



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 13<sup>TH</sup> DAY OF MARCH 2024 / 23RD PHALGUNA, 1945

OP(KAT) NO. 77 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 25.07.2023 IN OA (EKM) NO.500 OF  
2014 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S/APPLICANT:

VIMALAKUMARI M.K,  
AGED 67 YEARS, W/O.K.V.KUNHIKANNAN, JUNIOR  
SUPERINTENDENT (RETIRED) I.T.I, KANNUR, RESIDING AT  
KALATHIL HOUSE, C/O.MUKUNDAN, KOTTAM, MUNDALLOOR  
P.O.KANNUR, KERALA, PIN - 670622

BY ADVS.  
KALEESWARAM RAJ  
THULASI K. RAJ  
CHINNU MARIA ANTONY

RESPONDENT/S/RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT  
OF INDUSTRIAL TRAINING, SECRETARIAT, THIRUVANANTHAPURAM,  
PIN - 695001
- 2 THE PRINCIPAL,  
GOVERNMENT I.T.I, KANNUR , , PIN - 670007
- 3 THE DIRECTOR OF TRAINING,  
DEPARTMENT OF INDUSTRIAL TRAINING, THYCAUD,  
THIRUVANANTHAPURAM, KERALA, PIN - 695014
- 4 THE ACCOUNTANT GENERAL (A & E),  
STATUE, THIRUVANANTHAPURAM-KERALA., PIN - 695001  
SPECIAL GOVERNMENT PLEADER (SC/ST) -  
ADV.LATHA.T.THANKAPPAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY  
HEARD ON 13.03.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



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## **JUDGMENT**

**Dated this the 13<sup>th</sup> day of March, 2024**

### **A. MUHAMED MUSTAQUE (J)**

The petitioner, who retired from the post of Junior Superintendent, ITI, Kannur was not granted pensionary benefits due to the fact that the issue related to the caste status is yet to be settled by this Court in W.P.(C) No.13618 of 2012. The Kerala Administrative Tribunal, noting that the issue related to the caste status of the petitioner is pending before this Court, dismissed O.A.No.500 of 2014 dated 25.07.2023, seeking direction for the disbursal of the pensionary benefit of the petitioner.

2. The petitioner admittedly obtained employment in the Technical Education Department, classifying errors belonging to 'Moger' community. In school records, she has been treated as, belonging to the 'Moger' community. Historically there exists a dispute regarding, who are the constituents of moger community. The Government, by order dated 21.07.1989, directed to give benefit of moger community to those who are claiming as a 'moger' subject to further enquiry regarding their actual status.

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3. The status of the petitioner claiming as moger was not accepted by the Scrutiny Committee. This resulted in litigation. The question now to be considered is that, whether the petitioner should be denied pensionary benefits or not. If a patent fraud has been committed, no doubt, such persons should be denied pensionary benefit. The line of decision of this Court as well as the Apex Court really established the settled position of law as above. However, we note the issue relating to the caste status claimed by the petitioner as a moger could not be resolved by the State, as there was a delay in conducting enquiry.

4. In the light of directions given in other judgment, We also note that the Government passed an order in similar circumstances, allowing pensionary benefits by G.O.4595/2021 dated 08.05.2021. In a similar matter, Sri. P.P.Suresh Babu, an Assistant Engineer retired from PWD Department, approached the Tribunal in O.A.No.1925 of 2021, as he was not given pensionary benefit. Thereafter, based on the direction of the Tribunal, he was given pensionary benefit. Noting the above direction, the Single Bench of this Court in M.F.A. (SCSTCC) No.135 of 2005 ordered that similarly situated persons also should be given pensionary benefit and this Court in paragraph 5 of the judgment dated 24.04.2023 in M.F.A. (SCSTCC) No.135 of

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2005 , held as follows:

5. I am of the view that this is a case where appellants can claim their retirement benefits for more than one reason. Firstly, a similar order has been passed by the KAT upholding the retirement benefits of the 4<sup>th</sup> appellant and that has become final. The 4<sup>th</sup> appellant is already enjoying the pensionary benefits since there was no challenge against the order of the KAT, I am of the view that even if KAT orders that, it is subject to the orders to be passed in this MFA, that order has become irreversible by efflux of time. Secondly for the reason that, there was no fraud committed by the appellants in describing them as a moger. The pensionary benefits cannot be denied to officers as the officers retired from the service before the enquiry is concluded. The scrutiny committee's report could be relied upon only to prevent continuation of enjoyment of status as an employee based on an appointment made in a quota earmarked for scheduled caste. In a matter like this, the pensionary benefits flow from the service rendered for a long period of years of service to the State. Though the employment can be struck down, the pensionary benefits need not be struck down unless there is a manifest fraud committed by the employee.

5. The petitioner retired in the year 2013. Pension is a savings of an employee, that can be deprived only in accordance with the procedure established by law or when it is shown that the employment itself has obtained by playing fraud. In the light of the



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factual situation as above, we cannot hold that any fraud has been committed by the petitioner, though her status as a member of moger community, is set to be retained by this Court.

In view of the facts and circumstances of the case, the official respondents are directed to disburse the pensionary benefit of the petitioner, within a period of two months. Accordingly, the Original Petition is disposed of.

**Sd/**

**A. MUHAMED MUSTAQUE  
JUDGE**

**Sd/ -**

**SHOBA ANNAMMA EAPEN  
JUDGE**

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APPENDIX OF OP(KAT) 77/2024

**PETITIONER ANNEXURES**

- Annexure A1** TRUE COPY OF THE LETTER NO.B5/2435/2013 DATED 23.01.2014 ISSUED BY THE 2ND RESPONDENT
- Annexure A1(a)** TRUE ENGLISH TRANSLATION OF ANNEXURE A1.
- Annexure A2** TRUE COPY OF THE REPRESENTATION DATED 17.03.2014 SUBMITTED BY THE APPLICANT BEFORE THE 3RD RESPONDENT.
- Annexure A2(a)** TRUE ENGLISH TRANSLATION OF ANNEXURE A2.
- Exhibit P1** TRUE COPY OF THE ORDER DATED 25.07.2023 IN O.A(EKM)NO.500/2014 OF THE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM
- Exhibit P2** TRUE COPY OF THE MEMORANDUM OF THE OA (EKM)NO.500/2014
- Exhibit P2(a)** TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE 1ST RESPONDENT IN O.A(EKM)NO.500/2014
- Exhibit P3** TRUE COPY OF THE JUDGMENT IN MFA (SCSTCC)NO.135/2005 DATED 24.04.2023 PASSED BY THIS HON'BLE COURT.
- Exhibit P4** A TRUE COPY OF G.O(RT)NO.4595/2020/REV. DATED 18.12. 2021
- Exhibit P5** TRUE COPY OF LETTER ADDRESSED TO BRANCH MANAGER, STATE BANK OF INDIA DATED 01.08.2020.