

Kerala High Court

N.K. Haridas vs High Court Of Kerala on 28 January, 2015

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 25TH DAY OF AUGUST 2016/3RD BHADRA, 1938

WP(C).No. 1097 of 2015 (R)

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PETITIONER(S):

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1. N.K. HARIDAS, CHAUFFEUR SENIOR GRADE,  
HIGH COURT OF KERALA, ERNAKULAM.
2. E.K. KUNHIKANNAN, CHAUFFEUR SENIOR GRADE,  
HIGH COURT OF KERALA, ERNAKULAM.
3. M. RAJAN, CHAUFFEUR SENIOR GRADE,  
HIGH COURT OF KERALA, ERNAKULAM.
4. K.P.SUNIL KUMAR, CHAUFFEUR SENIOR GRADE,  
HIGH COURT OF KERALA, ERNAKULAM.
5. C.K. SHIBU, CHAUFFEUR SENIOR GRADE,  
HIGH COURT OF KERALA, ERNAKULAM.
6. U.K. RAJASEKHARAN, CHAUFFEUR SENIOR GRADE,  
HIGH COURT OF KERALA, ERNAKULAM.
7. MANOJ. D., CHAUFFEUR GRADE I,  
HIGH COURT OF KERALA, ERNAKULAM.
8. SANTHOSH K.J., CHAUFFEUR GRADE -I,  
HIGH COURT OF KERALA, ERNAKULAM.
9. S. MONEY, CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
10. JALESH V.K., CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
11. JIFFY ABRAHAM, CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
12. GIRI V.K., CHAUFFEUR GRADE -I,

N.K. Haridas vs High Court Of Kerala on 28 January, 2015  
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13. ANILKUMAR S., CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
14. ANTONY P.D., CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
15. BIJISH V.C., CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
16. BINU J., CHAUFFEUR GRADE - I,  
HIGH COURT OF KERALA, ERNAKULAM.
17. M.S. RAJESH, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.

BY SRI.P.RAVINDRAN, SENIOR ADVOCATE.  
ADV. SRI.SREEDHAR RAVINDRAN.

RESPONDENT(S):

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1. HIGH COURT OF KERALA,  
REPRESENTED BY THE REGISTRAR GENERAL,  
HIGH COURT COMPLEX, ERNAKULAM-682 031.
2. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY,  
HOME (C) DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
- \* ADDL. R3 TO R42 IMPLEADED
3. T.R. KALADHARAN, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
4. T.B.VINOD, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
5. R.BIJU KUMAR, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
6. G.SANTHOSH, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
7. N.K.PADMANABHAN, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.

8. K.S.JAYASING, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.

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9. C.CHELLADWARA, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
10. K.MURUKESA KUMAR, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
11. N.VIJAYAKUMAR, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
12. P.K.EBRAHIMKUTTY, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
13. GEREESH KUMAR PAYYAN, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
14. BABU OTTAMAVULLATHIL, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
15. BENSON D.MATHEW, CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
16. ANILKUMAR T.R., CHAUFFEUR GRADE-I,  
HIGH COURT OF KERALA, ERNAKULAM.
17. ABHILASH T.M., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
18. ANTONY FRANCIS, CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
19. SANTHOSH KUMAR K.S., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
20. T.P.RAJAN, CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
21. SHINE P.S.,CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
22. RAMJITH S.S., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
23. NASER K.M., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
24. M.SIYAD, CHAUFFEUR GRADE-II,

HIGH COURT OF KERALA, ERNAKULAM.

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25. S.JAYAKUMAR, CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
26. P.K.KAILASANATHAN, CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
27. AUGUSTINE. X., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
28. RAMESH CHANDRAN. R., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
29. BIJUMON K.K., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
30. AYOOBKHAN C.M., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
31. ARUNKUMAR K.A., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
32. MURALEEDHARAN. C., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
33. BENNY KURIAKOSE. K., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
34. ABDUL OFFAR P.H., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
35. KRISHNACHANDER. U., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
36. THUJAS P.T., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
37. BINU ABRAHAM, CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
38. VINOD KUMAR. T., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
39. SHAIJU THOMAS, CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.
40. RAJEEV. K., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.

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41. LIJO T.A., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.

42. BENNY M.S., CHAUFFEUR GRADE-II,  
HIGH COURT OF KERALA, ERNAKULAM.

\* ARE IMPEADED VIDE ORDER DATED 28/01/2015 IN  
I.A. NO.961/2015.

R1 BY SMT.V.P.SEEMANDINI, SENIOR ADVOCATE.  
R2 BY GOVT.PLEADER SMT.NISHA BOSE.  
ADDL. R3 TO R42 BY SRI.K.JAJU BABU, SENIOR ADVOCATE.  
ADVS. SMT.M.U.VIJAYALAKSHMI,  
SRI.BRIJESH MOHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 25-08-2016, ALONG WITH WP(C).NO.9265 OF 2015 AND  
CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

rs.

WP(C).No. 1097 of 2015 (R)

#### APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - TRUE COPY OF THE RELEVANT EXTRACT OF SPECIAL RULES FOR  
THE KERALA HIGH COURT SERVICE RULES, 2007.
- P2 - TRUE OCPY OF THE JUDGMENT DT.04.03.2008 IN WPC NO. 22364/2007 OF  
THIS HONOURABLE COURT.
- P3 - TRUE COPY OF THE JUDGMENT DT.21.07.2008 IN WA NO. 1505/2008 OF  
THIS HONOURABLE COURT.
- P4 - TRUE OCPY OF THE ORDER DT.25.01.2010 IN S.L.P(CC.21584/2009) OF  
THE HON. SUPREME COURT OF INDIA.
- P5 - TRUE COPY OF THE ORDER GO(MS) NO. 553/2011/(22)/FIN. DT. 18.11.2011  
ISSUED BY T HE FINANCE (ANOMALYRECTIFICATION CELL -C)  
DEPARTMENT.
- P6 - TRUE COY OF ORDER GO(MS) NO. 412/2012/(107)/FIN. DT.23.07.2012 ISSUED  
BY THE FINANCE (ANOMALYRECTIFICATION CELL - C) DEPARTMENT.

- P7 - TRUE COPY OF LETTER NO. 45186/C2/2012/HOME DT.18.03.2013 ISSUED BY THE UNDER SECRETARY, HOME (C) DEPARTMENT.
- P8 - TRUE COPY OF LETTER NO. 15-23685/2012/FW DT.18.04.2013 SENT BY THE REGISTRAR GENERAL, HIGH COURT OF KERALA TO THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT HOME (C) DEPARTMENT.
- P9 - TRUE COPY OF THE ORDER G.O(RT) NO. 2095/2014./HOME DT. 25.07.2014 ISSUED BY THE HOME (C) DEPARTMENT.
- P10 - TRUE COY OF NOTIFICATION NO. A2-76452/2014 DT. 25.09.2014 ISSUED BY THE REGISTRAR GENERAL, HIGH COURT OF KERALA.
- P11 - TRUE COPY OF ORDER G. NO. A2-91286/2010(2) DT. 20.10.2014 ISSUED BY THE ASSISTANT REGISTRAR, HIGH COURT OF KERALA.
- P12 - TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONERS AND OTHERS BEFORE THE SECRETARY TO GOVERNMENT HOME (C) DEPARTMENT.
- P13 - TRUE COPY OF A TABLE SHOWING THE DATES OF APPOINTMENT AND PROMOTION OF THE PETITIONERS WITH A PROBABLE TABULATION OF THE LOSS.
- P14- TRUE COPY OF THE ORDER NO.96758/C2/2014/HOME DATED 11/02/2015 ISSUED BY THE 2ND RESPONDENT.

....2/-

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P15- TRUE COPY OF THE REQUEST SUBMITTED TO THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE LETTER BEARING NO.J2-23685/2012/FW DATED 17/12/2012 BY THE RESPONDENT ADDRESSED TO THE PRINCIPAL SECRETARY.
- EXT.R1B COPY OF THE LETTER DATED 26/09/2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.R1C COPY OF THE PROCEEDINGS BEARING NO.A2-91286/2010 DATED 04/02/2015 ALONG WITH SERVICE DETAILS OF CHAUFFEURS ISSUED BY THIS RESPONDENT.
- EXT.R1D COPY OF THE G.O.(MS) NO.48/2010/HOME DATED 15/02/2010

ND SERVICE DETAILS OF CHAUFFEURS .

//TRUE COPY//

P.S.TO JUDGE

rs.

CR

A.K.JAYASANKARAN NAMBIAR, J .

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W.P.(C). Nos. 1097, 9265,  
9288, & 10912 of 2015

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Dated this the 25th day of August, 2016

JUDGMENT

As all these writ petitions involve a common issue, they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to facts and exhibits is from W.P.(C) No.1097 of 2015.

2. The petitioners in all these writ petitions are working as Chauffeurs in the High Court service. Their service conditions are determined by the Provisions of the Kerala High Court Service Rules, 2007. Under the said Rules, as they stood till 2014, the Chauffeurs were graded into four grades, namely, Head Chauffeur, Chauffeur Senior Grade, Chauffeur Grade I and Chauffeur Grade II. The Rules indicate that the entry level post, of Chauffeur Grade II, is one where the mode of appointment is by transfer, deputation, recruitment by transfer or direct recruitment, from persons having the qualification of S.S.L.C, and possessing a valid Light Motor Vehicle Driving Licence. The posts of Chauffeur Grade I and Senior Grade Chauffeur were posts which were to filled up by promotion from the lower grades, and the said promotions were to W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 be on the basis of seniority subject to fitness. It is seen that, when, apart from the post of Head Chauffeur, there were three grades of Chauffeurs, namely, Chauffeur Senior Grade, Chauffeur Grade I and Chauffeur Grade II in the High Court Services, the number of posts were 75, after excluding the single post of Head Chauffeur, and the said 75 posts were distributed among the three grades, in the ratio of 1:1:1. Accordingly, there were 25 posts of Chauffeur Senior Grade, 25 posts of Chauffeur Grade I and 25 posts of Chauffeur Grade II. During the period prior to 2014, contrary to the position that obtained in the High Court services, in the State Government Service, the post of Chauffeur was to be found only in the Department of Tourism. In the State service, apart from the post of Head Chauffeur, there are only two other grades of Chauffeurs, namely Chauffeur

Grade I and Chauffeur Grade II. In other words, the post of Senior Grade Chauffeur does not exist in the hierarchy of Chauffeur posts in the Tourism Department of the State Government. The issue with regard to equating of pay scales of Chauffeurs in the Department of Tourism under the State Government, and the Chauffeurs in the services of High Court, had engaged the attention of the State Government as well as the High Court in the past. The issue last came to be considered by this Court in WP(C) No.22364 of 2007 when, by Ext.P2 judgment dated W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 04.03.2008, this Court found that it had on an earlier occasion, by the judgment dated 19.08.1995 in OP No.3116 of 1992, clearly found that, on a comparison of the nature of duties discharged by the Chauffeurs of the High Court and Chauffeurs of the Secretariat Department, the nature of duties performed by both categories of Chauffeurs was the same. It was also noticed that a direction had been issued to the Government to pay special allowance to the Chauffeurs of the High Court at par with the allowance being paid to the Secretariat staff. In Ext.P2 judgment, this Court, while examining the legality of a Government Order that was passed contrary to the recommendations of the Chief Justice in the matter of fixation of pay scales for chauffeurs, found that the State Government had not bestowed any consideration to the recommendations of the Chief Justice for effecting parity in the pay scales of the Chauffeurs in the High Court services, with those of the Chauffeurs in the Government service. It was observed that the contrary stand of the State Government was not justified and, under Art. 229 (2) of the Constitution of India, the State Government could disagree with the recommendations of the Chief Justice only for valid reasons. The State Government was, therefore, directed to reconsider the matter and give due consideration to the recommendations of the Chief Justice, to bring W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 about a parity in pay scale between Chauffeurs in the High Court service and Chauffeurs in the Government Service. Although the Government took up Ext.P2 judgment in an intra-court appeal before this Court, the Writ Appeal was dismissed by Ext.P3 judgment. The SLP preferred before the Supreme Court thereafter, also did not meet with any success since the same came to be dismissed by Ext.P4 order of the Supreme Court. Consequent to the said judgments and order, the Government passed Ext.R1(e) order dated 15.02.2010, sanctioning scales of pay to the Chauffeurs in the Senior Grade, Grade I and Grade II of the High Court at scales which were similar to the scales of pay granted to Chauffeurs in the Government Department.

3. Pursuant to the recommendations of the 9th pay revision commission, that submitted its report on 26.02.2011, the Government by order No.57/11 dated 18.11.2011, extended the recommendations of the pay revision to employees in the High Court service as well. Accordingly, the Chauffeurs in the High Court service too received the benefits of the pay revision order. Thereafter, however, by separate Government Orders dated 18.11.2011 and 23.07.2012, produced as Exts.P5 and P6 respectively in the writ petition, Chauffeurs in the Tourism W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 department under the State Government were extended higher scales of pay than what was extended to Chauffeurs in the High Court service. This led the Association of Chauffeurs in the High Court to make a representation before the High Court, and the High Court to make a corresponding representation to the Government, for ensuring a parity in the scales of pay offered to Chauffeurs in both the High Court service as well as the Government Service. Ext.R1(a), produced along with the counter affidavit of the 1st respondent, is the letter sent by the High Court to the Government, wherein it was pointed out that the post of Senior Grade Chauffeur in the High Court was a promotion post of Chauffeur Grade I, and it always carried a higher scale of pay. It was, therefore,



suggested that the scale of pay of Senior Grade Chauffeur be suitably revised to remove the anomaly that existed, primarily on account of the fact that, while in the High Court service, the Chauffeurs fell for classification under four grades, in the department of Tourism under the State Government, the Chauffeurs fell for classification in three grades. The request was therefore, made for issuing orders revising the scale of pay of Senior Grade Chauffeurs to the level of Rs.13900-24040 with retrospective effect from 01.07.2009. The response to Ext.R1(a) communication was through Ext.P7 communication dated W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 18.03.2013. Therein, the State Government found that, in the High Court service, Chauffeurs were in four grades, whereas in Tourism department, there were only three grades available, in the absence of a Senior Grade. It was also observed, contrary to the specific findings in the judgments and order of this Court/Supreme Court referred above, and contrary to Ext.R1(e) order of the Government, that the duties and responsibilities of Chauffeurs in High Court and Tourism department are different. Based on the said observations, the State Government took the view that the proposal for revised scale of pay for Chauffeurs Grade II and Head Chauffeur in High Court could not be considered. The High Court was also requested to offer its views in the matter of adopting the pattern that prevailed in Tourism department of having three grades of Chauffeurs, in the High Court service as well.

4. It would appear that the recommendation of the Government was accepted by the High Court, which, by Ext.P8 communication dated 18.04.2013, proposed to accept the package with regard to categories of posts and corresponding scales of pay of Chauffeurs existing in the Tourism department as such, to Chauffeurs of the High Court service with prospective effect. In Ext.P8 communication, the High Court also proposed that a W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 protection of existing pay and allowances, that were being drawn by the Senior Grade Chauffeurs, be ensured while implementing the new package that was proposed. The concluding paragraph of Ext.P8 sums up the proposal of the High Court when it states that, the request was for issuing orders making applicable the categories of posts and corresponding scales of pay of Chauffeurs existing in the Tourism department, as such, to the Chauffeurs in the High Court and as a special case, protecting the existing pay of Chauffeurs in the High Court. The proposal put forward by the High Court in Ext.P8 was rejected by the Government by Ext.R1(b) letter, that is produced along with the counter affidavit filed on behalf of the High Court. In the said communication, the State Government suggested that, if conversion of grades as in the Tourism department would cause hardship to the Chauffeurs in the High Court service, the best course of action would be to continue the status-quo, and the Government was not prepared to consider the grant of protection of pay of Chauffeurs as a special case, as requested by the High Court. Thereafter, by Ext.P9 Government Order dated 25.07.2014, the State Government, while considering a request from the Registrar General of High Court to revise the scale of pay of Head Chauffeurs and Chauffeurs Grade II, on par with scales of pay of Chauffeurs in the Tourism department, W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 modified the schedule of Chauffeurs in High Court on par with the Chauffeurs in Tourism department as shown below:

Existing	Pre-revised	Existing scale	Modified	Modified scale	pattern	scale of pay of
pay	pattern of pay	Head Chauffeur	13900-24040	Head Chauffeur	14620-25280	
Sr.Grade	Chauffeur	7480-11910	13210-22360	Chauffeur	13210-22360	Chauffeur
Grade I	Grade I	6680-10790	11620-20240	Chauffeur	Chauffeur	9940-16580
				Grade II		

5250-8390 9190-15780 Grade II

5. The Government also introduced a ratio of 1:1 between Chauffeur Grade I and Chauffeur Grade II and mandated that the date of effect of the new package would be 01.07.2009 and the date of effect of ratio promotion would be 01.02.2011. The conditions specified in Ext.P9 Government Order are as follows:

"i] The ratio between Chauffeur Grade I and Chauffeur Grade II will be 1:1 ii] The date of effect of the new package will be 01.07.2009 and the date of effect of ratio promotion will be 01.02.2011.

iii] With respect to ratio, merger, higher grade, etc general rules as specified in G.O.(Ms) No. 257/2011/Home dated 18.11.2011 and G.O.[P] No. 85/2011/Fin dated 26.02.2011 will be applicable.

iv] Those who are in Chauffeur Grade I/Senior Grade as on W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 01.07.2009, shall come over to the revised scale of pay of Rs.13210-22360 w.e.f 01.07.2009 or any subsequent date they opt subject to restriction in Rule 7 of Annexure II of G.O.(P) No. 85/2011/Fin dated 26.02.2011.

v] Those who were promoted as Chauffeur Grade I/Sr.Grade between 01.07.2009 and 31.01.2011 shall also exercise option vide para 7(2) of Annexure II of G.O.(P) No. 85/2011/Fin dated 26.02.2011 to the revised scale of the promoted post in the scale of pay Rs.13210-22360.

vi] Those who were eligible for promotion as Chauffeur Grade I/Sr.Grade against vacancies that arose upto 31.01.2011 but not promoted due to administrative delay shall also be promoted as Chauffeur Grade I/Senior Grade in the revised scale since the revised ratio promotion came into effect only from 01.02.2011. That is, in the case of those who are eligible for promotion as Chauffeur Grade I upto 31.01.2011, their pay has to be fixed in the scale of pay of Rs. 13210-22360 under Rule 28(A) subject to option (a) or

(b). But in the case of those who are eligible for promotion as Senior Grade their pay has to be fixed under para 41(v) of G.O.(P) No. 85/2011/Fin dated 26.02.2011, as the scale of pay of feeder post and promotion post are the same.

vii] The senior most Chauffeur will be placed in the revised scale of Head Chauffeur (Rs.14620-25280), subject to eligibility.

viii] The above categories are given the facility of filing revised option for Pay Revision 2009 and for revised option under Rule 28 A Part I KSRs and the revised option shall be filed within 3 months from the date of this order.

ix] Arrears on account of revised option shall be paid with effect from the date of option.

x] The excess amount on filing revised option shall be adjusted against arrears admissible with effect from the date of effect of revised option. The balance amount, if any, after adjustment shall be refunded in lump.

xi] The above conditions will also be applicable to those who have W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 retired from service on or after 01.07.2009."

6. In the writ petition Ext.P9 Government Order is impugned primarily with regard to the retrospective operation that has been given to the new package with effect from 01.07.2009, and to the effect of ratio promotion from 01.02.2011. It is the contention of the petitioners that, while Ext.P9 order in its present form would not grant any protection of pay to persons, who were working as Senior Grade Chauffeurs in the High Court service till the date of Ext.P9 Government Order, the said Government Order also introduces a ratio of 1:1 for promotion, which is not stipulated in the Kerala High Court Service Rules. For the sake of completion of facts, it also needs to be noted that the High Court has since amended the 2007 Rules on 25.09.2014, with effect from 01.02.2011, so as to make the grades of Chauffeurs under the High Court service in conformity with the Grades of Chauffeurs under the State services in the department of Tourism. It is significant to note, however, that the amendment did not introduce the concept of 1:1 ratio promotion among the Chauffeurs.

7. A counter affidavit has been filed on behalf of the 1st W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 respondent, wherein the sequence of events that led to the passing of Ext.P9 Government Order has been narrated. It is pointed out that, pursuant to the request of the Association of Chauffeurs to take speedy steps to make available to them the scales of pay and allowances at par with that of the Chauffeurs in the Tourism department, the High Court, by letter dated 04.10.2013 had informed the Government of its willingness to accept the pattern existing in the post of Chauffeurs in the Tourism department to Chauffeurs in the High Court also. It is stated that, while issuing Ext.P9 order, the Government did not however, give the next lower scale of pay available to that of Head Chauffeurs to the next lower post of Senior Grade Chauffeurs to persons holding the newly formed combined Chauffeurs Grade I post among the High Court Chauffeurs. It is also pointed out that, in the light of Ext.P9 order, the High Court had no other alternative than to amend the High Court Service Rules in tune with Ext.P9 order deleting the post of Senior Grade Chauffeurs with retrospective effect from 01.02.2011 and that the amended Rules were implemented by refixing the cadre strength of High Court Chauffeurs in Grade I and Grade II posts with retrospective effect from 01.02.2011, and promoting the Senior most Chauffeur as Head Chauffeur and placing other Chauffeurs in the category of Grade I and Grade II in the ratio of W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 1:1, with the strength of 37 and 38 respectively.

8. In the counter affidavit filed on behalf of the 2nd respondent, while referring to the various orders passed by the Government, including Ext.P9 order that is impugned in the writ petition, nothing is stated with regard to the rationale for insisting on a 1:1 ratio between Chauffeurs Grade I and

Chauffeurs Grade II among the Chauffeurs in the High Court service.

9. I have heard Sri.P.Ravindran, the learned Senior Counsel, duly assisted by Sreedhar Ravindran, on behalf of the petitioners in WP(C) Nos.1097 and 9288 of 2015, Sri. T.R. Harikumar, the learned counsel appearing on behalf of the petitioners in WP(C) No. 9265 and 10912 of 2015, Smt.V.P.Seemanthini, the learned Senior Counsel on behalf of the High Court of Kerala, in all these writ petitions, Sri.Jaju Babu, the learned Senior Counsel on behalf of the additional respondents 3 to 42 in WP(C) No.1097of 2015 and the learned Government Pleader for the official respondents in all these writ petitions.

10. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 the issue as to whether the nature of duties performed, by Chauffeurs in the High Court service and the Chauffeurs in the State government service, is the same or not, is no longer res integra. By Exts.P2, P3 and P4 judgments and order of this Court/Supreme Court, it is evident that there cannot be any dispute that the nature of duties performed by both categories of Chauffeurs is the same. It would follow, therefore, that the Chauffeurs in the High Court service would be entitled to parity in scales of pay with the Chauffeurs under the Government service in the department of Tourism. The issue in the instant case arises pursuant to the implementation of the recommendations of the 9th pay revision commission, as also the amendment brought about in the Kerala High Court Service Rules, 2007, whereby, the grades of Chauffeurs in the High Court service were reduced from the erstwhile four grades to three grades, comprising of the Head Chauffeur, Chauffeur Grade I and Chauffeur Grade II alone. The reduction in the number of grades of Chauffeurs in the High Court service was, with a view to make it at par with the grades of Chauffeurs in the State service in the department of Tourism, where also, apart from the post of Head Chauffeur, there are only two grades of Chauffeurs namely, Chauffeur Grade I and W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 Chauffeur Grade II. The methodology that was adopted, for the purposes of bringing down the number of grades of Chauffeur to three in the High Court service, was to integrate the post of Senior Grade Chauffeur with the post of Chauffeur Grade I. Thus, the Senior Grade Chauffeurs and Chauffeurs Grade I, after the amendment in the High Court Service Rules, occupied a single cadre of Chauffeur Grade I and stood entitled to the benefits that flowed from such an integration of the posts. Further, as a consequence of the integration of the two posts of Chauffeur Senior Grade and Chauffeur Grade I, the number of posts in the cadre of Chauffeur Grade I stood enhanced to 50, while the number of posts in the cadre of Chauffeur Grade II stood at 25, as before. Thus, apart from the single post of Head Chauffeur, there were now 50 Chauffeurs in the cadre of Chauffeur Grade I and 25 Chauffeurs in the cadre of Chauffeur Grade II. Ext.P9 Government Order, however, introduced a ratio of 1:1 between posts of Chauffeur Grade I and Chauffeur Grade II and, it was following this concept that the High Court began implementing Ext.P9 order by reverting some persons from the post of Chauffeur Grade I to the post of Chauffeur Grade II. The issue that arises for consideration, however, is whether, while extending the benefit of pay scales applicable to Chauffeurs in the Government Service, to W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 the Chauffeurs in the High Court service, the State Government could insist on a ratio of 1:1 between Chauffeurs Grade I and Chauffeurs Grade II for the purposes of promotion from one cadre to the other. It is relevant to note here that, under the High Court Service Rules, the promotion from Chauffeur Grade II to Chauffeur

Grade I is on the basis of seniority, subject to fitness. In other words, the rules do not provide for any ratio to be maintained, either while determining the cadre strength of the respective posts, or in the matter of promotion from Chauffeur Grade II to Chauffeur Grade I. When the rules do not provide for such a ratio, an executive order in the nature of Ext.P9 cannot insist on such a ratio either. This settled position in law finds support in the decision of the Full Bench of this Court in Sugathan v. Shahul Hameed [2006 (4) KLT 54]. Thus, Ext.P9 to the extent it contemplates a ratio between Chauffeur Grade I and Chauffeur Grade II at 1:1, and the consequent reversion of persons who have been promoted as Chauffeurs Grade I in the past, cannot be legally sustained. It might be apposite to state, at this juncture, that this Court is aware that the granting of pay scales is a purely executive function and that Courts would not ordinarily interfere with an exercise of pay fixation by the State Government. W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 However, when a patent illegality is noticed in an executive order, this Court has necessarily to strike off the offending clause so that the pay fixation intended by the State Government is given effect to without breaching any legal provision.

11. The question then arises as to what would be the effect of Ext.P9 Government Order, if the prescription of the ratio of 1:1 therein is held legally unsustainable? As already noted, in Ext.P9 Government Order, the date of effect of the new package is stated to be 01.07.2009. This would mean that the benefit of higher pay scales as indicated in Ext.P9 order, would be available to Chauffeurs Grade I and Chauffeurs Grade II in the High Court service, with effect from 01.07.2009. If the ratio of 1:1 cannot be insisted upon, then all the Chauffeurs who were hitherto holding the post of Senior Grade Chauffeur, pursuant to Ext.P9 Government order and the amendment of the High Court Service Rules, will stand accommodated in the post of Chauffeur Grade I, and would have to be fitted at the appropriate place in the pay scale (Rs.13210-22360) indicated for the post of Chauffeur Grade I, based on the pay that they were drawing at the time of passing of Ext.P9 Government Order. Such an exercise would ensure that the pay, that was being drawn by the Senior Grade Chauffeurs W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 would continue to be protected, consequent to the extension of the modified scale of pay for the integrated post of Senior Grade Chauffeur and Chauffeur Grade I (now designated as Chauffeur Grade I) and would also ensure a conformity with the amended Kerala High Court Service Rules, 2007.

12. The upshot of the above discussion, and the consequence of quashing Ext.P9 order to the extent it prescribes the ratio of 1:1 between Chauffeur Grade I and Chauffeur Grade II with effect from 01.02.2011, is that:

(i) Chauffeurs in the High Court service would, after the date of amendment to the High Court Service Rules, be categorised as Head Chauffeur, Chauffeur Grade I and Chauffeur Grade II, respectively.

(ii) There would be one post of Head Chauffeur, 50 posts of Chauffeur Grade I and 25 post of Chauffeur Grade II.

(iii) The erstwhile Senior Grade Chauffeurs, who are now accommodated in the post of Chauffeur Grade I would be entitled to the modified scale of pay of

Rs.13,210-22360 and their pay would be fixed at the level which they were drawing at the time, when Ext.P9 Government Order was passed.

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(iv) In the absence of any ratio to be maintained among the posts of Chauffeur Grade I and Chauffeur Grade II, there would be no necessity of reverting any Chauffeur from the post of Chauffeur Grade I to Chauffeur Grade II or for reducing the pay of any Senior Grade Chauffeur to a level lower than what he was drawing consequent to his placement in the post of Chauffeur Grade I.

(v) The Chauffeurs in the aforementioned grades of Head Chauffeur, Chauffeur Grade I and Chauffeur Grade II will also consequently stand entitled for all benefits of future pay revision as applicable to the said scales of pay.

13. Before parting with these cases, I must also deal with the contention of the learned Senior Counsel for the petitioners with regard to the recovery that is sought to be effected by Ext.P11 order. By the said order, placing reliance on the prescription of a ratio of 1:1 between Chauffeur Grade I and Chauffeur Grade II with effect from 01.02.2011, recoveries were sought to be made from erstwhile Senior Grade Chauffeurs and Chauffeurs Grade I of the differential amounts that were paid to them, allegedly in excess, on account of the implementation of Ext.P9 Government Order. As rightly pointed out by the learned W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 Senior Counsel, relying on the decision in *Chairman, Railway Board and Others v. C.R. Rangadhamaiah and Others* [1997 KHC 996], [1997 (2) KLT 665] (paragraph 20 to 24), *Xavier v.State of Kerala* [1998 (2) KLT 603 (paragraph 11), and *Kerala Panchayat Executive Officers Association v. State of Kerala* [2000 (3) KLT 701] (paragraph 2 and 3), a rule which seeks to reverse, from an anterior date, a service benefit which has been granted or availed, such as the extension of particular pay scales of promotion, will fail the test of Article 14 and 16 of the Constitution of India, to the extent it operates retrospectively. It is settled law that, a benefit that is already made available to an employee under an existing rule cannot be taken away retrospectively, by a subsequent amendment in the rules. That apart, in the instant case, it is significant to note that the rules by themselves do not have the effect of depriving the employees of the benefit that they had already availed, and it is the retrospective effect contemplated in an executive order (Ext.P9), that has resulted in the deprivation of benefits that were already extended to the employees earlier. For reasons already stated earlier, such a retrospective operation cannot be legally countenanced and the recovery contemplated in Ext.P11 cannot be legally sustained. In the result, these writ W.P.(C). Nos. 1097, 9265, 9288, & 10912 of 2015 petitions are allowed by quashing Ext.P9 Government Order to the extent indicated above, and Ext.P11 to the extent it directs recovery of the amounts already paid to the petitioners prior to Ext.P9 order. The 1st respondent shall compute the benefits due to the petitioners and other Chauffeurs in the High Court service, based on the directions in this judgment and disburse the amounts, if any due to them, within an outer time limit of three months from the date of receipt of a copy of this judgment.

The writ petitions are, thus allowed as above.

Sd/-

A.K.JAYASANKARAN NAMBIAR JUDGE das /25.08.2016 xxx