

(2006) 06 KL CK 0079
In the High Court Of Kerala
Case No : W.A. No. 2677 of 2005

Director, State Water Transport Department and Another APPELLANT
Vs
C.N. Sankara Kaimal and Others RESPONDENT

Date of Decision : 05-06-2006

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 10, 13B, 2(13)

Citation : (2006) 06 KL CK 0079

Hon'ble Judges : M. Ramachandran, J;A.K. Basheer, J

Bench : Division Bench

Advocate : M.A. Waheeda Babu, for the Appellant; M.U. Vijayalakshmi, for the Respondent

Judgement

M. Ramachandran, J.—Serving as well as retired employees of the State Water Transport Department, in the category of Boat Master, had Jointly filed W.P. (C) No. 27447 of 2003 alleging that they had been subjected to discrimination. According to them, their request for a proper Higher Grade as admissible by G.O. (P) No.3000/98 dated 25-11-1998 had been rejected without sufficient cause. Benefits, as claimed by them, had been extended to a number of persons, including one K.J. Louis, and Ext. P-1 proceedings had been produced in support of such contentions. Reference was made by them to the earlier writ petition filed, wherein there was a direction issued by this Court to the Respondents to consider and advise them of the stand vis-a-vis the claims. It is submitted that by a communication dated 14-8-2003 their counsel had been informed by the Directorate that the Petitioners were not eligible for the scale they requested for. Ext. P-1 5 is the communication, which also has been challenged.

2. No counter-affidavit had been filed by the Respondents and the learned Judge held that the Petitioners will be entitled towards the third Higher Grade, a benefit similar to that spoken to by Ext. P-1. Consequently, there was a direction for passing fresh orders.

3. G.O.(P) No.3000/98 dated 25-11-1998, referred to earlier, was the Pay

Revision orders and it also provided for grant of Grade promotion. Clause 5(2) thereof gave the necessary guidelines. Omitting the details, generally first Higher Grade was to be extended to a Government Servant on completion of 10 years of service in the entry post; second Higher Grade on completion of either 8 years of service in the first promoted post or a total service of 18 years in the entry post; and the third Higher Grade was to be extended on completion of 23 years of total service in the entry post and the promotion post. The order also gave the respective Higher Grades, taking notice of the salary scales introduced.

4. Normal channel of promotion of a Boat Master was as Station Master Grade II and thereafter as Station Master Grade I. The next promotion post is that of Traffic Superintendent. By Ext.P-1, Sri K.J. Louis, referred to earlier, had been granted the benefit of such grades, including that of Traffic Superintendent. It also referred to a specific situation, namely that although the employee did not possess the qualifications prescribed for promotion as Traffic Superintendent, since he had attained the age of 50 years on the relevant date he could have claimed exemption, as provided by Rule 13B of the Kerala State and Subordinate Services Rules. Therefore, the stand taken, as could be seen from Ext. P-1, was that although the employee did not possess the required qualifications, he was deemed to be qualified for the scale of pay of Traffic Superintendent.

5. At this juncture, we may also notice the prescription as contained in Government Order dated 25-11-1998 in the matter of working up of details. The provision was that "while assigning higher grade only qualified hands i.e. those possessing the qualification prescribed for the promotion post will get the scales of pay of regular promotion posts. Unqualified hands were to be allowed the next higher scale of pay above that of the scale of pay of the post held at that time, in the standard scale of pay" [See Clause 5(6)].

6. It is evident that in the absence of a counter-affidavit, all relevant aspects had not been brought to the attention of the learned Judge. Taking note of ExtP-1, the learned Judge held that the Petitioners are entitled to the same treatment. However, shortly thereafter, this was found as objectionable, since according to the Appellants herein, it was noticed that Ext. P-1 proceeded on incorrect assumptions. As a matter of fact, proceedings were issued thereafter cancelling Ext. P-1. But, in the mean while, the Petitioners had moved by way of Contempt of Court Case. An appeal as W.A. No. 2115 of 2004 is seen to have been filed challenging the judgment in the writ petition. However, it was not pursued, and it stood withdrawn. The right to move for a review of the judgment was however reserved. Thereafter R.P. No. 10 of 2005 had been filed. As a matter of fact, the present appeal has been filed from the orders passed in the said Review Petition.

7. According to the learned Government Pleader, a request had been made to examine the grounds raised in the R.P., as according to them, there was a mistake of fact which required review of the judgment. However, the Government Pleader submits that the learned Judge was insistent that the Respondents in the contempt proceedings were to personally appear and explain their conduct.

According to the Appellants, although the Review Petition had been filed on 20-12-2004, further order had been passed in the Contempt of Court Case directing that the Government Pleader is to file an affidavit "with a copy of the order passed in compliance of the judgment". The matter was posted to 6-4-2005 along with R.P. No. 10 of 2005.

8. In obedience to such orders, the Appellants submit that an order had been passed on 31 -3-2005 granting Time Bound Higher Grade in the higher scale with effect from the date of completion of 23 years of service in respect of the Petitioners. Of course, the order indicated that it will be subject to the outcome of pending R.P. No. 10 of 2005.

9. However, according to the Appellants, on 3-6-2005 the learned Judge had dismissed the review petition observing that "in the light of the report furnished in the Judgment in W.P. (C) No. 27447 of 2003, the judgment has already been complied with". Thereby the Review Petition was found as of no consequence. This is now challenged.

10. Normally, if the appeal is allowed and contentions of the Appellants are accepted, the order in the Review Petition requires to be set aside, reviving the Review Petition. The petition, as above, would have to be considered again by the Single Judge, on merits. Still again, in such contingency, if the Appellants succeed in convincing the Judge about the necessity of a review, judgment dated 23-3-2004 would have to be set aside, and the writ petition reheard.

11. Taking notice of all these aspects, and as the Government Pleader submits that the Government do not intent to retrace the steps in the matter of sanctioning the benefits as per the earlier directions, and as the parties generally agreed, that the issue may be given a quietus, in these proceedings itself, we had permitted the parties to address us on the legal positions as arising. The anxiety of the Government, according to the Government Pleader, was that the judgment of the learned Judge and consequential orders issued on pain of contempt should not be foundation for claims from similarly situated personnel in the concerned department of other departments.

12. Government Pleader submits that when a mistake comes to the notice of the Government, they are always entitled to resort to rectification measures and it would not have been permissible for third persons to make capital out of the mistake or claim benefits which were really inadmissible on the strength of such orders.

13. We find that the proposition as above is true and liable to be accepted. A mistake committed should always be permitted to be corrected, although it may be necessary that principles of natural justice will have to be observed, when settled rights thereby require to be upset. It is equally a well-settled position that benefits received by a person, by a mistake, cannot form as foundation of a claim by another individual similarly situated, even in a case where efforts are not taken for a review suo motu or otherwise. Acomplaint of differential

treatment or discrimination hardly can arise in such situation.

14. We have also to be conscious of the jurisdictional limits, especially when a Constitution Bench of the Supreme Court had opined in *State of Punjab Vs. Jagdip Singh and Others*, , as following:

In our opinion where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.

15. The cardinal question therefore is as to whether Higher Grade in the post of Traffic Superintendent could have been claimable by the Petitioners in the writ petition at the time of receiving the third Higher Grade or whether they were entitled only to the pay scale prescribed by Table I of the relevant Government Order dated 25-11-1998. It may not be necessary for us to travel far and wide here. The Government Order provides that only qualified hands will be eligible to claim the scale of pay of regular promotion post and unqualified hands were to get only the next higher scale of pay in the standard scales of pay. Every one of the Petitioners were therefore required to satisfy the above preconditions for agitating a claim on such lines.

16. The Water Transport Subordinate Service Rules governed the service of the officers concerned. It is not disputed that before aspiring for promotion as Traffic Superintendent, a Station Master Grade I is to pass Account Test (Lower) and Manual of Office Procedure. It is asserted by the Appellants that none of the Petitioners possessed this qualifications. Therefore, they were not, according to them, entitled to claim the pay scale admissible to a Traffic Superintendent, as of right, when they were to be considered for conferment of the Time Bound Higher Grade.

17. Smt. Vaheeda Babu. learned Government Pleader, especially referred to the law on the subject with reference to the Division Bench judgment in *Sarojini Amina v. State of Kerala* 2002 (3) KLT 573. The Court was examining the scope and ambit of Rule 13B of the Kerala State and Subordinate Services Rules. Certain exemption is granted in respect of persons who attain the age of 50 years, but the issue was as to whether the rules prescribe for exemption from the basic qualifications to be possessed by an incumbent. For appointment, including promotion, one is to possess the minimum general educational qualifications and the test qualifications. We may also refer to Rule 10(a)(i) of the Rules, which states that educational or other qualifications, if any, required for a post shall be as specified in the Special Rules. The Division Bench clarified that such qualifications are different from departmental tests which come within the meaning of Rule 2(13) and no rule provides for permanent exemption from possessing the basically suggested qualifications.

18. Advertence was also made by the Government Pleader to Circular

Memorandum No. 10267/Rules 1/87/P&ARD dated 9-11-1987. The Government had clarified that tests such as Account Test Higher etc., prescribed under "qualifications" are basic qualifications like educational qualification for appointment/promotion to the post whereas "tests" prescribed in the Special Rules are obligatory departmental tests. Exemption could have been there only from acquiring obligatory test qualifications. Circular Memorandum No. 5303/Rules 1/88/P & ART) dated 7-2-1990, relied on by the Government Pleader, also referred to the legal position, as clarified above, where reference to a judgment passed by the Court had been shown as the authority for the proposition.

19. Mr. K. Jaju Babu, appearing for the Respondents, submits that the Government was aware of the predicaments of the Petitioners and consciously Ext. P-1 order had been issued, since employees like the Petitioners were not situated similar to the ministerial staff, who could have acquired qualifications of Manual of Office Procedure and Account Test. The result otherwise would have been that the Petitioners would not have been able to claim parity in status with their counterparts.

20. However, while interpreting the provisions of the statute or orders, we may not be justified in adopting a stand that the Special Rules governing the service were altogether to be ignored. Practically we notice that the counsel has no dispute about the manner in which the rules and orders are to be correctly understood, for his argument is one for a sympathetic approach.

21. It can therefore safely be assumed that the Petitioners in the writ petition were not having qualifications prescribed by the Special Rules for promotion as Traffic Superintendent. Therefore, they could have aspired only for the scale of pay referred to as the standard scales of pay and not the pay admissible to a promotee officer in the cadre. This will necessarily lead to a further presumption that Ext. P-1 order had been issued on a misconception of law. It was therefore irregular. Since the learned Judge had rested the judgment on Ext. P-1 alone, the Government was justified in submitting that a review of the judgment was highly essential.

22. However, the learned Government Pleader points out that in respect of the Petitioners in the writ petition, the directions had been complied with and enhanced benefits were given to them and most of them had retired from service.

23. Taking notice of the totality of the circumstances, although there is an anomaly in giving undeserved benefit to them, we do not think it is necessary to upset the orders, now noticing the stand of the Government. The Petitioners in the writ petition, therefore, will be entitled to continue to enjoy the benefits sanctioned by the respective Government Orders governing them in all matters.

24. But, we declare the legal position always was that unqualified persons like the Petitioners were ineligible to claim or draw salary prescribed for qualified promotees, in the matter of benefit of grade promotions as admissible by GO.(P) No.3000/98 dated 25-11-1998.

The Writ Appeal is disposed of as above.