

**TWELFTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2006-2008)**

**TWELFTH REPORT**

(Presented on 18th October, 2006)



SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM  
2006

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**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
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**TWELFTH REPORT**

**On**

**Action taken by Government on the Recommendations contained  
in the Hundred and Twelfth Report of the Committee  
on Public Accounts (1993-1995)**

1005/2006.

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COMMITTEE ON PUBLIC ACCOUNTS (2006-2008)

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Shri Aryadan Muhammed

*Members :*

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  - ” M. Prakashan Master
  - ” Thiruvanchoor Radhakrishnan
  - ” N. Rajan
  - ” A. K. Saseendran

*Legislature Secretariat :*

- Dr. M. C. Valson, Secretary  
Shri K. Ravikumar, Deputy Secretary  
Smt. M. T. Eleykutty, Under Secretary.

## INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report on their behalf, present the Twelfth Report on Action Taken by Government on the Recommendations contained in the Hundred and Twelfth Report of the Committee on Public Accounts (1993-1995)

The Committee considered and finalised this report at the meeting held on 11th October, 2006.

Thiruvananthapuram,  
18th October, 2006.

ARYADAN MUHAMMED,  
*Chairman,*  
*Committee on Public Accounts.*

## **REPORT**

This Report deals with the action taken by Government on the recommendations contained in the 112th Report of the Committee on Public Accounts (1993-95).

The 112th Report of the Committee on Public Accounts (1993-95) was presented to the House on July 4, 1995. The Report contained Eighteen recommendations relating to Taxes Department. Government were addressed on 14th July 1995 to furnish the statements of action taken on the recommendations contained in the Report and final replies were received on 12-4-2005.

The Committee examined the statements at its meeting held on 18-11-1998, 21-3-2002 and 24-5-2005.

The Committee was not satisfied with the action taken by Government on recommendation Nos. 2,5,6 (Para Nos. 11,16,17) and decided to pursue them further. The recommendations, its replies thereon and further recommendations of the Committee are included in Chapter I of this Report.

The Committee decided not to pursue further the remaining recommendations, in the light of the replies furnished by Government. These recommendations and their replies are incorporated in Chapter II of this Report.

## CHAPTER I

**Recommendations in respect of which the action taken by Government is not satisfactory and which requires reiteration**

## TAXES DEPARTMENT

**Recommendation***(Sl. No. 2 Para No. 11)*

1.1 The Committee recommend that the Department should take action against the retired officer.

**Action Taken**

1.2 The case relates to the short levy due to grant of inadmissible deduction in respect of Oommen P. Koshy, Alexandria Estate, an assessee on the rolls of the Agricultural Income Tax Officer, Chittoor. The mistake resulted in short levy of tax of Rs. 57,734. The original irregular assessment in this case was completed by Shri B. Ravi, who retired from service on 31-12-1988. The short levy pointed out by audit has been set right by revising the assessment. Additional demand so created has been collected in full. As the Officer had retired from service long before the draft para was communicated, no action was initiated against the officer. The Hon'ble High Court of Kerala in the Judgements in O. P. No. 1141/91/J. dated 11-8-1995 and 11636/93/I dated 10-4-1997 (copies included as Appendix II) held that Government has no power to initiate disciplinary action against a retired Government Servant. Vide Circular No.41/97/Fin. Dated 9-5-1997 (copy included as Appendix III) Government have directed the Heads of Departments and Pension sanctioning authorities to take necessary steps to fix up liability of officers before the dates of their retirement.

**Further Recommendation**

1.3 The Committee opined that the delay of 5 years in taking action against the retired officer was a purposeful attempt to favour him.

The Committee understands that a number of delinquent officers are escaping punishments under corruption charges on the mere ground that they could not be proceeded against once they retire from service. The Committee, therefore, recommends that it is high time that a way out from this kind of situation be sought out. The Committee therefore, recommends that the Government should frame a suitable law by which officers who retire from service after making a very huge loss to the Exchequer could be proceeded against.

**Recommendation**

*(Sl. No. 5 Para No. 16)*

1.4 The Committee are of the opinion that the officer who had completed the assessment in flippant manner should have been punished more severely. Barring one increment is not a deterrent for those kinds of wilful wrongs committed by an officer.

**Action Taken**

1.5 The case relates to the irregular assessment in respect of Joseph Kurian & Others for the year 1984-85. While completing the assessments of 8 individual assessee, the assessing authority adopted the market rate of Cardamom of Rs. 126 per kg. for the year 1984-85 instead of adopting the correct rate of Rs. 244 per kg. This resulted in short levy of tax of Rs. 4.41 lakhs.

1.6 The irregular assessment was completed by Smt. L. Selvi, while she was holding the post of Agricultural Income Tax Officer, Alappuzha. The same officer had committed certain irregularities in other files viz., File No. H2-32164/91/TX & H2-38926/91/TX. Thus the Board had initiated disciplinary action against the official by awarding her a punishment of barring one increment with cumulative effect. Hence the Officer cannot be punished again for the very same irregularity. The Board of Revenue has taken note of this recommendations.

**Further Recommendation**

1.7 Expressing dissatisfaction over the minor punishment awarded to the officer who had committed wilful wrongs, the Committee suggested to take further action in consultation with the Law Department within one month.

**Recommendation**

*(Sl. No. 6 Para No. 17)*

1.8 The Deputy Commissioner who set aside the revised assessment which is beyond his powers, had deliberately deluded the Department by issuing an irrelevant order. The Committee strongly recommend that the retired officer should be booked invoking provisions in the Public Accountants Act for his negligent and slip shod way of discharging duties, even at the fag end of his official career.

**Action Taken**

1.9 The facts of the case are that while holding the post of Deputy Commissioner (Alp), Shri K. S. Prabhakaran, Deputy Commissioner (Rtd.) entertained R.Ps filed by the 8 individual assesseees mentioned in para 34 against the revised assessment orders for which he had no jurisdiction to dispose of the same in favour of the assessee which caused loss to revenue to the tune of Rs.4,40,835 Disciplinary action was initiated against the irregularities committed by him and action was finalised by the Government as per order No. G.O.(Rt.) 644/94/TD. dated 30-11-1994. Accordingly it was ordered to withhold his one increment without cumulative effect. He has already retired from service on 31-1-1993. Government have no power to take action against a retired Government servant once action has been finalised by Government.

**Further Recommendation**

1.10 The Committee reiterates its recommendation that the retired officer should be booked invoking provisions in the Public Accountants Act. If there is no scope for this, criminal proceedings should be initiated against them.

## CHAPTER II

**Recommendations which the committee does not desire to pursue in the light of replies furnished by Government**

## TAXES DEPARTMENT

**Recommendation***(Sl. No. 1 Para No. 7)*

2.1 The Committee recommend to expedite action by the department for the speedy disposal of the appeal and vacate the stay granted to the assessee regarding collection of the balance amount of Rs. 10,223.

**Action Taken**

2.2 The case relates to M/s. Padinjarekkara Estate Limited. The stay granted under Section 40 of the Agricultural Income Tax Act, 1950 was till the disposal of appeal. The appeal was dismissed by the Deputy Commissioner (Appeals) Kollam as per order No.AITA.54/90. dated 3-8-1993. The assessee filed second appeal against this order which is still pending. The stay is not in force now and steps have been taken to realise the balance amount.

**Recommendation***(Sl. No. 3 Para No. 13)*

2.3 The Committee maintain that in order to avoid loss to Government there should be some machinery to bring cases regarding short levy of Taxes to the notice of the Member, Board of Revenue within one or two months, immediately after they are pointed out by Accountant General.

**Action Taken**

2.4 Major irregularities pointed out by the Accountant General are being brought to the notice of the Commissioner and necessary follow up is being made on rectification of mistake. Disciplinary action is also being taken in deserving cases.

**Further Recommendation**

2.5 The Committee wanted to be informed as to whether the amount of loss was realized. The Committee also recommended strengthening the internal audit wing of the Department by dividing the wing into North, South and Central Sectors. The Committee also wanted to ensure that efficient and experienced hands are posted for at least one year in the Internal Audit Wing and 100% audit should be conducted.

### **Supplementary Action Taken**

2.6 The case relates to the Mannarghat Rubber Estate for the year 1987-88. The assessment was revised and the total tax due as per revised assessment (including additional demand created of Rs. 49,202) amounting to Rs. 92,307 was realised as shown below:

Rs. 21,553 Ch. No.1675 dated 14-3-1988.

Rs. 20,126 Ch. No.2728 dated 14-11-1990.

Rs. 15,000 Ch. No.1125 dated 13-12-1990.

Rs. 15,000 Ch. No.1129 dated 22-1-1990.

Rs. 20,628 Excess adjusted from previous year.

2.7 The Internal Audit Wing of the department has been divided into two zones, North and South and two posts of Deputy Commissioner (A&I) have been created as per G. O.(Rt.) No.509/01/TD. dated 11-7-2001 and are functioning at present at Ernakulam and Kozhikode. Eight Posts of Inspecting Assistant Commissioner (A&I) and sixty-three posts of Sales Tax Officer (Audit) were also created as per order No.A/28794/01/TX. dated 24-8-2001 Now senior officers are being posted for audit work and 100% audit is being done with good results.

### **Recommendation**

*(Sl. No. 4 Para No. 14)*

2.8 The Committee find that although the assessee company had not incurred any expenses for collecting lease rent, Rs. 1.35 lakhs was wrongly allowed as deduction. The Committee desire to be furnished with details of Revenue Recovery Proceedings pending against the assessee.

### **Action Taken**

2.9 The case relates to M/s. Periyar and Pareekanni Rubbers Ltd. as assessee on the rolls of Agricultural Income Tax Officer, Palai.

2.10 The assessee obtained a conditional stay from the High Court as per order No.CMP.153/95 in TRC. 5/95 dated 13-1-1995. Accordingly, the defaulter has remitted Rs. 20,333 as per Chalan No. 1241 dated 17-2-1995. Stay is still in force.

### **Supplementary Action Taken**

*Latest position of the case :*

2.11 TRC No.5/95 was finally disposed by the High Court as per Judgment dated 1-11-1996. The Honourable Court held that the assessment orders completing the assessment for the assessment year 1983-84 and subsequent years should be treated as final and conclusive. The court also directed that the amount deposited in pursuance of the order is to be refunded forthwith. Thus the original assessment order was restored.

#### **Recommendation**

*(Sl. No. 7 Para No. 19)*

2.12 The Committee are of the opinion that facts of the case have been brought to the notice of the Accountant General at the draft para stage. Challenging the facts of the para, after formulation of the para is reprehensible.

#### **Action Taken**

2.13 The correct position of the fact will be brought to the notice of the Accountant General at the earliest stage. The opinion of the Committee is noted for future guidance.

#### **Recommendation**

*(Sl. No. 8 Para No. 24)*

2.14 The Committee opined that since the amount set apart for Bishop's House could not be treated solely for religious purpose, the department should seek legal opinion of the Law Department and report to the Committee.

#### **Action Taken**

2.15 The legal opinion of Law Department on the recommendation is as follows:

Section 4(10) (b) of the Agricultural Income Tax Act 1950 provides that the total agricultural income of any previous year of any person comprises, all agricultural income derived from land situated within the State and received by him within or outside the State, but does not include any agricultural income derived from, property held under trust wholly or for charitable or religious purpose, to the extent to which such income is applied to such purpose in the State. In the instant case the legal point to be examined is whether the amount set apart for Bishop's house will come under charitable or religious purpose. "Charitable purpose" is defined by section 2 of the Charitable Endowment Act

1890, as a purpose including relief of the poor, education, medical relief and the advancement of any other object of general public utility but does not include a purpose which relates exclusively to religious teaching or worship. According to Section 2(v)(a) of the Gift Tax Act, 1958, "Charitable purpose includes relief of the poor education, medical relief and advancement of any other object of general, public utility not involving the carrying one of any activity of profit. To serve a charitable purpose, it is sufficient if the intention is to the benefit of a section of the Public as distinguished from specified individuals".

2.16 In view of the interpretation explained above, the amount set apart for the Bishop's House cannot be treated solely for religious purpose, as no charitable or religious activity can be identified in the Bishop's House. As a religious head, the Bishop can utilise the building only for residential purpose and charitable activity cannot be attached to the building. As such it cannot be said that the amount set apart for Bishop's House is used for charitable purpose. As there is no charitable or religious purpose is involved, the income set apart for Bishop's House cannot be treated as charitable purpose. Therefore, the assessee is not entitled to get the benefit of tax exemption under section 4(1) (b) of the Agricultural Income Tax Act 1950.

#### **Recommendation**

*(Sl. No. 9 Para No. 30)*

2.17 The Committee recommend to expedite the Revenue Recovery proceedings and result of recovery should be intimated to the Committee.

#### **Action Taken**

2.18 The case relates to M.M. Khadeeja & Others. In this case the assessee filed O.P. and Hon'ble High Court in O.P.16823/93 has granted interim stay on condition of deposit of Rs. 15,000 within one month from 8-12-1992. Accordingly, the defaulter has remitted Rs. 15,000 as per Chalan No.915 dated 27-1-1994 at Sub Treasury, Nedumkandam. The Advocate General, Ernakulam has been addressed as per ref. No. OP.6823/95 dated 17-10-1995 to take urgent steps to get the stay vacated and to get the OP disposed of at the earliest.

#### **Supplementary Action Taken**

2.19 The Honourable High Court disposed of the OP No. 16823/93 as per Judgment dated 30-1-1997 with a direction to the appellate authority to dispose of the appeals. But the appeal in question had been disposed of by the Tribunal much before the date of Judgment of the High Court. Based on the

appellate order, the assessments were revised. The additional demand created as per the revised assessment Rs. 52,290 has been advised for Revenue Recovery. Out of this Rs. 15,000 has been remitted by the assessee vide chalan No. 902 dated 14-6-2001. Balance amount is pending collection.

**Recommendation**

*(Sl. No. 10 Para No. 33)*

2.20 The decision on the second appeal with the copy of Judgement should be forwarded to the Committee.

**Action Taken**

2.21 The Second appeal is still pending with the Tribunal.

**Further Recommendation**

2.22 The Committee wanted to await the decision on the appeal.

**Supplementary Action Taken**

2.23 The Agricultural Income Tax Appellate Tribunal as per its order dated 30-11-2000, modified the assessments for the year 1981-82, 1983-84, 1984-86 and 1986-87 and dismissed the appeal for the year 1982-83. On the basis of the Appellate Tribunal Order, the assessments were revised on 21-1-2002. The result of modification is as shown below:

| <i>Year of assessment</i> | <i>Result of modified order</i>                                    |
|---------------------------|--|
| 1981-82                   | No dues Rs. 70,109 excess  |
| 1982-83                   | No dues  |
| 1983-84                   | Balance Rs. 46,991 adjusted against excess amount in previous year |
| 1984-85                   | Net loss reported. No dues   |
| 1985-86                   | Net loss reported. No dues   |
| 1986-87                   | Rs. 9,116 – Excess.  |

**Recommendation**

*(Sl. No. 11 Para No. 35)*

2.24 The Committee take strong exception to the reply furnished by the Department stating that the action against the assessing officer was being taken. The Committee want proper explanation from the department as to why action against him is delayed and what punitive action has been proposed to take against the delinquent officer.

**Action Taken**

2.25 The case relates to Shri V. J. Antony. The original irregular assessment in this case was completed by Shri P. M. Badaseenath and action initiated against him has been finalised by barring an increment for six months in one lump as per Board's proceedings No.H2-26116/91/TX dated 6-8-1996.

**Recommendation**

(Sl. No. 12 Para No. 38)

2.26 The Committee call for the details of action taken for reassessment, creation of additional demand and Revenue Recovery.

**Action Taken**

2.27 The case relates to Dayalan Rajesh an assessee on the rolls of Agricultural Income Tax Officer, Chittoor. The assessment for the year 1978-79 and 1979-80 have been revised as per order dated 17-5-1993 creating an additional demand of Rs. 48,723 The outstanding balance of Rs. 41,993 has been advised for R. R. as per R. R. C. Nos. 4/93-94 & 5/93-94 which is pending collection. The two TRCs filed by the assessee before the High Court in CMP Nos. 2097/93 and CMP 2098/93 are still pending.

**Supplementary Action Taken**

2.28 Shri.Dayalan Rajesh has paid an amount of Rs. 58,469 for the years 1978-79 and 1979-80 in accordance with amnesty scheme under section 37(2) of Agricultural Income Tax Act 1991 vide chalan No.49 dated 22-1-2000 as shown below:

| <i>Year</i> | <i>AIT<br/>(Rs)</i> |
|-------------|---------------------|
| 1978-79     | 23,412.00           |
| 1979-80     | 18,652.00           |
| Interest    | 16,405.00           |
| Total       | <u>58,469.00</u>    |

**Recommendation**

(Sl. No. 13 Para No. 40)

2.29 The Committee recommend to take steps to incorporate necessary provisions in Agricultural Income Tax Act for prior intimation of transfer of properties by the assessee.

**Action Taken**

2.30 As per amendment of Act 15 of 1991, a new provision 56 A has been inserted into the Agricultural Income Tax Act 1991 which read as under:

“56 A. Assessee to furnish details of acquisition and disposal of landed property”.

2.31 Every person liable to pay tax and every person to whom a permanent account number has been allotted under this Act, shall intimate in writing to the assessing authority the details of any landed property acquired or disposed as the case may be.

2.32 The Kerala Finance Act 1994, by which the above amendment has been made came into force on 1-4-1994.

**Recommendation**

*(Sl. No. 14 Para No. 45)*

2.33 The Committee find that in all the cases except one, the Board of Revenue had not finalised action against the officers responsible. The Committee want the action against them should be completed without further delay and intimated to the Committee. The Committee take note that the Officer responsible for the lapse pointed out in audit para 4.6 (iv) is the same person who had erred in the case brought out in para 4.3. The Committee recommend that such officers should be closely watched and kept away from responsible posts.

**Action Taken**

2.34 During the year 34 draft paras were reported. In 10 cases officers already retired before the receipt of the draft paras (The details are appended as Appendix IV). Disciplinary action against 19 cases were finalised (Details are appended as Appendix V).

**Recommendation**

*(Sl. No. 15 Para No. 48)*

2.35 The Committee desire a clarification from the Law Department of the Government as to whether the case Law quoted in the Government note (102 ITR803) is applicable in the case discussed in audit para 4.7 (i) after examining the points in the brief of the para. The Government should get the opinion from Law Department and forward it to the Committee.

**Action Taken**

2.36 The opinion of the Law Department in the para is as follows:

As per Section 3 of the Kerala Agricultural Income Tax Act, tax at the rate or rates specified in the Schedule to this Act shall be charged for each assessment year in accordance with and subject to the provisions of this Act on the total agricultural income of the previous year of every person.

2.37 Under Section 5(k) of the Act, the Agricultural income of a person shall be computed after making deduction of any sum paid during the previous year to an employee as gratuity in accordance with the provision of payment of Gratuity Act 1972 less such amount if any claimed in any previous year towards provision for gratuity in respect of such employee.

2.38 The proviso to section 5 provides as follows:

Provided that no deduction shall be made under this section if it has already been made in the assessment under the Income Tax Act 1961 (Central Act 43 of 1961).

2.39 The definition of the term "agricultural income" for the purpose of Income Tax Act 91/61 has to be considered in the light of Rules 7 and 8 of the Income Tax Rules 1962. Extracts of the Rules 7(1) and 8(1) are given below:

2.40 7(1) In case of income which is partially agricultural income as defined in section 2 and partially income chargeable to income tax under the head "profits and gains of business" in determining that part which is chargeable to the income tax, the market value of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as a raw material in such business or the sale receipts of which are included in the accounts of the business shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

2.41 8(1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax.

2.42 The following cases refer to the assessment of Agricultural Income Tax which hold good in the present case. An Agricultural Income Tax Officer acting under the Kerala Act has no power to levy Agricultural Income Tax except 60% of the income derived by the assessee from the sale of Tea (Tata Tea Ltd. vs. State of West Bengal AIR 1988 SC 1425 173 TR 18).

2.43 The entire income derived from the sale of tea is not agricultural income. The levy of tax under Agricultural Income Tax Act can relate only to sixty per cent of the income derived from the sale of tea after allowing admissible deduction under section 5 (Thomas V. AITO 1989 (1) KLT 909 184/ TR 561, Karimtharuvi Tea Estates vs. Kerala State AIR 1963 SC 760 48 IR 83). Section 5(K) read with the proviso to that section shows that the audit objection in the matter is sustainable.

**Recommendation**

*(Sl. No. 16 Para No. 52)*

2.44 The final position of collection should be informed to the Committee. The Committee notice that the department had taken more than 4 years to revise the assessment since the mistake pointed out in audit para 4.8 (ii) was reported in February 1983. The Committee urge that the persons responsible for the delay should be brought to book.

**Action Taken**

2.45 The case relates to M/s. Vally estate for the year 83-84. The additional demand created i.e., Rs. 1,02,435 has been paid by the assessee on 3-3-1993. In this case action was initiated against Sarvasree S. Chandrasekharan, K.S. Bhaskaran and P.I. Sheriff Mohammed who failed to take timely action to revise the assessment. The Board after examining the explanation filed by the officers with reference to the records facts and circumstances of the case and considering the fact that the short levy has been made good and the amount collected in full, a lenient view was taken and they were let off with a warning as per order No. H1-42610/91/TX dated. 19-10-1993.

**Recommendation**

*(Sl. No. 17 Para No. 62)*

2.46 The Committee opined that the Government should follow up the matter and take action to vacate the stay and realise the amount at the earliest.

**Action Taken**

2.47 The case relates to Mohammed and others. The present position is as follows:

The appeal in the case of Valsa Kurian legal heir of George Kurian was dismissed as per order No.AITA KTR 690/92 Dated 21-2-1994 and the stay is no longer in force. The balance due from the assessee i.e., Rs.28,384 was

advised for collection under Revenue Recovery and the RRC was forwarded to District Collector, Manipal by the District Collector, Pathanamthitta, since the defaulter is residing there. District Collector, Manipal has been addressed for speedy realisation of arrears. Rs. 13,500 and Rs. 5000 have been collected from Mohammed and N. Mohammed respectively for 1983-84. Tahsildar, Kozhenchery has been instructed to realise the balance at the earliest.

**Recommendation**

*(Sl. No. 18 Para No. 64)*

2.48 The Committee opined that there should be a provision included in the Act that transfer of properties under assessment should be done with prior information to the department, failing which the assessee should be made liable to pay to short levy of tax.

**Action Taken**

2.49 As per amendment of Act 15 of 1991, a new provision 56 A has been inserted in the Agricultural Income Tax Act, 1991 as under:

2.50 “56 A Assessee to furnish details of acquisition and disposal of landed property.

2.51 Every person liable to pay tax and every person to whom a permanent account number has been allotted under this Act, shall intimate in writing to the assessing authority the details of any landed property acquired or disposed of by him within two months of such acquisition or disposal as the case may be”.

2.52 The Kerala Finance Act, 1994 by which the above amendment came into force on 1-4-1994.

ARYADAN MUHAMMED,

Thiruvananthapuram,  
October 18, 2006.

*Chairman,  
Committee on Public Accounts.*

## APPENDIX I

**Summary of Main Conclusions/Recommendations**

| <i>Sl. No.</i> | <i>Para No.</i> | <i>Department Concerned</i> | <i>Conclusions/Recommendations</i>  |
|----------------|-----------------|-----------------------------|---|
| 1.             | 1.3             | Taxes Department            | The Committee opined that the delay of 5 years in taking action against the retired officer was a purposeful attempt to favour him. The Committee understands that a number of delinquent officers are escaping punishments under corruption charges on the mere ground that they couldn't be proceeded against once they retire from service. The Committee therefore, recommends that it is high time that a way out from this kind of situation be sought out. The Committee therefore recommends that the Government should frame a suitable law by which officers who retire from service after making a very huge loss to the exchequer could be proceeded against. |
| 2.             | 1.7             | „                           | Expressing dissatisfaction over the minor punishment awarded to the officer who had committed wilful wrongs, the Committee suggested to take further action in consultation with the Law Department within one month.   |
| 3.             | 1.10            | „                           | The Committee reiterates its recommendation that the retired officer should be booked unvoking provisions in the Public Accountants Act. If there is no scope for this, criminal proceedings should be initiated against them.  |

APPENDIX II  
IN THE HIGH COURT OF KERALA AT ERNAKULAM  
*Present*  
The Honourable Mr. Justice K. Sreedharan  
Friday, the 11th day of August, 1995/20th Sravana, 1917

O. P. No.1141 of 1991-J

*Petitioner:*

N. Sankaranarayana Iyer,  
Retired Sales Tax Officer,  
T.C.16/1633, Thycaud, Trivandrum  
By Adv. Mr. M. Balagovindan.

*Respondents :*

1. State of Kerala  
Represented by its Chief Secretary.
2. Board of Revenue (Taxes),  
Kerala represented by its Secretary, Trivandrum.  
By Government Pleader Shri. P. K. Behnan.

This original petition having been finally heard on 11-8-1995, the Court on the same day delivered the following :

JUDGMENT

Petitioner retired from service while holding the post of Sales Tax Officer on 30-9-1984. He was not paid his death-cum-retirement gratuity till April, 1990. He claims interest on the said amount on account of the delay in effecting payment.

2. Petitioner has not mentioned the amount of death-cum-retirement gratuity, which was due to him and which was admitted by the Accountant General. Without knowing the quantum of death-cum- retirement gratuity, this court will not be justified in directing the respondents to calculate interest on that amount from the date of retirement till the date of payment. Petitioner alone is responsible for creating such a situation.

3. Before parting with the case, I feel that the Government is under a wrong notion that disciplinary proceedings can be initiated against retired

employees. No provision in the Classification, control and Appeal Rules or for that matter any other rule has been brought to my notice which gives power to the Government to initiate disciplinary proceedings against retired Government Servants. Disciplinary proceedings initiated against an officer could be continued for the limited purpose contemplated by Rule 3 of part III K. S. R. as has been held by a Full Bench of this Court in *Xavier vs. K. S. E. Board*, 1979 KLT 80. In no other circumstance can any disciplinary proceedings be initiated or continued against a retired Government Servant. In the instance case, petitioner retired from service on 30-9-1984. Disciplinary proceedings were initiated against him by issuing a memo of charges dated 8-2-1985. This was clearly illegal. To crown all these, the final order passed by the Government, namely G.O. (Rt.)125/90/TD dated 8-3-1990, is worth quoting :—

“After detailed enquiry the board has reported that there is a loss of Rs. 646 only and therefore recommended to recovery that amount from the death-cum-retirement gratuity of the delinquent officer. The non-receipt of DCRG for 5 end odd years itself constitutes enough punishment. Taking a lenient view, Government hereby drop further disciplinary proceedings pending against him. Secretary, Board of Revenue (Taxes) will settle the pensionary claims of the retired officer immediately.”

Government must realise that the pensionary benefits and death-cum-retirement gratuity are not bounties to be paid to retired Government employees. They are the properties of the pensioners. When the pensioners' right to that property is sought to be interfered with, it must be in accordance with law. No provision of law allows the Government to take a stand as the one seen in the order quoted above. In *R. Kapur V. Director of Inspection*, (1994) 6 SCC 589. Their Lordships took the view that on account of withholding of death-cum-retirement gratuity, the pensioner should be paid interest at the rate of 18% per annum as damages. It is high time for the State Government to realise their obligation to the pensioners.

Order on CMP No. 1960 of 1991 in O. P. No. 1141 of 1991-J Dismissed.

11-8-1995.

(Sd)

K. SREEDHARAN,  
*Judge.*

## APPENDIX

*Petitioner's Exhibits :*

- Ext.P1 : True Copy of Memo of charges No. AII.18689/84/TX dated 8-2-1985 issued by the 1st respondent.
- Ext.P2 : True copy of explanation by the petitioner to the 2nd respondent dated 28-2-1985.
- Ext.P3 : True copy of representation by the petitioner to the 2nd respondent dated. 5-6-1985.
- Ext.P4 : True copy of proceedings dated 28-1-1987 by the 2nd respondent.
- Ext.P5 : True copy of G.O.(Rt.) No.125/90/TD dated.8-3-1990.
- Ext.P6 : True copy of representation by the petitioner to the 1st respondent dated 16-6-1990.
- Ext.P7 : True copy of letter No. 22.23/D1/89/TD dated 13-12-1990 by the 1st Respondent.

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

*Present :*

The Hon'ble Mr. Justice K. A. Abdul Gafoor, Thursday, the 10th April 1997/20th Chaithra, 1919

O.P. No. 11636 of 1993 I

*Petitioner :*

R. Raghavan Pillai,  
Vijaya Bhavan,  
College Ward, Punalur, Kollam.  
Dy. Adv. Shri V. P. Seemanthini.

*Respondents :*

1. State of Kerala represented by Secretary to Government, Revenue Department, Thiruvananthapuram.
2. The Board of Revenue (Taxes), represented by its Secretary, Thiruvananthapuram.
3. The Accountant General, Office of the Accountant General (A&E), Thiruvananthapuram.
4. The Sub Treasury Officer, Punalur.  
By Govt. Pleader (Adv. Sri P. N. Sukumaran)

This O. P. having been finally heard on 10-4-1997, the Court on the same day delivered the following.

K. A. ABDUL GAFOOR J.

O. P. No. 11636 OF 1993 I

*Dated this the 10th April 1997*

#### JUDGMENT

Petitioner was a retired Sales Tax Officer. He retired from service on 31-3-1987. Before his retirement, a disciplinary action had been initiated against him by serving a memo Charges dated 24-10-1983. Without much delay the petitioner submitted a statement of defence on 29-12-1983. Thereafter, nothing was heard. Petitioner was paid his retirement benefits including DCRG, Provident Fund and monthly pension. Later in 1988, he was called upon for an enquiry pursuant to the disciplinary action, and again after four years, petitioner was served with Ext. Pl. Order finalising the action against him. By Ext. Pl penalty of withholding of three increments with cumulative effect in the scale of Rs. 1370-40-1530-60-1830-80-2470-85-2640 was imposed. Consequently, Ext. P2, letter was addressed to the Sub Treasury, Punalur by the Accountant General to recover an amount of Rs. 10,800 as monetary equivalent of withholding of increment in fourteen instalments out of the monthly pension payable to the petitioner. Petitioner has approached this Court challenging Exts. P1 and P2 and seeking a direction not to recover any amount from his pension.

2. Petitioner submits that though Ext.Pl refers to an enquiry report and though reliance had been placed on the enquiry report, no copy has been served on him. It is referred to in Ext. Pl that it had become necessary to conduct a formal and detailed enquiry under Kerala Civil Service (Classification, Control and Appeal) Rules, 1960 to come to a correct conclusion. It is mentioned in Ext. Pl that the Deputy Commissioner, Kollam was authorised to conduct an enquiry into the matter. It is also mentioned in Ext. Pl that the Enquiry Officer submitted a report which is referred as item No. 5 in reference contained in Ext.Pl. It is also mentioned in Ext. Pl that in the report of enquiry it is seen that the petitioner had been found guilty of charges No. 7, 8, and 9 levelled against him and that the Board has examined that report in details and found that the petitioner has been guilty, and accordingly, punishment was imposed. Thus the reliance placed in Ext. Pl is on the enquiry report. Ext.Pl does not disclose that the enquiry report had been furnished to the petitioner. When an enquiry has been conducted into the allegations raised against an incumbent and reliance is placed on the findings in that enquiry report to impose penalty on the incumbent, necessarily that enquiry report shall be communicated to the incumbent concerned to obtain his remarks. That fairness, which is an essential element of natural justice, has not been shown to the petitioner. So, on that sole reason itself Ext. Pl is liable to be quashed.

3. Moreover, the penalty imposed by Ext.P1 is withholding of increment. That order was passed on 15-12-1992 whereas the petitioner had retired from service on 31-1-1987. After retirement, there is no employer employee relationship between the Government and the petitioner, and the petitioner is not under the control of the Government to impose any penalty. Petitioner was not in a time scale when Ext.P1 was passed and the petitioner was not earning any increment at that time. The penalty contained in Kerala Civil Service (Classification, Control and Appeal) Rules other than the deduction in pension should not have been imposed on the petitioner. If a disciplinary action had been initiated against an incumbent prior to retirement and the incumbent had retired from service before finalisation of the disciplinary action, necessarily that disciplinary action can be continued in terms of Rule 3 Part III of the Kerala Service Rules, only for the limited purpose for withholding or with drawing pension. The disciplinary action so continued after retirement cannot be made use of to impose any penalty of withholding increment as in contained in Ext.P1. so on that reason also Ext. P1 is illegal.

4. Even if it is permissible, Clause (d) of proviso to Rule 3 part III of K.S.R provides that consultation of Public Service Commission had to be obtained. There is no mention in Ext. P1 whether such consultation had been obtain or not. On that reason also Ext. P1 is illegal.

5. It is clear from the opening part of Rule 3 part III of K.S.R. that Government reserve to themselves the right of withholding or withdrawing pension or any part of it, if the pensioner is found guilty of grave misconduct or negligence during the period of his service. So, disciplinary action initiated before retirement and continued after retirement can result only withholding or withdrawing pension and not imposing any other penalty contemplated by Rule 11 of the Kerala Civil Services (Classification, Control and Appeal) Rules. The order to be passed in terms of disciplinary action so continued shall only be by Government whereas Ext.P1 was passed by the Board of Revenue. So, Ext.P1 is incompetent as well.

6. In the above circumstances, Ext. P1 is arbitrary unreasonable, incompetent and violative of Rule 3 Part II of the K.S.R. Accordingly it is quashed. Ext. P2 is only a consequent direction in terms of Ext.P1. When Ext. P1 is illegal, Ext. P2 cannot be in existence. Consequently, Ext. P2 is also quashed. It is directed that no recovery can be made out of the pension due to the petitioner and that whatever recovered from the pension paid to the petitioner shall be reimbursed to the petitioner within three month from today.

Original petition is allowed. No costs.

(Sd)

K. A. ABDUL GAFOOR,  
*Judge :*

Order on C. M. P. No. 21171/93 in OP. No. 11636/93 I

Dismissed.

10th April, 1997.

(Sd)

K. A. ABDUL GAFOOR,  
*Judge*

APPENDIX

*Petitioner's Exhibits :*

Ext.P1 : True Copy of the order passed by the 2nd respondent dated 15-12-1992.

Ext.P2 : True copy of the letter issued by the 2nd respondent to the 3rd respondent dated 8-7-1993.

Ext.P3 : True copy of representation dated 28-7-1993 filed by the petitioner.

*Respondents Exts : Nil*

APPENDIX III

GOVERNMENT OF KERALA

**Finance (Pension B) Department**

CIRCULAR

No. 41/97/Fin.

*Dated, 9th May 1997.  
Thiruvananthapuram*

*Sub :—Pension—Fixing up of liability of officers before retirement—Reg.*

*Ref :—Letter dated 27-2-1997 from the Additional Advocate General,  
Kerala addressed to the Chief Secretary.*

The Additional Advocate General in his letter cited has pointed out instances where officers who have indulged in serious misconduct and caused loss to Government have escaped from the purview of the law because of lack of timely actions thereby causing monetary loss to Government by way of payment of interest for the delayed disbursement of pensionary benefit.

The existing rules insist on the calculation and finalising of liabilities of an officer either before or within three years after retirement and to intimate the same to the Government employees.

After examining the matter in detail, Government are please to order that all Heads of Departments/pension sanctioning authorities should see that necessary steps are taken to fix up liability of officers before the dates of their retirement. Steps should also be taken to speed up and to finalise disciplinary proceedings/vigilance enquiry, if any, pending against an officer at any rate before the date of retirement of the employee. Any lapse on the part of the Heads of Departments/Pension Sanctioning Authorities will be viewed seriously.

**ALOK SHEEL,**

*Special Secretary,*

*Finance (Expenditure).*

To

The Principal Accountant General (Audit), Kerala, Tvpm.

The Accountant General (Accounts and Entitlements), Kerala.

All Heads of Departments and Officers

All Departments (All Sections) of the Secretariat.

The Secretary, KPSC, Tvpm (with C.L.)

The Registrar, High Court of Kerala, Ernakulam (with C. L.)

The Registrar, University of Kerala/Cochin/Calicut/Ghandiji (with C.L)

The Registrar, Kerala Agri. University, Thrissur (with C.L)

The Advocate General, Ernakulam (with C.L.)

The Secretary, Kerala State Electricity Board, Tvpm.

The Genral Manager, KSRTC, Tvpm (with C.L.)

The Secretary to Governor.

Etc.Etc.

## APPENDIX IV

**Details of Assessing Authorities who completed the irregular assessments and retired before the receipt of Draft paras (Draft paras received on 19-8-1991)**

| <i>Sl. No.</i> | <i>Name and Designation of the Officers</i>          | <i>Date of retirement</i> | <i>Related Draft para (90-91)</i> |
|----------------|--|---------------------------|-----------------------------------|
| 1.             | Sri S. Krishnan Nair,<br>IAC, Kollam                 | 31-7-1986                 | 4.2 (a) (1)                       |
| 2.             | Sri B. Ravi, AITO, Chittur                           | 31-12-1988                | 4.2 (a) 4<br>and 4.4              |
| 3.             | Sri M. Narayanan,<br>IAC, Palakkad                   | 30-6-1991                 | 4.2 (a) (v)                       |
| 4.             | Sri M. Mohammed Abdul Khader,<br>AITO, Kanjirappally | 31-12-1989                | 4.3 (iii)                         |
| 5.             | Sri M. Prabhakaran,<br>AIT & STO, Kumily             | 31-8-1990                 | 4.6(i)                            |
| 6.             | Sri E. V. Joseph,<br>AIT & STO, Kumily               | 31-7-1991                 | do.                               |
| 7.             | Sri V. Thomas Pothen<br>IAC, Idukki                  | 30-11-1988                | 4.8(i)                            |
| 8.             | Sri K. N. Kawiraja,<br>AITO, Sulthan Batherry        | 30-9-1989                 | 4.8(ii)                           |
| 9.             | Sri N. Appukuttan Nair,<br>AITO, Pathanapuram        | 30-5-1989                 | 4.13                              |
| 10.            | Sri V. Gopala Pillai,<br>AITO, Pathanapuram          | 30-6-1986                 | do.                               |

(Sd)

For Special Secretary to Government (Taxes)

APPENDIX V

**List showing disciplinary action finalised relating to draft paras (1990-91)**

| <i>Sl. No.</i> | <i>Name and Designation</i>   | <i>Related draft para</i> | <i>Nature of disposal of Disciplinary action</i>                  | <i>Order No. Date</i>                 |
|----------------|---|---------------------------|---|---------------------------------------|
| (1)            | (2)   | (3)                       | (4)   | (5)                                   |
| 1.             | Shri P. S. Sreedharan,<br>Agricultural Income Tax Officer<br>Kottarakkara | 4.2. (a) (ii)             | Warning   | H2-27155/91/TX dated. 10-7-1992       |
| 2.             | Sri P. J. Thampi,<br>AITO, Palakkad                                       | 4.2. (a) (iii)            | Warning   | HI. 42608/91/TX dated. 20-2-1994      |
| 3.             | Shri T. K. Vasudevan<br>AITO, Palakkad                                    | do.                       | Warning   | do.                                   |
| 4.             | Sri K. S. Gopinatha Pillai<br>AITO, Palai                                 | 4.2 (b)                   | Warning   | H2.24630/91/TX dated.20-4-1992        |
| 5.             | Smt. L. Selvi, Addl. AITO<br>Alappuzha                                    | 4.3 (1)                   | Barred one increment  | A5-60718/92 TX dated.24-2-1993        |
| 6.             | Sri K. S. Prabhakaran, Deputy<br>Commissioner, Alappuzha                  | 4.3 (i)                   | Barred one increment<br>without cumulative effect                 | G O. Rt. 644/94/ TD dated. 30-11-1994 |
| 7.             | Smt. L. Selvi, AITO, Alapuzha   | 4.3 (vi)                  | Barred one increment  | A5.60718/92/TX dated 24-2-1993        |
| 8.             | Sri A. Abdul Sathar,<br>AITO, Alappuzha                                   | 4.3 (viii)                | Warning   | H2-38925/91/TX dated 25-1-1993        |
| 9.             | Sri. P. M. Badreenath, Additional<br>AITO, Kattappana                     | 4.3 (ix)                  | Monetary value of<br>one increment for 6<br>months in one lumpsum | H2-26116/91/TX dated.6-8-1996         |

| (1) | (2)   | (3)       | (4)   | (5)                                  |
|-----|---|-----------|---|--------------------------------------|
| 10. | Sri. M. Sankaran Nair,<br>AITO, Peermade              | 4.5. (ii) | Censure   | A5-66721/92/TX dated 20-3-1993       |
| 11. | Sri. George Eappen,<br>AITO, Peermade                 | do.       | do.   | do.                                  |
| 12. | Shri. V. N. T. Ravindranathan,<br>AIT and STO, Kumily | 4.6 (1)   | Reduction of Rs. 500<br>per month from his<br>pension | G O. (Rt.) 503/95/TD dated 11-9-1995 |
| 13. | Sri. G Rama Varma,<br>AITO and STO, Kumily            | do.       | Warning   | H2.32949/91/TX(2) dated. 6-11-1997   |
| 14. | Sri. T. Madhavan,<br>AITO and STO, Kumily             | do.       | Warning   | H2.32949/91/TX(1) dated. 6-11-1997   |
| 15. | Sri. G. Rama Varma,<br>AIT and STO, Kumily            | 4.6 (ii)  | Warning   | H2-366337/91/TX dated.25-8-1994      |
| 16. | Sri. M. V. Abdurahiman,<br>AITO , Kozhikode           | 4.6 (iii) | Disciplinary action<br>was dropped                    | H1-27946/91 dated 19-10-1993         |
| 17. | Smt. L. Selvi,<br>AITO , Alappuzha                    | 4.6(iv)   | Barred one increment<br>without cumulative<br>effect  | H2-34264/91/TX dated 2-8-1994        |
| 18. | Smt. P. A. Pathumma Beevi,<br>AITO, Kottayam          | 4.9(i)    | Warning   | H2-27157/91/TX dated 9-12-1991       |
| 19. | Smt. L. Selvi,<br>AITO, Alappuzha                     | 4.10      | One increment<br>barred with cumulative<br>effect     | A5-60718/92/TX dated 24-2-1993       |