



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO. 29933 OF 2023

PETITIONER:

VINSON M. PAUL, AGED 68 YEARS,
STATE CHIEF INFORMATION COMMISSIONER OF THE
KERALA STATE INFORMATION COMMISSION (RETIRED),
S/O.THE LATE M.M.PAUL, RESIDING AT 12-A, KAMALA GARDENS,
PEROORKADA, THIRUVANANTHAPURAM, PIN - 695005.

BY ADVS.
H.VISHNUDAS
O.V.RADHAKRISHNAN (SR.)
GEORGE VARGHESE

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.
- 2 PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION (CO-ORDINATION) DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.

BY SRI.E.G.GORDEN, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07.04.2025,
THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

**“CR”****JUDGMENT**

The petitioner, who retired as the State Chief Information Commissioner, has filed the captioned writ petition seeking to challenge Exts.P14 and P17 communications of the 2nd respondent, by which he is denied the post-retirement benefits claimed by him.

2. The petitioner, a member of Indian Police Service, retired on 22.11.2015. He was appointed as the State Chief Information Commissioner as evidenced by Ext.P1 notification dated 28.04.2016. He demitted the office on 22.11.2020 on attaining the age of 65 years. In connection with his retirement, the 2nd respondent was requested to determine the post-retirement benefits through Ext.P13 communication of the Secretary to the State Information Commission, Kerala. By Ext.P14, the 2nd respondent informed that the Government is not in a position to consider “the Chief Information Commissioners at par with retired Supreme Court Judges and the retired Election



Commissioners". It is further found that such benefits could not be extended to one class of officers, that the Central Government admitted the Election Commission of India and Central/State Information Commission are different, etc. Therefore, the retirement benefits sought for by Ext.P13 was not extended to the petitioner. By Ext.P17 communication dated 12.07.2021, the same stand is repeated, further holding that the pension can only be fixed as per the provisions of G.O.(P) No.199/2014/Fin. dated 29.05.2014 produced along with the writ petition as Ext.P18.

3. It is in the afore circumstances that the captioned writ petition is filed by the petitioner.

4. I have heard Sri.O.V. Radhakrishnan, the learned senior counsel for the petitioner and Sri.E.G.Gorden, the learned Senior Government Pleader for the respondents.

5. Sri.Radhakrishnan, the learned senior counsel, would contend that:

- i. The petitioner is appointed as the State Chief Information Commissioner with reference to the provisions of Section



16 of the Right to Information Act, 2005 (for short, the 'Act'). Sub-section (5) makes it clear that a State Chief Information Commissioner is entitled for the salary and allowances as well as the terms of office and conditions of service as applicable to that of an Election Commission.

- ii. With reference to the above, he contends that under the provisions of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 (Ext.P2 Act), under Section 3, the salary of the Chief Election Commissioner is equal to the salary of a Judge of the Supreme Court. Similarly, under Section 6(2), the pension of the Chief Election Commissioner is equal to the pension payable to a Judge of the Supreme Court. In the light of the afore, it is his contention that the petitioner was also entitled for similar treatment.
- iii. He would rely on Ext.P7 Government Order dated 09.12.2008, to contend that the petitioner was entitled to pension/retirement benefits as noticed above.
- iv. With reference to the provisions of the Right to Information (Amendment) Act, 2019, (for short, the "Amendment Act") relied on in the impugned communication, he would contend that insofar the petitioner was appointed earlier to the afore amendment, he would be entitled to be governed under the unamended provisions.



6. *Per contra*, Sri.Gorden, the learned Senior Government Pleader, would contend that:

- i. The petitioner is not entitled to the afore benefits, in view of Ext.P18 Government Order dated 29.05.2014.
- ii. The benefits available, if any, are only those admitted in the counter affidavit.

7. I have considered the rival submissions as well as the connected records.

8. The short issue arising for consideration in this writ petition is the entitlement of the petitioner for the retirement benefits as applicable to the Election Commission, as contended by him. It is not in dispute that the petitioner is appointed as the State Chief Information Commissioner under the provisions of the Act. Chapter IV to the Act provides for the State Information Commission. Section 16 thereunder provides for the "term of office and conditions of service" of the State Chief Information Commissioner. Sub-section (5) categorically provides as under:

"(5) The salaries and allowances payable to and other terms and conditions of service of-



- (a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;
- (b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government."

Thus, the salary/allowances, as well as the terms and conditions of service of the State Chief Information Commissioner, shall be the same as that of the Election Commissioner. Ext.P2 Act provides for the determination of conditions of service of the Chief Election Commissioner and other Election Commissioners. Section 3 thereto provides that the salary payable to the Chief Election Commissioner shall be equal to the salary of a Judge of the Supreme Court. As regards pension, Section 6(2) provides as under:

"(2) Where the Chief Election Commissioner or an Election Commissioner demits office whether in any manner specified in sub-section (3) or by resignation, he shall, on such demission be entitled to -

- (a) a pension which is equal to the pension payable to a Judge of the Supreme Court in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958), as amended from time to time; and
- (b) such pension including commutation of pension, family pension and gratuity as are admissible to a Judge of the Supreme Court under the said Act and the rules made



thereunder, as amended from time to time.”

Thus, the Chief Election Commissioner/Election Commissioner is entitled to the pension payable to a Judge of the Supreme Court. Therefore, the petitioner is justified in contending that since he retired as the State Chief Information Commissioner, by virtue of the provisions of Section 16(5)(a) of the Act read along with the provisions of Section 6(2) of Ext.P2 Act, he was entitled to the pension payable to a Judge of the Supreme Court.

9. This Court further notices that even the State Government when it issued Ext.P7 Government Order dated 09.12.2008 has found that “the State Chief Information Commissioner would be entitled to avail pension and post-retirement benefits as are admissible to a Judge of the Supreme Court”.

10. True, Act came to be amended pursuant to the Amendment Act, 2019 whereby Section 16(5) stood substituted as under:

“(5) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be



prescribed by the Central Government;

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment;

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.”

A reading of the afore sub-section as amended would show that the salary and allowances payable to the State Chief Information Commissioner shall be as such as may be prescribed by the Central Government. However, the first proviso thereto has provided that the conditions of service of the State Chief Information Commissioner is not to be varied to his disadvantage after the initial appointment. Similarly, the second proviso has laid down that those State Chief Information Commissioners who have been appointed before the commencement of the Amendment Act, shall continue to be governed by the unamended provisions.



11. In this connection, it is to be noticed that the petitioner, as seen from Ext.P1, came to be appointed as the State Chief Information Commissioner on 28.04.2016. Therefore, he is entitled to the protection extended by both the provisos to the amended sub-section as noticed above.

12. When that be so, I am of the opinion that the petitioner is entitled to the benefits as prayed for. The impugned communication at Ext.P14 seeks to place reliance on the Amendment Act without noticing the impact of the first and second provisos to Section 16(5). To the above extent, Exts.P14 and P17 requires to be *set aside*.

13. This Court further notices the averments contained in paragraph 6 of the counter affidavit filed by the 2nd respondent herein, as per which, the petitioner being the retired State Chief Information Commissioner, would also be entitled for the medical facilities, residential telephone/mobile charges, orderly charges and domestic help facilities.



14. This Court further notices that the 2nd respondent has placed reliance on Ext.P18 Government Order (G.O.(P) No.199/2014/Fin. dated 29.05.2014) while issuing Ext.P17 communication. In this connection, it is to be noticed that the provisions of Section 16(5) prior to the Amendment in 2019 provided for extending the term of office and conditions of the service of the State Chief Information Commissioner in the manner provided therein. The Government Order at Ext.P18 referred to above seeks to depart from the provisions of the statute as noticed above. The Apex Court in **Dr. Rajinder Singh v. State of Punjab and Others [(2001) 5 SCC 482]** has laid down that “no government order, notification or a circular can be a substitute of the statutory rules framed with the authority of law.” To the same effect is the judgment in **State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another [(2013) 12 SCC 210]**, wherein the Apex Court has laid down that pension is not a bounty and therefore, in the nature of “property” which cannot be taken away without due process of



law. Therefore, I am of the opinion that Ext.P18 Government Order also requires to be *set aside* and I do so.

15. On the whole, I am of the opinion that the petitioner is entitled to succeed.

Resultantly, this writ petition would stand allowed by quashing Exts.P14 and P17 communications issued by the 2nd respondent as well as the Government Order, G.O.(P) No.199/2014/Fin. dated 29.05.2014. There will be a direction to the respondents to extend the retirement benefits to the petitioner in tune with the provisions of Section 16(5) of the Act as it existed prior to the amendment in 2019, read along with the provisions of Ext.P2 Act as discussed above.

Sd/-

HARISANKAR V.MENON, JUDGE

In

APPENDIX OF WP(C) 29933/2023

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE NOTIFICATION G.O(MS) NO.60/2016/GAD DATED 28-04-2016 OF THE SECRETARY TO GOVERNMENT
- EXHIBIT P2 A TRUE COPY OF THE RELEVANT PAGES OF THE ELECTION COMMISSION (CONDITIONS OF SERVICE OF ELECTION COMMISSIONERS AND TRANSACTION OF BUSINESS) ACT, 1991
- EXHIBIT P3 A TRUE COPY OF THE OFFICE MEMORANDUM NO. 5/2/2013/CIC/ADMN DATED 09-04-2018 OF THE JOINT SECRETARY, CENTRAL INFORMATION COMMISSION, NEW DELHI
- EXHIBIT P4 A TRUE COPY OF THE OFFICE MEMORANDUM NO.193/1/201(I) DATED 19-03-2021 OF THE SENIOR PRINCIPAL SECRETARY,, ELECTION COMMISSION OF INDIA, NEW DELHI
- EXHIBIT P5 A TRUE COPY OF THE ORDER FILE NO. 5/2/2013/CIC/ADMN DATED 31-03-2021 OF THE JOINT SECRETARY (ADMN), CENTRAL INFORMATION COMMISSION, NEW DELHI
- EXHIBIT P6 A TRUE COPY OF THE RELEVANT PAGES OF THE SUPREME COURT JUDGES RULES, 1959 RETRIEVED FROM THE WEBSITE: WWW.COURTKUTCHEHRY.COM
- EXHIBIT P7 A TRUE COPY OF THE G.O.(MS) NO.377/2008/GAD DATED 09-12-2008 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P8 A TRUE COPY OF THE RELEVANT PAGES OF THE PENSION PAYMENT ORDER NO. 111621713 DATED 04-01-2016 ISSUED TO THE PETITIONER
- EXHIBIT P9 A TRUE COPY OF THE RIGHT TO INFORMATION (AMENDMENT) ACT, 2019 OF THE SECRETARY, GOVERNMENT OF INDIA.
- EXHIBIT P10 A TRUE COPY OF THE NOTIFICATION DATED 24-10-2019 PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY DATED 24-10-2019 OF THE ADDL.



SECRETARY, MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS, NEW DELHI.

- EXHIBIT P11 A TRUE COPY OF THE RIGHT TO INFORMATION (TERM OF OFFICE, SALARIES, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHIEF INFORMATION COMMISSIONER, INFORMATION COMMISSIONERS IN THE CENTRAL INFORMATION COMMISSION, STATE CHIEF INFORMATION COMMISSIONER AND STATE INFORMATION COMMISSIONERS IN THE STATE INFORMATION COMMISSION) RULES, 2019ADDL. SECRETARY, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, NEW DELHI.
- EXHIBIT P12 A TRUE COPY OF THE SUPREME COURT JUDGES (AMENDMENT) RULES, 2021, OF THE JOINT SECRETARY, MINISTRY OF LAW AND JUSTICE, NEW DELHI.
- EXHIBIT P13 A TRUE COPY OF THE LETTER NO.8486/G8-ADMN/2020/SIC DATED 14-09-2020 OF THE SECRETARY TO THE COMMISSION, STATE INFORMATION COMMISSION, KERALA, THIRUVANANTHAPURAM
- EXHIBIT P14 A TRUE COPY OF THE REPLY LETTER NO.53/CDN.5/2020/DAD DATED 12-04-2021 OF THE 2ND RESPONDENT.
- EXHIBIT P15 A TRUE COPY OF THE REPRESENTATION DATED 21-04-2021 OF THE PETITIONER TO THE 2ND RESPONDENT
- EXHIBIT P16 A TRUE COPY OF THE FORWARDING LETTER NO.6297/G8-ADMIN/2018/SIC DATED 01-06-2021 OF THE COMMISSION SECRETARY, STATE INFORMATION COMMISSION, KERALA.
- EXHIBIT P17 A TRUE COPY OF THE LETTER NO.33/CDN.5/2021/GAD DATED 12-07-2021 OF THE 2ND RESPONDENT ADDRESSED TO THE SECRETARY, STATE INFORMATION COMMISSIONER, GOVERNMENT OF KERALA.
- EXHIBIT P18 A TRUE COPY OF THE G.O.(P) NO. 199/2014/FIN. DATED 29-05-2014 OF THE JOINT SECRETARY (FINANCE) TO GOVERNMENT.
- EXHIBIT P19 A TRUE COPY OF THE ORDER NO.360-PAR(GENL.)/G8P-103/2017(PT.I) DATED 06-05-2021 OF THE



ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF
WEST BENGAL.

EXHIBIT P20 A TRUE COPY OF THE ORDER DATED 07-01-2022 OF
THE PRINCIPAL SECRETARY TO GOVERNMENT OF
PUNJAB.

EXHIBIT P21 A TRUE COPY OF THE REPRESENTATION DATED 2-12-
2022 OF THE PETITIONER TO THE CHIEF SECRETARY,
GOVERNMENT OF KERALA.

EXHIBIT P22 A TRUE COPY OF THE HIGH COURT AND SUPREME COURT
JUDGES (SALARIES AND CONDITIONS OF SERVICE)
AMENDMENT ACT,2018 (ACT NO.10 OF 2018) GAZETTE
NOTIFICATION DATED 27-01-2018.