

പതിനാലാം കേരള വിശ്വകലാ

പത്മമം സമ്മേളനം

നക്ഷത്ര ചിഹ്നമിടാതെ ചോദ്യം നമ്പർ: 5976

28-05-2017 - 67 പേജ്

ഉപഭോക്തൃ തർക്ക പരിഹാര കമ്മീഷനിലെ മെമ്പർമാരുടെ  
ആർജ്ജിതാവധി സറണ്ടർ

ചോദ്യം

മറുപടി

ശ്രീ. ഹൈബി ഈഡൻ:

ശ്രീ. പി. തിലോത്തമൻ  
(ക്ഷേമവും സിവിൽ സപ്ലൈസും വകുപ്പു മന്ത്രി)

(എ) സംസ്ഥാന ഉപഭോക്തൃ തർക്ക പരിഹാര കമ്മീഷനിലേയും ജില്ലാ ഉപഭോക്തൃ തർക്ക പരിഹാര ഫോറങ്ങളിലേയും മെമ്പർമാർക്ക് ആർജ്ജിതാവധി സറണ്ടർ ചെയ്യാമോ; എങ്കിൽ ഒരു വർഷം എത്ര വീതം;

(എ) സംസ്ഥാന ഉപഭോക്തൃ തർക്ക പരിഹാര കമ്മീഷനിലേയും ജില്ലാ ഉപഭോക്തൃ തർക്ക പരിഹാര ഫോറങ്ങളിലേയും മെമ്പർമാർക്ക് സറണ്ടർ ആനുകൂല്യം അനുവദിച്ചിരുന്നില്ല എന്നാൽ സറണ്ടർ ആനുകൂല്യം നൽകാൻ ഡബ്ല്യൂ.പി.(സി).നം.19321/17 നമ്പർ കേസിലെ ബഹു. കേരള ഹൈക്കോടതിയുടെ 30-11-2017-ലെ വിധിന്യായത്തിൽ ഉത്തരവായിട്ടുണ്ട്. മേൽ ഹൈക്കോടതി വിധിക്കെതിരെ സർക്കാർ അപ്പീൽ നൽകിയിട്ടുണ്ട്.

(ബി) ജില്ലാ ഫോറം മെമ്പർമാർക്ക് സറണ്ടർ ആനുകൂല്യം അനുവദിച്ചുകൊണ്ട് കേരളാ ഹൈക്കോടതിയിൽ നിന്നും അനുകൂല ഉത്തരവ് ലഭിച്ചിട്ടുണ്ടോ; ഉണ്ടെങ്കിൽ വിധിയുടെ പകർപ്പ് ലഭ്യമാക്കുമോ;

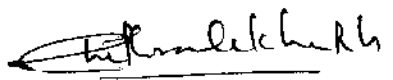
(ബി) ഉണ്ട്; പകർപ്പ് അനുബന്ധമായി ചേർക്കുന്നു.

(സി) അപേക്ഷ സമർപ്പിച്ചവർക്ക് സറണ്ടർ ആനുകൂല്യം തുകയായി ലഭിക്കാൻ ഹൈക്കോടതിയുടെ ഉത്തരവിൽ കാലാവധി പറഞ്ഞിട്ടുണ്ടോ; ഉണ്ടെങ്കിൽ വ്യക്തമാക്കുമോ;

(സി) ഉണ്ട്; ഹൈക്കോടതി വിധിന്യായം ലഭിച്ച് 2 മാസത്തിനുള്ളിൽ സറണ്ടർ ആനുകൂല്യം നൽകാൻ ഹൈക്കോടതി ഉത്തരവിൽ പറഞ്ഞിട്ടുണ്ട്.

(ഡി) ഹൈക്കോടതി വിധിയിൽ നൽകിയ അവസാന തീയതി കഴിഞ്ഞിട്ടുണ്ടെങ്കിൽ സറണ്ടർ ആനുകൂല്യം നൽകാത്തതിന്റെ കാരണം എന്താണ്; ഇത് സംബന്ധിച്ച് എന്തെങ്കിലും കോടതി അലക്ഷ്യ നടപടി നിലവിലുണ്ടോ?

(എ) ഹൈക്കോടതി വിധിക്കെതിരെ സർക്കാർ അപ്പീൽ നൽകിയിട്ടുണ്ട്. ഇത് സംബന്ധിച്ച് കോടതി അലക്ഷ്യ നടപടി നിലവിലില്ല.

  
സെക്ഷൻ ഓഫീസർ

18/11/2017

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

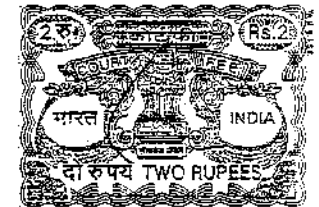
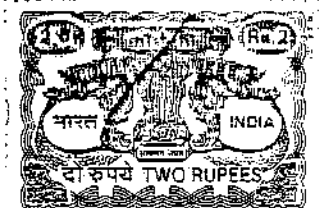
THURSDAY, THE 30TH DAY OF NOVEMBER 2017/9TH AGRAHAYANA, 1939

WP(C).No. 19321 of 2017 (M)

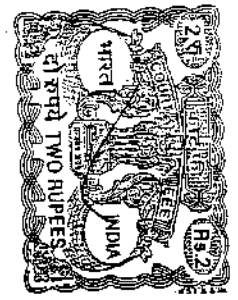


**PETITIONER(S):**

- SHEENA V.V.,**  
AGED 39 YEARS, W/O.M.V.VARGHESE,  
MARATHAMPILLY HOUSE, MURIYAD P.O.,  
PIN-680 683.
- SHEELA JACOB,**  
AGED 56 YEARS, W/O.LATE BABU,  
KADUVALLIKUDIYIL, K.S.E.B.QUARTER NO.E 34 A,  
IDUKKI COLONY.P.O., IDUKKI, PIN-685 602.
- M.P.CHANDRAKUMAR,**  
AGED 60 YEARS, S/O.PARAMESWARAN NAIR,  
KARINGANAMPILLY, VADAKKAL, ALAPPUZHA.

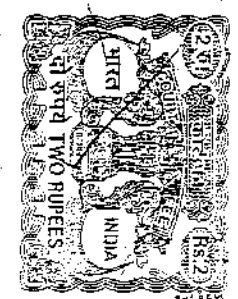
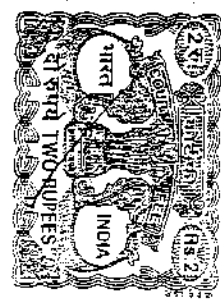
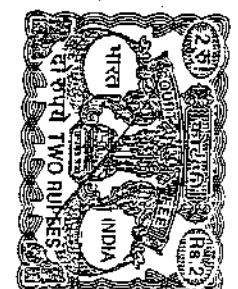
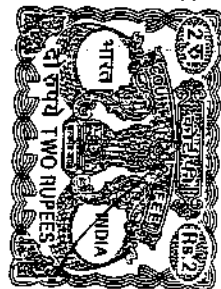


BY ADVS.SRI.BABU KARUKAPADATH  
SMT.M.A.VAHEEDA BABU  
SRI.K.M.FAISAL (KALAMASSERY)  
SRI.P.U.VINOD KUMAR  
SRI.MITHUN BABY JOHN  
SRI.J.RAMKUMAR  
SMT.AMRIN FATHIMA



**RESPONDENT(S):**

- STATE OF KERALA**  
REP. BY THE SECRETARY TO GOVERNMENT,  
DEPARTMENT OF CONSUMER AFFAIRS,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM. 695 001.
- THE SPECIAL SECRETARY TO GOVERNMENT**  
DEPARTMENT OF CONSUMER AFFAIRS,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM. 695 001.
- THE PRESIDENT**  
CONSUMER DISPUTES REDRESSAL FORUM,  
THRISSUR.680 001.



WP(C).No. 19321 of 2017 (M)

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4. THE PRESIDENT  
CONSUMER DISPUTES OF REDRESSAL FORUM,  
PATHANAMTHITTA. 689 645.

R1& R2 BY SR GOVERNMENT PLEADER SRI BIJOY CHANDRAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 30-11-2017, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

sdr/-

*A. VASHA, J.*

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W.P(C) No.19321 of 2017-M  
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*Dated this the 30<sup>th</sup> day of November, 2017*

**JUDGMENT**

The petitioners are members of Consumer Disputes Redressal Forum, who are aggrieved by Ext.P5 order by which their application for surrender of earned leave Ext.P6 was rejected.

2. The petitioners were appointed as Members of the Consumer Disputes Redressal Forum under the provisions contained in Section 10 of the Consumer Protection Act, 1986 "hereinafter referred to as the 'Act' for short). As per subsection (3) of Section 10 of the Act, the conditions of service, salary and honorarium and other allowances payable to the members of the District Forum are as prescribed by the Government. The Government issued the Consumer Protection Rules 2005, as per Ext.P1 notification issued in SRO.No.1069/2005 as per G.O(Ms).No.37/2005/F, CS&CA dated 08.12.2005, in supercession of the Consumer Protection Rules, 1998. Rule 15 of the Rules provides for the salary, honorarium, other allowances and conditions of service of President and Members of the District Forum. Clause (4) thereof provides that the President of the District

Forum would be entitled to the leave admissible, including surrender of earned leave in accordance with the provisions in the Kerala Service Rules as applicable to provisional employees appointed for a period of 5 years or less. But in clause (5) which dealt with the conveyance allowance of Members, nothing was provided with respect to their leave. On the basis of representations submitted by the Members like the petitioners, the Government amended the rules issuing Ext.P3-the Kerala Consumer Protection (Amendment) Rules, 2016, notified as per G.O(Ms) No.8/2016/CAD dated 30.06.2016, providing for the leave rules applicable to the Members of the District as well as State Forum. Rule 15 was amended as follows:

"2. Amendment of the Rules:-- In the Kerala Consumer Protection Rules, 2005, -

(a) in rule 15, after sub-rule (11) the following sub-rule shall be inserted, namely:--

"(12) The members of the District Forum, if appointed on whole time basis, shall be entitled to the leave admissible, as per the provisions of the Kerala Service Rules relating to the leave rules as applicable to contract/provisional employees appointed for a period of five years or less; the President of the District Forum shall sanction such leave."

(b) in rule 26, after sub-rule (11), the following sub-rule shall be inserted, namely:--

"(12) The members of the State Commission appointed on whole time basis shall be entitled to the leave admissible, as per the provisions of the Kerala Service Rules relating to the leave rules as admissible to contract/provisional employees appointed for a period of five years or less; the President of the State Commission shall sanction such leave."

On the basis of this amendment, the petitioners submitted applications for

surrender of earned leave. In the meanwhile, the President of the Consumer Disputes Redressal Forum, Trichur had addressed the Government in Ext.P4 letter seeking clarification as to whether commuted leave can be sanctioned to the members of the District Forum by combining half pay leave and whether surrender of earned leave can be allowed for getting monetary value.

3. By Ext.P5 order the Government had informed the President of the Consumer Disputes Redressal Forum that the benefit of commuted leave cannot be granted to the employees whose eligibility for leave is based on Appendix VIII to Part I KSR, which reads as follows:

"(1) The benefit of commuted leave can't be granted to the employees whose eligibility for leave is based on Appendix VIII, Part I KSRs since "leave on half pay" is not being earned as in the case of regular Government employees.

(2) Medical certificate is insisted for granting "leave on half pay" as per rules under Appendix VIII KSRs, since the leave is granted only in case of absolute necessity.

(3) Earned leave will be admissible at 1/11<sup>th</sup> of the period spent on duty, subject to the limit of 15 days in a year. Such leave may be accumulated upto a maximum period of two months. As per GO(Ms)No.08/2016/CAD dated 30.06.2016 surrender of earned leave can't be allowed for getting monetary value."

Simultaneously, the applications were rejected. The petitioners have approached this Court at this stage claiming terminal surrender of earned leave pointing out that their appointment is regular even though it is for a prescribed tenure and therefore they are entitled to surrender of earned

leave.

4. The 2<sup>nd</sup> respondent has filed a counter affidavit stating that the petitioners are not eligible for the benefit of commuted leave as their eligibility for leave is based on Appendix VIII of Part I KSR. According to the 2<sup>nd</sup> respondent, eligibility of half pay is not being earned as in the case of regular Government employees. The Presidents of Consumer Disputes Redressal Forum are not eligible for commutation and they are eligible for half pay leave only on production of medical certificate in case of absolute necessity. According to them, earning of leave is based on the rules in KSR; whereas the surrender of earned leave is governed by the executive orders issued by the Government from time to time. Rule 15(4) of Consumer Protection Rules, 2005 ('the Rules' for short) specifically provides for granting of leave as well as the surrender of earned leave in the case of President; whereas in the case of members of the Forum, the Rules do not provide for surrender of earned leave as in the case of the President. They are only entitled to half pay leave on production of medical certificates, that too, in cases of absolute necessity. It is stated that they are eligible for leave without allowance, in special circumstances. According to them, even after amendment to the Rules, the eligibility for leave continues to be under

Appendix VIII, Part 1 KSR. It is further stated that the qualification for the post of President and members of CDRF, the salary, honourarium, allowance and conditions of service are as prescribed in the rules. But there is no provision for surrender of earned leave. It is stated that leave on half pay is not being earned as in the case of regular Government employees. Even though the members of CDRF are eligible for earned leave at 1/11<sup>th</sup> of the period spent on duty subject to the limit of 15 days in a year which can be accumulated upto a maximum period of two months, they are not entitled to surrender the same in the absence of Rules.

5. The learned counsel for the petitioner points out that the members of the CDRF were being paid the benefit of surrender of earned leave and they had submitted their applications subsequent to the amendment of the Rules in 2016, which stand rejected.

6. Heard Smt. Vaheeda Babu, the learned counsel for the petitioners and Sri. Bijoy Chandran, the learned Government Pleader.

7. According to the learned Government Pleader, there is difference in the words and expressions appearing in clause (4) of Rule 15 of the Ext.P1 Rules and in clause (12) of Rule 15 of the Rules even after the amendment was brought about providing for leave to the members. The



eligibility of the President for availing leave as given in clause (4) of Rule 15 of the Rules read as follows:

"The President of a District Forum, if appointed on full-time basis, shall be entitled to the leave admissible, including surrender of earned leave, as per the provisions of the Kerala Service Rules relating to the leave rules as applicable to contract/provisional employees appointed for a period of five years or less. The above allowance shall however not count for the purposes of pension, etc."

Therefore, there is a specific provision for surrender of earned leave when the eligibility of leave is provided. At the same time, what is provided in Clause 12 of Rule 15 in the case of Members is the following:

"(12) The members of the District Forum, if appointed on whole time basis, shall be entitled to the leave admissible, as per the provisions of the Kerala Service Rules relating to the leave rules as applicable to contract/provisional employees appointed for a period of five years or less; the President of the District Forum shall sanction such leave."

Therefore, even after amendment to the Rules, as per Ext.P3, there is no rules specifically conferring any benefit of surrender of earned leave, when it provides for leave to its members. Therefore, the contention is that members of the District Forum appointed on whole time basis are eligible only for the leave admissible as per the provisions of the Kerala Service Rules relating to the leave rules as admissible to contract/provisional employees appointed for a period of 5 years or less. On a reading of the provisions contained in Exts.P1 and P3 with respect to the President as well

as the members it would appear that in the absence of any provision stipulating eligibility for surrender of earned leave, the petitioners cannot claim the benefit of surrender of earned leave, as contended by the learned Government Pleader.

8. The learned counsel for the petitioners points out that even when there is no specific provision, what is provided is that the members are eligible for leave under Appendix VIII as in the case of those appointed for a period of 5 years. Decision No.4 to Appendix VIII reads as follows:

"Government Decision No.4  
Officers appointed on a fixed monthly honorarium against regular sanctioned post will be governed by the leave rules in this Appendix. The benefit of surrender of earned leave will be allowed to them as in the case of provisional employees."

Therefore, it is pointed out that the petitioners are eligible for surrender of earned leave.

9. Apart from Government decision no.4 in Appendix VIII, it is necessary to have a look at Rule 92 and 93 of Part I KSR, which read as follows:

"92. An officer on earned leave is entitled to leave salary equal to,—  
(i) full (duty) pay i.e, pay admissible had he been on duty during the period of leave;  
(ii) Dearness allowance applicable to the above duty pay; and  
(iii) Such other compensatory allowances as are admissible under the rules during the period of leave;  
[Provided that where an officer is promoted during the period he is on

earned leave the monetary benefit of promotion shall be given only from the date on which he assumes charge of the post, if there is change of duties].

93. An officer on half pay leave or leave not due is entitled to leave salary equal to,--

(i) half of duty pay, i.e., half of the pay admissible had he been on duty during the period of leave;

(ii) dearness allowance applicable to the amount admissible under clause (i) above;]

[provided that where an officer is promoted during the period he is on half pay leave the monetary benefit of promotion shall be given only from the date on which the officer assumes charge of the post, if there is change of duties.]

(iii) Hill Tract Allowance, House Rent Allowance and City Compensatory Allowance admissible from time to time will be payable during periods of all leave with allowances, if the total period of such leave at a time does not exceed 180 days or if the actual duration of the leave exceeds 180 days, for the first 180 days of such leave.]”

Explanation:- For the purpose of Rule 92 and this rule, period of duty shall be deemed to be the period of duty in a post during which the officer would have drawn the pay in the time-scale of that post but for his proceeding on leave.

In the case of officiating appointments, a certificate of continuance in the same post but for leave should be furnished to the Audit Officer along with the sanction noted in the Service Book and the bill claiming the leave salary.”

Rule 92 provides that 'an officer' on earned leave is entitled to leave salary. The petitioners are also officers. There is no specific provision which limits the benefit of Rule 92 to an officer on permanent employment alone. Rules 92 and 93 with decision No.4 in Appendix VIII will make the petitioners eligible for the leave salary, i.e for surrender of earned leave as well as commuted leave.

10. In the above circumstances, the clarification Ext.P5 as well as Ext.P9 order issued to the petitioners directing to refund the excess leave salary drawn by them are unsustainable and will not stand in the eye of law. Exts.P5 and P9 are therefore set aside.

Accordingly, the writ petition is allowed. It is declared that the petitioners are eligible for the benefits surrender of leave/leave salary as provided under Rules 92 and 93 of Part I KSR, read with decision no.iv of Appendix VIII of KSR. There shall be a direction to the respondents to pass fresh orders on the applications for leave and for surrender of leave submitted by the petitioners and grant them the benefits, within a period of two months, in accordance with the aforesaid directions.

Sd/-

**(P.VASHA, JUDGE)**

rtr/

WP(C).No. 19321 of 2017 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE RELEVANT PORTION OF G.O.(MS)NO.37/2005/F, CS&CA DATED 08.12.2005.
- EXHIBIT P2 A TRUE COPY OF ONE OF SUCH REPRESENTATION SUBMITTED BY THE PETITIONERS 1 AND 3 BEFORE THE 1ST RESPONDENT DATED NIL ALONG WITH RELEVANT PORTION OF ITS ANNEXURE.
- EXHIBIT P3 A TRUE COPY OF RELEVANT PORTION OG G.O.(MS)NO.8/2016 DATED 30.06.2016 ISSUED BY THE 1ST RESPONDENT AMENDING THE KERALA CONSUMER PROTECTION RULES, 2005, WHICH WAS FORWARDED TO THE CONSUMER FORUM, THRISSUR.
- EXHIBIT P4 A TRUE COPY OF THE LETTER DATED 29.12.2016 OF THE 3RD RESPONDENT, ADDRESSED TO THE 1ST RESPONDENT.
- EXHIBIT P5 A TRUE COPY OF THE CLARIFICATION LETTER DATED 21.04.2017 OF THE 2ND RESPONDENT, ADDRESSED TO THE 3RD RESPONDENT.
- EXHIBIT P6 A TRUE COPY OF THE APPLICATION FOR SURRENDER OF EARNED LEAVE SUBMITTED BY THE 2ND PETITIONER, WHICH STANDS REJECTED ON 31.05.2017 BASED ON EXHIBIT P5.
- EXHIBIT P7 TRUE COPY OF THE NOTIFICATION DATED 09-12-2013 ISSUED BY THE GOVERNMENT, APPOINTING THE 3RD PETITIONER AS MEMBER OF THE CDRF, THRISSUR
- EXHIBIT P8 A TRUE COPY OF THE ORDER DATED 26/09/2016 OF THE PRESIDENT OF THE CONSUMER DISPUTES REDRESSAL FORUM, THIRUVANANTHAPURAM
- EXHIBIT P9 A TRUE COPY OF THE ORDER DATED 22/09/2017 OF THE 3RD RESPONDENT ISSUED TO THE 1ST AND 3RD PETITIONERS
- EXHIBIT P10 A TRUE COPY OF THE LETTER DATED 16/10/2017 FROM THE CIVIL SUPPLIES COMMISSIONARATE TO THE OFFICE OF THE 3RD RESPONDENT

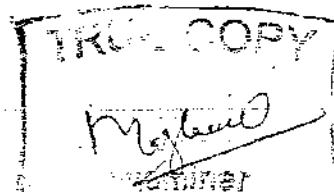
RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

sdr/-





HIGH COURT OF KERALA  
AT ERNAKULAM

Year and Number of Suit or other Proceedings : WPC 19321 / 2017

Name of Applicant/Advocate : SRIBABU  
KARUKAPADATH

Application Number : A 87177/2017

Application Date : 30-11-2017

Date of Calling for Stamp : 14-12-2017

Date of Production of Stamp : 14-12-2017

Date When copy was Ready : 14-12-2017

Date Notified for appearance to receive the copy : 21-12-2017

Date when copy was delivered : 14.12.17

*M. J. Karukapadath*  
Examiner

*[Signature]*