

(2017) 03 KL CK 0051
In the High Court Of Kerala
Case No : 23252 of 2016

Dr. Kauser Edappagath

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Citation : (2017) 03 KL CK 0051

Hon'ble Judges : Devan Ramachandran

Bench : SINGLE BENCH

Advocate : K.R. Avinash (Kunnath), Abdul Rao, Raji T. Bhasker, V.P. Seemandini, M.R. Anison

Judgement

1. The Hon"ble Supreme Court of India in All India Association v. Union of India ((1992) 1 SCC 119) had issued affirmative directions for setting up an All India Judicial Service and to bring about uniform conditions of service and benefits for the members of Subordinate Judiciary through out the country.

2. The Government of India in compliance and obedience of these directions, constituted the First National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty for the Subordinate Judiciary all over the country to consider the principles which should govern the structure of pay and emoluments of the Subordinate Judiciary as also the structure of emoluments and conditions of the Judicial Officers in the States and Union Territories.

3. The Commission in its report recommended, inter alia, that if candidates selected for appointment as Judicial Officers have entered service acquiring a higher qualification like a Post-graduation in Law, they would stand entitled to three advance increments in recognition of their educational excellence. It is to be noticed straightway that these recommendations were confined to the Subordinate Judiciary and with specific reference to the junior division of the judicial service, namely, the Munsiff-Magistrates.

4. It appears that Government of Kerala had, thereafter, received representations

to make these recommendations applicable to the other posts in the Subordinate Judiciary up to the District Judges and that they consequently issued a Government Order dated 22.11.2013, a copy of which has been appended to this writ petition as Exhibit P4. This order is a very small one and requires to be read in its full text and I, therefore, reproduce it as under:

"In the circumstances reported by the Registrar (Subordinate Judiciary) in the letter read above sanction is accorded to grant three advance increments to the District Judges appointed by direct recruitment from the bar and having post graduation in Law (LL.M.) at the time of recruitment with prospective effect."

5. It is obvious from Exhibit P4 order that sanction has been accorded to grant three advance increments to the District Judges appointed by direct recruitment having Post-graduation in Law at the time of recruitment. However, the words "with prospective effect" in the last limb of the said order opens up issues for interpretation. The question is whether this would mean that only those District Judges who are appointed after the date of the order would get the benefits or whether even those District Judges in service at the time of the order would also be entitled to it, albeit, prospectively from the date of the said order.

6. Some of the District Judges, who were in service at the time when Exhibit P4 order came into being, made representation to the Government, namely, Exhibit P2, which was considered by the Government, however, culminating in issuance of Exhibit P7 order enouncing that the benefits in Exhibit P4 would only enure to those candidates who entered service, as direct recruitee District Judges with Post-graduation in Law, after the date on which Exhibit P4 came into being. This order of the Government, namely, Exhibit P7, is impugned in this writ petition.

7. I have heard Sri. K.R. Avinash, the learned counsel for the petitioner, Smt. V.P. Seemandini, the learned Senior Counsel, assisted by Ms. Sikha Krishnan, appearing for the third respondent and the learned Government Pleader for respondents 1 and 2.

8. The order in question indubitably uses the words "with prospective effect" as a virtual suffixal. The order, qualified by this suffix, is sought to be read by the Government to mean that it applies only to the new eligible officers who are recruited after the date of the order. The petitioner, au contraire, interprets the order to mean that the benefits under it will only be granted after the date of the order irrespective of the date on which the eligible officers were recruited.

9. The above two interpretations apparently at dissonance with each other ad rem the operational ambit of Exhibit P4, is the leaven for this litigation. The resolution of the disputations here would pivot on how these three words will have to be read in the context of the purpose for which the order was issued.

10. It is obvious that Exhibit P4 order grants the benefits under it to District Judges who were appointed directly from the Bar with Post-graduation in Law at the time of recruitment. The issue is whether it is only those who were recruited

after the order who would get the benefit or whether others who were already in service as on the date of the order would also obtain it, but the eligible increments to be granted to them only after the date of the order.

11. I have examined Exhibit P4 quite in extenso because I understand that this Court is now called upon to consider the claims of the members of the fraternity. I do not want to be seen as being biased or leaning towards such claims merely because the claimants are members of the judicial system. I have no doubt in my mind that if interpretation of Exhibit P4 does not give any benefit to the claimants, then they shall not get it. I am, therefore, firmly routed in my examination of Exhibit P4 pointedly as to whether it would operate to the benefit of officers who entered service prospective to the order alone or if it is intended to provide benefits under it prospectively even to officers in service prior to the date of the order. This examination is very crucial because even if the order is found intended to cover those Officers who were in service prior to its date also, then the benefits that they would obtain under its terms, would certainly be entitled to them only after that date, since the order says that it is with prospective effect. As is intelligible from Exhibit P6, the Government takes the view that Exhibit P4 order is intended to operate prospectively only to those who entered service after the date of the order.

12. I propose to only interpret the order literally in the manner it is written and nothing more. I do not even intend to employ purposive interpretation because I am of the view that if literal interpretation of Exhibit P4 does not obtain benefit to the petitioner I shall not be justified in extending it by a purposive interpretation.

13. Exhibit P4 says that the benefit will be available to the District Judges appointed by direct recruitment from the Bar and having Post-graduation in Law at the time of recruitment with prospective effect. The intention of this order will have to be seen underpinned in the way in which it is drafted. The order begins by saying that sanction is accorded to grant three advance increments. The officers eligible for such grant are the District Judges appointed by direct recruitment from the Bar having post-graduation in Law. The order also says that such Judges, to be eligible for the grant of three advance increments, will have to have the post-graduation in Law at the time of recruitment. The words "at the time of recruitment" is very crucial in understanding the purport and intent of the order. If the intention was to make only such eligible officers entitled to the advance increments who are recruited after the date of the order, then there was no necessity to add the words at the time of recruitment in the order. This is obvious because if Exhibit P4 is intended to apply only to those officers recruited after the date of the order, then the words at the time of recruitment becomes superfluous and otiose.

14. The use of the words "at the time of recruitment" in Exhibit P4 would ineluctably tilt its interpretation in favour of those officers already in service but who had the necessary qualification at the time when they were recruited. The

order does not in any manner qualify itself by saying, even implicitly, that it applies only to those Officers who were appointed after the order. The limitation in the said order is that the benefits under its sanction will be granted only prospectively. If the intention of the Government was to the contrary, I am certain that nothing prevented them from specifically and expressly saying in the order that it would enure only to the eligible Judicial Officers who were appointed after that date. That has not been so said in the order.

15. This conspicuous silence in the order makes it perspicuous that what is intended in Exhibit P4 was to make it operate to the benefit of even those eligible Judicial Officers serving prior to the order but limiting the grant of benefits therein only from the date of the said order.

16. I am, therefore, of the view that the intent of Exhibit P4 order is to operate prospectively for the purpose of grant of eligible increments but not to operate prospectively for the purpose of according eligibility for such grant. I am firm in my mind that Exhibit P4 would, in its operational realm, grant increments to all Judges, who were directly recruited from the Bar into the service and having Post-graduation in Law at the time when they were so recruited.

17. Dispassionately viewed, I do not think Exhibit P4 can concede to any other interpretation. I am certain, even after repeated reading of Exhibit P4, that this was what was intended. I do not know why the Government has, thereafter, retracted and issued Exhibit P7 holding that only the Officers who were appointed after the date of that order would get the benefit. I cannot approve Exhibit P7 and, therefore, I am of the opinion that same cannot obtain sustenance in law.

18. In such view of the matter and since I am certain that Exhibit P4 order operates to grant benefits under it prospectively and is not merely intended to operate for the Officers appointed after its date, I quash Exhibit P7 and direct the first respondent to extend the benefit of Exhibit P4 order to the petitioner, but only with effect from or later than the date of the said order.

The writ petition is ordered as above. In the facts and circumstances of the case, I make no order as to costs and the parties are directed to suffer their respective costs.