



GOVERNMENT OF KERALA

Abstract

AYUSH Department – Homoeopathy – Final Order dtd 13.10.2021 in OA (EKM) No.1626/2021 of Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram (Additional Bench: Ernakulam) filed by Lincy M.G and others – Complied with – Orders issued.

AYUSH (B) DEPARTMENT

G.O.(Rt)No.70/2022/AYUSH Dated, Thiruvananthapuram, 08-03-2022

- Read.
1. Final Order dated 13.10.2021 in OA (EKM) No.1626/2021 of Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram (Additional Bench: Ernakulam).
 2. GO(P) No.56/2002/Fin.Dated 16.01.2002.
 3. GO(P) No. 441/2012/Fin.Dated, 08.08.2012.
 4. GO(P) No.20/2013/Fin. dated 07.01.2013.
 5. GO(P) No.209/13/Fin dated 07.05.2013.
 6. GO(P) No.279/2014/Fin dated 14.07.2014.
 7. GO(P) No.172/2018/Fin. dated 07.11.2018.
 8. GO(Rt)No.5071/2020/Fin. Dated 03.09.2020.
 9. Letter No.DHTVM/721/2021-EA2 dt: 10.12.2021 of the Director of Homoeopathy, Thiruvananthapuram.

ORDER

Smt. Lincy M G and Others who are working in various posts in the Department of Homoeopathy had filed OA (EKM) No.1626/2021 of Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram (Additional Bench: Ernakulam) aggrieved by the non-inclusion in the Statutory Pension Scheme.

2) In the final order dated 13.10.2021 in OA (EKM) No.1626/2021, Hon'ble Kerala Administrative Tribunal has directed the 1st respondent (Secretary, AYUSH Department) to consider and pass appropriate orders on Annexures A1 to A5 representations without further delay and at any rate within a period of three months from the date of receipt of a copy of the order after affording an opportunity of hearing to any of the applicants or their duly authorized representatives. The first respondent shall pass appropriate orders in the light of Annexure A6 judgment as upheld by the Hon'ble Supreme Court of India.

3) As directed by the Hon'ble Court, the applicants were heard on 13.12.2021. The petitioners and the Director of Homoeopathy attended the hearing. The applicants requested to reconsider their claim for inclusion in the Statutory Pension Scheme. The Director of Homoeopathy reported that the applicants have been given appointment from the rank lists published before 01.04.2013.

4) Government have examined the case in detail. As per Government order read as 4th paper above, the NPS is mandatory for all appointments made on or after 01/04/2013. It is the policy decision of the Government to implement NPS. Even though NPS was implemented with effect from 01.01.2004 to central government employees, Government of Kerala has decided to implement NPS with effect from 01.04.2013 only. A cut off date has to be chosen for its implementation. Hence the Government had decided 01.04.2013 as the cut off date for the implementation of NPS. In order to implement it in the state of Kerala, Government executed various agreements with NSDL and NPS Trust - two central government agencies. Both in the Agreements and executive orders issued by the Government, it is clearly specified that "NPS is applicable to those who are appointed on or after 01.04.2013". Since the appointment of the petitioners is only after 01.04.2013 i.e. after the implementation of NPS in the State, they came under the purview of NPS.

5) As per notification of Ministry of Finance F No.5/7/2003ECB& PR Dated 22.12.2003 the new restructured contribution pension scheme would be mandatory for all recruits to the central government service from 01.01.2004 where as Government of Kerala has implemented the scheme to those employees who were appointed in service on or after 01.04.2013. The condition and date of effect for implementing NPS in Central Government and State Government is not identical. Moreover considering the soaring huge expenditure towards pension and in order to overcome the financial crisis, Government as per order read as 2nd paper above had announced a contributory pension scheme to the new entrants in Government service as well as in Public Sector Undertakings wherein KSR part III pension scheme is in existence. Further, Government with a view to achieve fiscal consolidation in the state examined various proposals and has taken the final decision in principle to introduce new pension scheme with effect from 01.04.2013 which shall be applicable to all appointments made thereafter. Based on the decision, Government had issued order read as 3rd paper above. That is Government had announced the implementation of NPS as early in 2002 itself. Hence the newly recruited employees are well aware of the intention of Government to implement a contributory pension scheme instead of Statutory Pension Scheme.

6) As per Government orders read as 4th and 5th papers above, mobility was given to those employees who were appointed in service up to 31.03.2013 and was under the purview of statutory pension scheme prior to 01.04.2013 to retain in Part III KSRs pension scheme. The petitioners had been appointed after

01.04.2013 only and at the time of joining the service, they were well aware of the pension scheme admissible to them. The petitioners cannot claim the benefits admissible to those who were in service prior to the date of joining of the petitioners. Considering the increase in number of petitions and applications regarding the inclusion of employees under K.S.R. Part III on the basis of Notification date through which their respective process of selections commenced, Government issued order read as 8th paper above to include this matter in the list of subjects of consideration before the NPS Review Committee which was constituted vide Government order read as 7th paper above.

7) Since the introduction of NPS was done as a matter of policy decision by the Government, any notable amendment to this policy can only be made through another policy making by the Govt. This can be done only after taking a decision on the report from the Review Committee which is already under examination by the Government. Hence the request of the applicants to be included in the Statutory Pension Scheme is hereby rejected.

8) The final Order dated 13.10.2021 in OA (EKM) No. No.1626/2021 of Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram (Additional Bench: Ernakulam) is complied with accordingly.

(By order of the Governor)
RAJAN NAMDEV KHOBRAGADE
PRINCIPAL SECRETARY

The Advocate General, O/o the Advocate General,
Ernakulam/Thiruvananthapuram (with Covering Letter).
The Director of Homoeopathy, Thiruvananthapuram.
The petitioners (Through the Director of Homoeopathy).
The Principal Accountant General (Audit/ A&E) Kerala, Thiruvananthapuram.
Stock File/Office Copy.

Forwarded /By Order


Section Officer