

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 36793 OF 2022

PETITIONER/S:

- 1 AJITH KUMAR V.S., AGED 55 YEARS,
DEPUTY REGISTRAR, HIGH COURT OF KERALA,
ERNAKULAM, COCHIN- 682 031.
- 2 E.K. KUNHIKANNAN, CHAUFFEUR GRADE-I,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031.

BY ADVS.

K.JAJU BABU (SR.)

M.U.VIJAYALAKSHMI

BRIJESH MOHAN

D.SREEKUMAR (KALAMASSERY)

SACHIN RAMESH

K.M.FATHIMA

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY ADDL. CHIEF
SECRETARY TO GOVERNMENT, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695
001.
- 2 THE HIGH COURT OF KERALA,
ERNAKULAM, COCHIN - 682031,
REPRESENTED BY REGISTRAR GENERAL.

ADDL.R3 MOHAMMED SHAN S., SHAN VILLA, TC 16/1250/1,
NEAR KMLRA-129, KUMARAPURAM MOSQUE LANE, MEDICAL
COLLEGE P.O., THIRUVANANTHAPURAM, PIN - 695 011.

ADDL.R4 SONIYA K.S., 53/397, 6213, KUMBALATHUPARAMBIL
HOUSE, VYTTILA, PIN - 682 019.

VERDICTUM.IN

WP(C) NO. 36793 OF 2022

-2-

ADDL.R5 AKHIL R. AKHIL NIVAS, WGPA - 3, DOCTORS GARDEN,
ULLOOR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM, PIN - 695 011.

ADDL.R6 UNNIKRISHNAN M.J., MULAKUNNATHU HOUSE,
CHIRAKKADAVU EAST P.O., CHIRAKKADAVU,
KOTTAYAM DISTRICT, PIN - 686 520.

(ADDL.R3-R6 ARE IMPEADED AS PER ORDER DATED
10/04/2023 IN I.A.NO.1/2022 IN WP(C) 36793/22)

ADDL.R7 MIDHUN VARGHESE PAUL
SECTION OFFICER/COURT OFFICER, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI - 682 031.

ADDL.R8 MUHAMMED LIJAS
ASSISTANT SECTION OFFICER, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682 031.

ADDL.R9 SHEMI S.
ASSISTANT SECTION OFFICER, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682 031.

ADDL.R10 SHEMEER P.A.
ASSISTANT SECTION OFFICER, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682 031.

ADDL.R11 JIJOMON K.J.
ASSISTANT SECTION OFFICER, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682 031.

ADDL.R12 KERALA HIGH COURT STAFF ASSOCIATION
REG. NO. 14/57, REPRESENTED BY ITS SECRETARY
V.N. RADHIKA DEVI, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 682 031.

(ADDL.R7-R12 ARE IMPEADED AS PER ORDER DATED
10/04/2023 IN IA 2/2023 IN WP(C) 36793/22)

BY ADVS.

SUNIL JACOB JOSE FOR R2
S.P.ARAVINDAKSHAN PILLAY
K.P.SATHEESAN (SR.)
N.SANTHA

VERDICTUM.IN

WP(C) NO. 36793 OF 2022

-3-

V.VARGHESE
PETER JOSE CHRISTO
S.A.ANAND
K.N.REMYA
L.ANNAPOORNA
VISHNU V.K.
ABHIRAMI K. UDAY
P.MOHANDAS (ERNAKULAM)
K.SUDHINKUMAR
SABU PULLAN
GOKUL D. SUDHAKARAN
R.BHASKARA KRISHNAN
ADVOCATE GENERAL OFFICE KERALA
SHRI.T.B.HOOD, SPL.G.P. TO A.G.()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.05.2023, ALONG WITH WP(C).11246/2023,
14555/2023 AND CONNECTED CASES, THE COURT ON 31.05.2023
DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 11246 OF 2023

PETITIONER/S:

A.B. SHEELAKUMARI, AGED 56 YEARS,
JOINT REGISTRAR, HIGH COURT OF KERALA, ERNAKULAM,
COCHIN- 682 031, RESIDING AT VYSAKH, THENGODE. P.O,
KOCHI-682030.

BY ADVS.

M.U.VIJAYALAKSHMI

K.JAJU BABU (SR.)

BRIJESH MOHAN

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY ADDL. CHIEF
SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE HIGH COURT OF KERALA, ERNAKULAM, COCHIN -
682031, REPRESENTED BY REGISTRAR GENERAL.

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

HARINDRANATH B G

AMITH KRISHNAN H. (K/000666/2015)

M.GOPIKRISHNAN (K/000841/2017)

SHRI.T.B.HOOD, SPL.G.P. TO A.G. ()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.05.2023, ALONG WITH WP(C).36793/2022 AND CONNECTED CASES,
THE COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 14555 OF 2023

PETITIONER/S:

HALEEL. M., AGED 56 YEARS,
ASSISTANT REGISTRAR, HIGH COURT OF KERALA,
ERNAKULAM, COCHIN- 682 031, RESIDING AT RAYYAN, SEA
VIEW WARD, ALAPPUZHA-690515.

BY ADVS.

M.U.VIJAYALAKSHMI

K.JAJU BABU (SR.)

BRIJESH MOHAN

RESPONDENT/S:

1 STATE OF KERALA , REPRESENTED BY ADDL. CHIEF
SECRETARY TO GOVERNMENT HOME DEPARTMENT, GOVERNMENT
SECRETARIAT THIRUVANANTHAPURAM-695001.

2 THE HIGH COURT OF KERALA,
ERNAKULAM, COCHIN - 682031,
REPRESENTED BY REGISTRAR GENERAL.

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

ELVIN PETER P.J.

K.R.GANESH(K/000551/1991)

SHRI.T.B.HOOD, SPL.G.P. TO A.G. ()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.05.2023, ALONG WITH WP(C).36793/2022 AND CONNECTED CASES,
THE COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 14911 OF 2023

PETITIONER/S:

- 1 RAMADEVI K.V., AGED 55 YEARS,
AGED 55 YEARS, W/O T. R PREMKUMAR,
THURUTHAIL HOUSE, VENNALA P.O., ERNAKULAM-682028.
- 2 SURESH KUMAR M.K., AGED 55 YEARS,
AGED 55 YEARS, S/O. M.R KARUNAKARAN (LATE),
VARADHANAM HOUSE, NETTOOR P.O., ERNAKULAM-682040.

BY ADVS.

S.RAJEEV

V.VINAY

M.S.ANEER

PRERITH PHILIP JOSEPH

RESPONDENT/S:

- 1 STATE OF KERALA, REP. BY THE ADDL. CHIEF SECRETARY
TO GOVERNMENT, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 SECRETARY, FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 3 HIGH COURT OF KERALA, REP. BY ITS REGISTRAR GENERAL,
ERNAKULAM 682 031.

BY ADVS.

ELVIN PETER P.J.

K.R.GANESH(K/000551/1991)

ADVOCATE GENERAL OFFICE KERALA

SHRI.T.B.HOOD, SPL.G.P. TO A.G. ()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.05.2023, ALONG WITH WP(C).36793/2022 AND CONNECTED CASES, THE COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 16097 OF 2023

PETITIONERS:

- 1 BABY ANITHA P. K., AGED 56 YEARS,
W/O.LATE P.K.ARAVINDAKSHAN, P.S (HR. GR) TO JUDGE, HIGH
COURT OF KERALA, PRESENTLY RESIDING AT HOUSE NO. 667,
THARASSERY HOUSE, COMRADE DEVASYA LANE, THYKKOODAM P.O,
ERNAKULAM, PIN - 682019.
- 2 BINDU S., AGED 56 YEARS, W/O. SABU P,
P.S (HR. GR) TO JUDGE, HIGH COURT OF KERALA, PRESENTLY
RESIDING AT A3, AKASH APARTMENTS, THIDUNNAYIL LANE,
PONNURUNNI, VYTILO, ERNAKULAM, PIN - 682019

BY ADVS.
A.KEVIN THOMAS
NIDHI SAM JOHNS
LIJO JOSEPH (THOPPIL)
A.V.THOMAS (SR.) (T-49)

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF
SECRETARY, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 2 THE HIGH COURT OF KERALA,
ERNAKULAM, COCHIN REPRESENTED BY THE REGISTRAR GENERAL,
PIN - 682031

BY ADVS.
HARINDRANATH B G
AMITH KRISHNAN H. (K/000666/2015)
M.GOPIKRISHNAN(K/000841/2017)
LEJO JOSEPH GEORGE(K/357-C/2017)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.05.2023, ALONG WITH WP(C).36793/2022 AND CONNECTED CASES, THE
COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 38775 OF 2022

PETITIONER/S:

XAVI M.J., AGED 56 YEARS, SELECTION GRADE LIBRARY ASSISTANT, HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031.

BY ADVS.

M.U.VIJAYALAKSHMI

K.JAJU BABU (SR.)

SACHIN RAMESH

BRIJESH MOHAN

D.SREEKUMAR (KALAMASSERY)

K.M.FATHIMA

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY ADDL.CHIEF SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001
- 2 THE HIGH COURT OF KERALA,
ERNAKULAM, COCHIN-682 031, REPRESENTED BY REGISTRAR
GENERAL.

BY ADVS.

SUNIL JACOB JOSE

PUBLIC PROSECUTOR

ADVOCATE GENERAL

SHRI.T.B.HOOD, SPL.G.P. TO A.G.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.05.2023, ALONG WITH WP(C).36793/2022 AND CONNECTED CASES, THE COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 39308 OF 2022

PETITIONER/S:

CICILY LOPEZ, AGED 56 YEARS,
SECTION OFFICER HIGHER GRADE / COURT OFFICER, HIGHER
GRADE (RETIRED) HIGH COURT OF KERALA, ERNAKULAM,
COCHIN- 682 031, RESIDING AT CHETTIVALAPIL HOUSE,
DOOR # 74/1130 (46/216 OLD NO), PUSHPAKA ROAD NORTH,
VADUTHALA P.O, KOCHI-682 023

BY ADVS.

K.JAJU BABU (SR.)

M.U.VIJAYALAKSHMI

BRIJESH MOHAN

RESPONDENT/S:

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

2 THE HIGH COURT OF KERALA
ERNAKULAM, COCHIN - 682031,
REPRESENTED BY REGISTRAR GENERAL.

BY ADVS.

SUNIL JACOB JOSE

PUBLIC PROSECUTOR

ADVOCATE GENERAL

SHRI.T.B.HOOD, SPL.G.P. TO A.G.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.05.2023, ALONG WITH WP(C).36793/2022 AND CONNECTED CASES,
THE COURT ON 31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 40636 OF 2022

PETITIONER/S:

SAJEEV KUMAR P.P., AGED 56 YEARS,
DUFFEDAR, HIGH COURT OF KERALA,
KOCHI - 682 031.

BY ADVS.
P.DEEPAK
M.T.SURESHKUMAR

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE HIGH COURT OF KERALA,
REPRESENTED BY REGISTRAR GENERAL,
ERNAKULAM - 682 031.

ADDL. R3 VIJAYAKUMARI AMMA C.R.,
56 YEARS, D/O. RAVINDRAN PILLAI (LATE), RESIDING
AT KRISHNA KRIPA, THIRUVONAM NAGAR, THRIKKAKARA,
COCHIN UNIVERSITY P.O., ERNAKULAM - 682 022,
(IS IMPEADED AS PER THE ORDER DATED 19/12/2022
IN I.A.NO.1/2022 IN WP(C) NO.40636/2022)

ADDL.R4 SALIM. C, JOINT REGISTRAR, HIGH COURT OF KERALA,
ERNALUKAM-682031, RESIDING AT "KRISHNANJANA",
KALADY.P.O, ERNAKULAM-683 574.

(IS IMPEADED AS PER THE ORDER DATED 31.5.2023
IN I.A.NO.1 OF 2023 IN W.P. (C) NO.40636/2022).

VERDICTUM.IN

WP(C) NO. 40636 OF 2022

-2-

BY ADVS.

SHRI.T.B.HOOD, SPL.G.P. TO A.G.

B.G.HARINDRANATH

RILGIN V.GEORGE

BRIJESH MOHAN

K.JAJU BABU (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.05.2023, ALONG WITH
WP(C).36793/2022 AND CONNECTED CASES, THE COURT ON
31.05.2023 DELIVERED THE FOLLOWING:

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:1:-

"C.R."

A.MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.

W.P. (C) Nos.36793/2022, 38775/2022,
39308/2022, 40636/2022, 11246/2023,
14555/2023, 14911/2023 & 16097/2023

Dated this the 31st day of May, 2023

J U D G M E N T

A.Muhamed Mustaque, J.

On 25.10.2022, the Registrar General of the High Court of Kerala forwarded the proposal of the Hon'ble the Chief Justice of High Court of Kerala for enhancement of age of superannuation of the members of the staff of the High court from 56 to 58 years. This proposal was mooted pursuant to the

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:2:-

High level meeting between the Hon'ble Chief Justice and Hon'ble the Chief Minister held on 24.9.2022 wherein while considering many other matters, the Hon'ble Chief Minister expressed willingness to consider the proposal for enhancement of age with an open mind. The High Court forwarded the proposal along with the sub-committee report. The sub-committee consisted of three judges of this Court. After advertng to many inputs and factors, the committee suggested enhancement of retirement age, limiting to members with meritorious service and impeccable integrity. That means an evaluation of performance will have to be done at the age of 56, which is the present age fixed for retirement, for an extension of service beyond 56 years.

2. The Government considered the matter. The Additional Chief Secretary by communication dated 28.2.2023 informed the High Court of their inability to accept the proposal as the Government

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:3:-

fixed the retirement age at 56 of the High Court staff at par with the government servants and in view of the fact that no decision was taken to enhance retirement age of the government servants, the Government was not in a position to consider the proposal favorably.

3. The Kerala High Court Services (Determination of Retirement Age) Act, 2008, a state legislation, determines the retirement age in High Court service. It came into force with effect from 1.8.2008, the retirement age was fixed at 55. Thereafter, it was amended and now the retirement age is 56 years. We are not referring to the various events that occurred between the original enactment and the amendment as it may not be relevant for consideration of the points involved in this case.

4. These writ petitions have been filed by employees who have entered into the service of the High Court prior to 1.4.2013. The age of

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

- : 4 : -

retirement of government employees after 1.4.2013 is 60 years based on the Government order then prevailing and thereafter, based on the amendment of service rules including the Kerala High Court Services (Determination of Retirement Age) Act, 2008. These matters have been placed before the division bench on a reference from the learned single judge apparently pointing out conflicts of views expressed by learned single judges in W.P. (C).No.19628/2007 and W.P.(C).No.31662/2007 and connected cases on interpretation accorded to Article 229 of the Constitution referring to the power of the Chief Justice. We, at the outset, must say that there is no conflict of views as the facts in both cases are dissimilar. In W.P. (C).No.16097/2023, there was a challenge against the statutory provision fixing age of retirement. This relief sought in the writ petition has been given up.

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:5:-

5. The writ petitions proceed on the ground that under Article 229 the Chief Justice is the sole authority to decide the service conditions of the employees of the High Court and therefore, the Government was bound to accept the proposal.

6. We shall now refer to Article 229 of the constitution, which reads thus:

229. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:6:-

7. Article 229 gives primacy to the Chief Justice in the matter of appointment of officers and servants of the High Courts as referable under 229 (1) of the Constitution. Service conditions of such officers and servants of the High Courts are subject to any law made by the state legislature. We need not vex our mind on this point as the constitutional provision is unambiguously clear as to the supremacy of the legislature to lay down the service conditions. We also see the judgments of the Apex Court in **M.Gurumoorthy v. Accountant-General, Assam & Nagaland & Ors.** 1971 (2) SCC 137, **Union of India & Anr v. S.B. Vohra & Ors.** (2004) 2 SCC 150, **State of Andhra Pradesh & Anr v. T.Gopalakrishnan Murthi & Ors.** (1976) 2 SCC 883, and the judgments of this Court in **M. Valsakumari & Ors. v. State of Kerala & Ors.** [2007 (3) KHC 528] and **Valsakumari v. State of Kerala** [2008 (1) KLT 672].

This court in **M. Valsakumari & Ors. v. State of**

W.P. (C) Nos.36793/2022 and conn.cases

-:7:-

Kerala & Ors. [2007 (3) KHC 528] held as follows:

13. It is common case that retirement age is a condition of service and therefore, the Chief Justice is competent to frame appropriate provisions, concerning the same. The parties differ only on the question whether such a Rule requires approval of the Governor or not. The learned counsel on both sides admitted that there is no decision of the Apex Court or this Court directly on this point. Going by the Constitutional scheme, the founding fathers thought that to ensure the independence of judiciary, the power to make Rules concerning service conditions of the Officers and servants of the High Court should be left to the Chief Justice, subject to any law made by the State Legislature. Independence of Judiciary is one of the basic features of our Constitution. Various provisions are included in the Constitution to guarantee the independence of the Judiciary and to insulate it from the influence of the Executive. Art.229(2) is one among them. But, the founding fathers have taken care to ensure that at least in relation to four main matters involving financial commitment, the approval of the Governor is necessary. This being not a matter to be discharged in the discretion of the Governor, the approval of the Governor means the approval of the Government, in the light of the Constitution Bench decision of the Apex Court in *Samsher Singh v. State of Punjab*, 1975 (1) SCR 814: 1974 (2) SCC 831: AIR 1974 SC 2192. But, in relation to other matters not covered by the four enumerated items, which may involve financial commitment, the approval of the Governor is not necessary. The interpretation sought to be advanced by the contesting respondents that all matters involving financial commitment, approval of the Governor is necessary, cannot be accepted. **But, in such matters also, the State Legislature has the power to say the ultimate word. It can frame a legislation dealing with the service conditions of the employees, including the age of**

W.P. (C) Nos.36793/2022 and conn.cases

-:8:-

retirement. In that event, the rule making power of the Chief Justice will be subject to the provisions of the Legislation. In other words, if the State Legislature passes a legislation providing that the age of retirement of the servants and employees of the High Court shall be 55, R.37(1), providing that the retirement age will be 58 years, will not have any efficacy. [emphasis supplied]

Further, this court in **Valsakumari v. State of Kerala [2008 (1) KLT 672]** held that:

35. Does sub-cl. (2) of Art 229 of the Constitution suggest any constitutional limitation insofar as the competence of the State legislature is concerned? In my view, subject to conformity with the provisions of Part III of the Constitution, which of course, is a matter of general application to any law enacted by any legislature, it is open to the State legislature to pass a law dealing with the conditions of service of employees of the High Court. The fact that the opening words in CI.(2) of Art.229 of the Constitution refers to a law made by the legislature of the State should obviously reiterate and affirm the competence of the State legislature to enact a law on the subject. At any rate, the opening words cannot inferentially result in a dilution of the competence of the State legislature in that behalf.

8. The retirement age has been fixed by the law laid down by the state legislature. The request of the Chief Justice can only be treated as a proposal for favourable consideration for

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

- : 9 : -

initiating suitable amendment to the law laid down with respect to the retirement age. This court cannot issue writ of mandamus to the Government to bring suitable amendments to the legislation. It is beyond our power to direct the Government to initiate steps for amendment of legislation related to the retirement age. However, at the same time, we also feel that the Government cannot outrightly reject the proposal, merely citing the age of retirement prevailing for government servants. The sub-committee constituted by the Chief Justice had gone into the matter in detail and had only recommended the enhancement of the retirement age of meritorious employees and servants. The reason for such recommendation is that many officers who come up the ladder by way of promotion, before setting their foot to the post where they have been promoted, will have to retire from service without much contribution utilizing the experience they gained. This might

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:10:-

cause ripples in the administration of the High Court. We have often seen that an officer who has been promoted to the cadre of Registrar will have to retire from service within two or three months after promotion. The idea of suggesting enhancement to meritorious employees is in the best interest of the administration of the institution. The proposal itself negates automatic enhancement of retirement age. When the Chief Justice sends a proposal, institutional comity expects a high level of deliberations and consideration of the aspects related to the subject. The different institutions of the State are to be coordinated in their efforts to achieve what is best in the larger interest of the Institution. In a recent judgment, **State of Rajasthan & Ors. v. Ramesh Chandra Mundra & Ors [(2020) 20 SCC 163]** the Apex Court reiterated the principles of comity and mutual respect of different institutions working under the

W.P. (C) Nos.36793/2022 and conn.cases

-:11:-

Constitution. The Apex court therein opined as below:

21. It seems to us that the proviso to Article 229(2) (as also Article 146), does not reflect an architecture of hierarchy. We think that the correct constitutional approach is one of comity between different institutions working under the Constitution. The emphasis is not on the supremacy of one institution or demarcating the boundaries of the other. It is about ensuring institutional integrity of one while respecting the functional domain of the other. These provisions are meant to facilitate a dialogue of governance between high constitutional functionaries. A healthy dialogue, perhaps, even a debate is necessary for an efficient constitutional polity. The constitutional vision is not to draw "lakshman rekhas" between constitutional functionaries; its command is for the constitutional functionaries to efficiently coordinate to best achieve constitutional goals. It is this constitutional essence that was ignored when the request of the learned Chief Justice was not even placed before the Governor.

22. That independence of judiciary is part of the basic structure of the Constitution is now well entrenched. The Constitution has insulated the judiciary from outside influences both by the executive and legislature. Articles 223 to 234 in Chapter VI in Part VI of the Constitution dealing with the courts below the High Courts also show that the Constitution-makers were equally keen to insulate even subordinate judiciary. Independence of judiciary takes within its sweep independence of the individual Judges in relation to their appointments, tenure, payment of salaries and also non-removal except by way of impeachment. An integral part of "Independence of judiciary", as a constitutional value is the "Institutional Independence" i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess

and enjoy. This effective involvement of the judicial branch in budgeting, staff and infrastructure has also been recognised by the international community.

9. When the Hon'ble the Chief Justice forwarded the proposal to enhance the retirement age of those employees who have meritorious service, that can only be inferred that such proposal is to protect institutional interest. Such a proposal cannot therefore be returned merely citing that it deflects parity in following the retirement age of government servants. Each organ of the State is expected to have deference to the views expressed by one organ, concomitant with the policies and rules that govern the institutions. It is apparent that the Government had not adverted to the proposal of extension of retirement age of meritorious candidates beyond the age of 56.

10. We note that the Government had not considered the proposal in a proper perspective as agreed at the high level meeting. The sub-

VERDICTUM.IN

W.P. (C) Nos.36793/2022 and conn.cases

-:13:-

committee report and request to consider the enhancement of only meritorious employees have been sidetracked during the consideration. The logic and objectivity reflected in the proposal having been deflected during consideration, in the larger interest of the State, we remit the matter back for the Government to consider the proposal for enhancement of the retirement age of meritorious employees beyond the age of 56 years. We hope in the interest of all, the Government will consider the proposal at the earliest.

With the above observations, declining the prayer to permit them to continue in the service beyond 56 years of age, all the above writ petitions are disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

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VERDICTUM.IN

APPENDIX OF WP(C) 11246/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE NOTIFICATION VIDE NO. 15518/LEGN-1/2022/LEG DATED 5.09.2022 OF THE SECRETARIAT OF THE KERALA LEGISLATURE.
- EXHIBIT P2 TRUE COPY OF THE PROPOSAL VIDE NO. A7-71454/2021 DATED 25.10.2022 OF THE 2ND RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE INTERIM ORDER DATED 29.11.2022 IN W.P. (C) .NO.36793/2022 OF THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE LETTER VIDE NO.C2/424/2022/HOME DATED 28.02.2023 FORWARDED BY THE ADDL. CHIEF SECRETARY TO HOME DEPARTMENT TO THE REGISTRAR GENERAL.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 16.3.2023 IN WP(C) NO. 36793 OF 2022 AND CONNECTED CASE OF THIS HON'BLE COURT
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 24.3.2023 IN WP(C) NO. 36793 OF 2022 AND CONNECTED CASE OF THIS HON'BLE COURT

VERDICTUM.IN

APPENDIX OF WP(C) 14555/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE NOTIFICATION VIDE NO. 15518/LEGN-1/2022/LEG DATED 5.9.2022 OF THE SECRETARIAT OF THE KERALA LEGISLATURE.
- EXHIBIT P2 TRUE COPY OF THE PROPOSAL VIDE NO. A7-71454/2021 DATED 25.10.2022 OF THE 2ND RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 29.11.2022 IN WP(C) NO. 36793/2022 OF THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE LETTER VIDE NO. C2/424/2022/HOME DATED 28.2.2023 FORWARDED BY THE ADDITIONAL CHIEF SECRETARY TO HOME DEPARTMENT TO THE REGISTRAR GENERAL.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 16.3.2023 IN WP(C) NO. 36793/2022 AND CONNECTED CASES OF THIS HON'BLE COURT.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 24.3.2023 IN WP(C) NO. 36793/2022 AND CONNECTED CASES OF THIS HON'BLE COURT.
- EXHIBIT P7 TRUE COPY OF THE ORDER DATED 29.3.2023 IN WP(C) NO. 11246/2023 OF THIS HON'BLE COURT.

VERDICTUM.IN

APPENDIX OF WP(C) 14911/2023

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE AMENDMENT NOTIFICATION DATED 05.09.2022.
- EXHIBIT P2 THE TRUE COPY OF THE PROPOSAL OF THE HON'BLE CHIEF JUSTICE DATED 25.10.2022.
- EXHIBIT P3 THE TRUE COPY OF THE INTERIM ORDER DATED 29.11.2022 IN W.P NO.36793/2022.
- EXHIBIT P4 THE TRUE COPY OF THE JUDGMENT DATED 04.02.2021 IN W.P NO.25933/2017.
- EXHIBIT P5 THE TRUE COPY OF THE JUDGMENT DATED 11.02.2021 IN W.P NO.36889 OF 2018.
- EXHIBIT P6 THE TRUE COPY OF THE LETTER NO.C2/424/2022/HOME DATED 28.02.2023 OF THE 1ST RESPONDENT ADDRESSED TO THE 3RD RESPONDENT.
- EXHIBIT P7 THE TRUE COPY OF THE ORDER OF REFERENCE DATED 16.03.2023 IN W.P NO.36793/2022.
- EXHIBIT P8 THE TRUE COPY OF THE ORDER DATED 24.03.2023 IN W.P NO.36793/2022.
- EXHIBIT P9 THE TRUE COPY OF THE INTERIM ORDER DATED 25.04.2023 IN W.P NO.14555/2023.

VERDICTUM.IN

APPENDIX OF WP(C) 16097/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE LETTER NO. A7-
71454/2021 DATED 25.10.2022 SENT BY THE
2ND RESPONDENT TO THE 1ST RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE LETTER NO.
C2/424/2022/HOME DATED 28.02.2023 SENT
BY THE 1ST RESPONDENT TO THE 2ND
RESPONDENT.
- EXHIBIT P2(A) TRUE COPY OF THE ENGLISH TRANSLATION OF
EXHIBIT P2.

VERDICTUM.IN

APPENDIX OF WP(C) 38775/2022

PETITIONER EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE NOTIFICATION VIDE NO.15518/LEGN-1/2022/LEG DATED 5.09.2022 OF THE SECRETARIAT OF THE KERALA LEGISLATURE.
- EXHIBIT P2 TRUE COPY OF THE PROPOSAL VIDE NO.A7-71454/2021 DATED 25.10.2022 OF THE 2ND RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE INTERIM ORDER DATED 29.11.2022 IN WPC NO.36793/2022 OF THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE LETTER VIDE NO.C2/424/2022/HOME DATED 28.02.2023 FORWARDED BY THE ADDL. CHIEF SECRETARY TO HOME DEPARTMENT TO THE REGISTRAR GENERAL.
- EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 04.02.2021 IN W.P. (C) .NO.25933/2017 OF THIS HON'BLE COURT.
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 11.02.2021 IN W.P. (C) .NO. 36889/2018 OF THIS HON'BLE COURT.

VERDICTUM.IN

APPENDIX OF WP(C) 39308/2022

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE NOTIFICATION VIDE NO. 15518/LEGN-1/2022/LEG DATED 5.09.2022 OF THE SECRETARIAT OF THE KERALA LEGISLATURE.
- EXHIBIT P2 TRUE COPY OF THE PROPOSAL VIDE NO. A7-71454/2021 DATED 25.10.2022 OF THE 2ND RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE INTERIM ORDER DATED 29.11.2022 IN W.P.(C).NO.36793/2022 OF THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE LETTER VIDE NO.C2/424/2022/HOME DATED 28.02.2023 FORWARDED BY THE ADDL. CHIEF SECRETARY TO HOME DEPARTMENT TO THE REGISTRAR GENERAL
- EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 04.02.2021 IN W.P.(C).NO.25933/2017 OF THIS HON'BLE COURT.
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 11.02.2021 IN W.P.(C).NO. 36689/2018 OF THIS HON'BLE COURT

VERDICTUM.IN

APPENDIX OF WP(C) 40636/2022

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE NOTIFICATION
(NO.15518/LEGN.1/2022/LEG) DATED
05.09.2022 OF THE SECRETARIAT OF THE
KERALA.
- EXHIBIT P2 A TRUE COPY OF THE NOTICE DATED
07.11.2022 ISSUED BY THE REGISTRAR
GENERAL.
- EXHIBIT P3 A TRUE COPY OF THE PROPOSAL DATED
25.10.2022 (NO.A7-71454/2021)

RESPONDENT EXHIBITS

- EXHIBIT R2 (A) A TRUE COPY OF THE REPORT BY THE
COMMITTEE COMPRISING OF THREE JUDGES OF
THIS HONBLE COURT
- EXHIBIT R2 (C) A TRUE COPY OF NOTICE A7-80978/2021
DATED 07.11.2022
- EXHIBIT R2 (B) A PHOTOCOPY OF THE LETTER NO A7-
71454/2021 DATED 25.10.2022

VERDICTUM.IN

APPENDIX OF WP(C) 36793/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE NOTIFICATION VIDE
NO.15518/LEGN-1/2022/LEG DATED
5.098.2022 OF THE SECRETARIAT OF THE
KERALA LEGISLATURE

Exhibit P2 TRUE COPY OF THE PROPOSAL VIDE NO.A7-
71454/2021 DATED 25.10.2022 OF THE 2ND
RESPONDENT.

RESPONDENT EXHIBITS

Exhibit R2(a) True copy of the report of the
committee dated 12/10/2022

RESPONDENT ANNEXURES

Annexure 1 TRUE COPY OF THE RELEVANT EXTRACT OF
RANK LIST NO.REC1-59985/2020 DATED
23.07.2022

RESPONDENT EXHIBITS

Exhibit R2(b) True copy of the letter No.A7-
71454/2021 dated 25/10/2022 of the 2nd
respondent addressed to the 1st
respondent

Exhibit R2(c) True copy of the High Court Notice A7-
80978/2021 dated 7/11/2022 regarding
Efiling of cases issued by the 2nd
respondent

PETITIONER EXHIBITS

Exhibit P3 TRUE COPY OF THE LETTER VIDE
NO.C2/424/2022/HOME DATED 28.02.2023
FORWARDED BY THE ADDL. CHIEF SECRETARY
TO HOME DEPARTMENT TO THE REGISTRAR
GENERAL

VERDICTUM.IN

APPENDIX OF WP(C) 36793/2022

-2-

Exhibit P4 TRUE COPY OF THE JUDGMENT DATED
04.02.2021 IN W.P. (C) .NO.25933/2017 OF
THIS HON'BLE COURT.

Exhibit P5 TRUE COPY OF THE JUDGMENT DATED
11.02.2021 IN W.P. (C) .NO.36889/2018 OF
THIS HON'BLE COURT

RESPONDENT EXHIBITS

Exhibit R1(a) Copy of the G.O. (MS) No. 45/2023/Home
dated 16.02.2023