
(2005) 06 KL CK 0098

In the High Court Of Kerala

Case No : W.A. No's. 1636 of 2003 and 218 and 269 of 2004

Idicula Abraham

APPELLANT

Vs

K.S.R.T.C. and Others

RESPONDENT

Date of Decision : 01-06-2005

Acts Referred:

Citation : (2005) 2 KLJ 602

Hon'ble Judges : K.T. Sankaran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : S. Subhash Chand, A Shafeek, P.K. Ibrahim and K.P. Ambika, for the Appellant; James Koshy N. and Sajeevkumar K. Gopal (SC, KSRTC), for the Respondent

Final Decision : Allowed

Judgement

Koshy, J.—Petitioners were employed as daily-rated reserve drivers in the Kerala State Road Transport Corporation from 1981 onwards. They were continuously doing the work on daily wage basis till they were permanently appointed through the Public Service Commission. We refer to the date of appointment mentioned in O.P. No. 32947 of 2002 (W.A. No. 1636 of 2003). Petitioner in that case who was advised by the Employment Exchange was appointed as driver on provisional basis on 29-06-1981. Petitioner was appointed on regular basis as driver on the advice of the Kerala Public Service Commission on 29-05-1989. Therefore, on 3-6-1989 provisional appointment was terminated and he joined duty as regular driver on 5-6-1989. He retired from service on 30-04-2002. He wanted his daily rated provisional service to be counted for pensionary benefits. That was disallowed and hence the writ petition was filed. The question is whether the uninterrupted provisional service without break is liable to be counted for pensionary benefits. The date of appointment has to be taken from the date of appointment by Public Service Commission. Normally, provisional service is not taken into account for counting qualified service for pension. But, the question is whether there is any rule in the KSRTC to count provisional service for

pensionary benefits. There is no regulation or service rules regarding pensionary matter in the KSRTC. According to the KSRTC, they are following the Government pattern and rules regarding pension from time to time. Ext. P11 is the conciliation settlement entered into with the KSRTC which is binding on the workmen as well as the management. Clause XXIII of Ext. 11 conciliation settlement deals with pension. It reads as follows:

XXIII Pension:

1. Pension will be paid as per the provisions of Kerala Service Rules followed by the Government from time to time.
2. Service under State Government prior to joining the Corporation will qualify for pension provided the break between Government service and KSRTC service shall not exceed three months.
3. Daily wages period of Conductors, Drivers and Mechanical Staff before their regular appointment in full, will count for pension provided there should be at least ten days duty in a month. If there is no duty in a month, that month will be excluded and 50% will be taken as qualifying service of the months in which the number of duty is below 10 or 50% of the total daily wage period excluding the months having no duty whichever is beneficial to the employee.
4. Pre-appointment training period of Mechanical Staff including Assistant Depot Engineers will be treated as qualifying service for pension.

Sub-clause (3) very clearly shows that daily wage period of conductors, drivers and mechanical staff before their regular appointment will count for pension provided there should be at least ten days duty in a month. So, if there is ten day's duty in a month, it will not be considered as break in service and their appointment on daily wages before their regular appointment will be counted for pension. Apart from the above. Sub-clause (1) of clause XXII shows that pension will be paid as per the Kerala Service Rules. It is specifically mentioned that service rules followed by the Government from time to time will be applicable in KSRTC also with regard to the payment of pension. By Ext. P3 Government ordered that the provisional service of an employee with or without break will be reckoned for qualifying service for the purpose of calculating pensionary benefits. In Ext. P4. It is mentioned that Ext. P3 order was cancelled with effect from 1-10-1984. Thereafter, Ext. P5 Was issued clarifying the same stating that the provisional service prior to 1-10-1994 will be added to the service and provisional service after 1-10-1994 will not be counted. In Ext. P5 it was mentioned as follows:

Government have examined the case in detail and are pleased to clarify that the provisional service with or without break rendered by the employee upto 30-09-1994 which qualifies for earning increments in terms of Government Decision No 2 under Rule 33 Part III, Kerala Service Rules will be reckoned as Qualifying Service for pension irrespective of dates of retirement after

20-01-1989. The provisional service rendered on or after 1-10-1994 will not be reckoned as qualifying service for pension. The cases of retirement from service during the period from 1-10-1994 to 15-12-1998 and pensionary claims already sanctioned will not be re-opened.

2. In Ext. P6 rules with regard to the scales of pay, it is stated that provisional/employment exchange service followed by regular service without break will be reckoned for weightage. But, at the same time clause XIII (5) of Ext. P6 says that service will count as qualifying service provided there is no break exceeding three months (ninety days). In Ext. P7 conciliation settlement it is stated that daily wage period in respect of drivers and conductors and pre-appointment training of mechanical staff will also be counted as qualifying service for grade promotion. Petitioners were given increments taking into account the provisional service. But, it was not taken into account for the calculation of pension. In O.P. No. 29499 of 2001 (W.A. No. 269 of 2004), it was Contended that it was not taken up for weightage followed by regular service and provisional service rendered prior to 1-10-1994 is taken into account for calculation of pension as qualifying service. Therefore, if sub-clause (1) of clause XXIII of Ext. P11 conciliation settlement is taken into account, thee KSRTC employees will get pension taking into account the provisional service prior to 1-10-1994. In this case, all the petitioners had provisional service prior to 1-10-1994 and they were absorbed in the regular service through Public Service Commission and till then they were working as regular employees or on daily wage basis. Apart from the above, it is specifically mentioned in clause XXIII (3) of Ext. P11 that daily wage service before their regular appointment will be counted if they had" worked at least ten days in a month. It is further stated that if there is any ambiguity, the clause will be interpreted in favour of the employees. In Ext. P6 settlement which is binding on the management and the employees, it is provided that the daily wage period prior to their regular appointment is to be counted for the purpose of pension and grade promotions apart from increments which Were granted. According to the learned single Judge, clause XXIII of the settlement states about the daily rated workers who were appointed after they were given appointment by PSC. No such restrictions are mentioned in the above settlement clause or government order. When there is no ambiguity in the wordings in the settlement, it has to be literally interpreted. The court cannot assume hidden meanings so as to deny the benefits granted by the settlement. The wordings in the settlement are very clear. There is no room for any doubt. In fact, it is very clearly stated in the settlement that the daily wage period will be counted as qualifying service. The learned single Judge also referred to the decision of another single Bench of this Court reported in Balakrishna Pillai v. Asst. Executive Engineer (1996 (2) KLT 406). There, the court said that a provisional employees is not entitled to pension. That is very clear also from rule 4 part III KSR that a provisional employee is not entitled to pension. In W.A. No. 1975 of 1999 also, petitioners retired as provisional employees and they reached the age of superannuation before regularization. If a provisional employees retires as a

provisional employee, he will not get pension. But, here, all the petitioners were provisional employees prior to 1994 and became regular employees much before 1-10-1994. Hence, they are entitled to get the benefit claimed as per the Government order referred above. A cut off date is not mentioned in the settlement. Petitioners are entitled to the benefits of the settlement which the Corporation cannot avoid. In *Barauni Refineries Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd. and others* (1991) 1 LLJ 46, the Apex Court reiterated the view that terms of settlement are binding on the workmen and union till it is terminated as provided under the Industrial Disputes Act and even the standing orders under the Standing Orders Act cannot be amended contrary to the terms of settlement. Binding nature of settlement is again reiterated by the Apex Court in *ITC Ltd. Workers Welfare Association v. Management of ITC Ltd. and others* (2002) 1 LLJ 848. In the above circumstances, we direct the KSRTC to count the provisional service of the petitioners also as qualifying service for calculating pension and weightage if it is not already calculated.

Financial benefits should be paid to the petitioners in accordance with the scheme framed as per the directions in W.A.No.260 of 2003.

The writ appeals are allowed.