will be admissible to those teachers with M.Phil who acquire Ph.D within two years of recruitment. Instead, it was provided in Clause 10.4 of Ext.P4 order that teachers who complete their Ph.D degree while in service shall be entitled to three non-compounded increments subject to the rider that the Ph.D shall be in the relevant discipline and has been awarded by a university complying with the process prescribed by the UGC for enrolment, course-work, evaluation etc. In other words, there has been a change in the scheme of Ext.P4 order as far as teachers who enter the service with M.Phil degree and acquire Ph.D while in service are concerned. The change is that they

have been treated at par with teachers who do not have M.Phil degree and acquired Ph.D while in service. In other words, if a teacher who has been awarded two non-compounded increments at the entry level on the strength of the M.Phil possessed by him/her, he/she is entitled to three more non-compounded increments on acquiring Ph.D while in service subject to the rider prescribed in Clause 10.4 as regards the Ph.D degree. Clause 10.4 of Ext.P4 order evidently deals with teachers who acquire Ph.D while in service after the implementation of Ext.P4 order. Clause 10.5 of Ext.P4 order however provides that teachers in service who have been awarded Ph.D at the time of coming into force of the Sixth Scheme of the UGC are also entitled to award of three non-compounded increments even if the University awarding such Ph.D has not yet been notified by the UGC as having complied with the process prescribed by the UGC. The purpose of Clause 10.5 of Ext.P4 order is that if there are any teachers in service who have been awarded Ph.D at the time of coming into force of Ext.P4 order, the benefit of Clause 10.4 shall not be denied to them on the ground that their Ph.D has not been notified by the UGC as having complied with the process prescribed by the

UGC. Clause 10.5 of Ext.P4 order is, therefore, only an exception to Clause 10.4 which confers on teachers in service who have been awarded Ph.D at the time of coming into force of Ext.P4 order to claim three non-compounded increments insofar as the same deals with the requirements of the Ph.D. In other words, both Clauses 10.4 and 10.5 of Ext.P4 correspond to Clause 6.19 of Ext.P2 order.

14. The petitioner concedes that his Ph.D degree does not satisfy the requirements of Clause 10.4, as the UGC prescribed the process of enrolment, course-work, evaluation etc. for Ph.D degrees only in the year 2009. But according to him, he would fall under Clause 10.5 of Ext.P4 order and it is on that premise that he raises the claim for three non-compounded increments on the strength of his Ph.D degree. The question is as to whether the petitioner would fall under Clause 10.5 of Ext.P4 order so as to enable him to claim three non-compounded increments on the strength of the Ph.D degree secured by him on 16.06.2008. As noted, Clause 10.5 of Ext.P4 order deals only with teachers in service who have been awarded Ph.D at the time of coming into force of Ext.P4 order. No doubt, the petitioner was a teacher in service when

Ext.P4 order was given effect to. The pointed question is as to whether the petitioner could be regarded as a teacher in service who has been awarded Ph.D at the time of coming into force of Ext.P4 order. If a person like the petitioner who has been awarded Ph.D about two years prior to the coming into force of Ext.P4 order and who was governed by Clause 6.17 of Ext.P2 order is regarded as a teacher in service who has been awarded Ph.D at the time of coming into force of Ext.P4 order, then all similar teachers who were governed by Clause 6.19 of Ext.P2 order would also fall under Clause 10.5, as the Sixth Scheme of the UGC which is part of the records in W.P.(C) No.30802 of 2015 from which W.A.No.332 of 2018 arises only precludes teachers who have already availed the benefit of advance increments from possessing Ph.D at the entry level under the earlier Scheme, from claiming advance increments under the Sixth Scheme in terms of Clause 7(xxi) therein. If that be so, they can also claim three non-compounded increments in addition to the two advance increments which have been granted to them in terms of Clause 6.19 of Ext.P2 order. Such an inference, according to us, cannot be made, for if such an inference is made, those who have entered service



with Ph.D when Ext.P2 order was in force will have to be satisfied with four increments, whereas those who have entered service without Ph.D, but acquired Ph.D while in service, will be able to claim five increments, two under the Fifth Scheme and three under the Sixth Scheme. It is therefore clear that Clause 10.5 of Ext.P4 order deals only with persons who have not been granted any advance increments in terms of Ext.P2 order on the strength of the Ph.D acquired by them and who are unable to claim the said benefit in terms of Ext.P3 order on account of the condition stipulated in Clause 10.4 as regards the requirements to be satisfied for the Ph.D degree. We are fortified in this view by the expression “who have been awarded Ph.D at the time of coming into force of the scheme”. Needless to say, the petitioner cannot be regarded as a teacher in service who has been awarded Ph.D at the time of coming into force of Ext.P4 order falling within the scope of Clause 10.5 of Ext.P4 order. We take this view also for the reason that it has been clarified by the Government in Ext.P5 order that those who have already availed the benefit of advance increments at the earlier scheme for possessing Ph.D/M.Phil at the entry level or for acquiring Ph.D/M.Phil in

service shall not be entitled to the benefit of increments under the Sixth UGC Scheme, except as provided therein specifically. The effect of the said clause is that those who are governed by the earlier scheme for claiming advance increments on the strength of their Ph.D either at the entry level or while in service will not be entitled to claim increments as per the Sixth Scheme except as provided for in Ext.P5 order. Ext.P5 order is not under challenge. It does not also confer any right to persons like the petitioner to claim the non-compounded increments in terms of Ext.P4 order.

15. Let us now deal with the case set out by the petitioner in the writ petition as upheld by the learned Single Judge. As noted, the case set out by the petitioner is that the issue is covered in his favour as per Ext.P6 judgment rendered in an identical case as affirmed by the Division Bench in Ext.P6(a) judgment. As we could not ascertain from the judgment as to whether the facts are identical, we have called for and examined the Judges Papers in W.P.(C) No.23409 of 2016 in which Ext.P6 judgment was rendered. On a perusal of the Judges Papers in W.P.(C) No.23409 of 2016, it was found that W.P.(C) No.23409 of 2016 is a case where the petitioner

therein who was awarded two advance increments in terms of Clause 6.19 of Ext.P2 order claimed three more increments under the Sixth Scheme in terms of Clause 10.4 of Ext.P4 order. True, the said claim is seen to be upheld by the learned Single Judge of this Court and the same was affirmed by the Division Bench. It is also seen that in an identical writ petition namely, W.P.(C) No.30802 of 2015, though the learned Single Judge upheld the claim of the petitioners therein, the judgment was reversed in appeal by another Division Bench in W.A.No.332 of 2018, cited by the learned Government Pleader. The views taken by the learned Single Judge in Ext.P6, as affirmed by the Division Bench and the view taken by the Division Bench in W.A.No.332 of 2018 are conflicting. As noted, the question considered in Ext.P6 judgment as also in W.A.No.332 of 2018 is whether teachers who have been awarded two advance increments on the strength of the Ph.D acquired by them while in service in terms of Ext.P2 order, are entitled to three additional non-compounded increments also as provided for in Ext.P4 order. The question arising for consideration in this case is as to whether a teacher who entered service with M.Phil and who was awarded two advance

increments on the basis of the M.Phil degree and was denied the benefit of additional increment provided for in Ext.P2 order on acquiring Ph.D degree on the ground that he has not acquired the same within two years, is entitled to three additional non-compounded increments as provided for in Ext.P4 order. As the questions are different, we are of the view that the conflicting views expressed by this Court in Ext.P6 judgment as affirmed in Ext.P6(a) judgment and in W.A.No.332 of 2018 cannot be an impediment for us to decide the case on merits.

In the result, the writ appeal is allowed, the impugned judgment is set aside and the writ petition is dismissed.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

Sd/-

**C.S.SUDHA, JUDGE.**

ds 17.01.2023