

(2006) 12 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29835 of 2003

Krishnakumar, S.P.

APPELLANT

Vs

Guruvayoor Devaswam and Others

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 12 KL CK 0057

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

Bench : Division Bench

Advocate : Sajeev Kumar K. Gopal and Binoy Vasudevan, for the Appellant;
Kodoth Sreedharan, S.C., G.D.B., for the Respondent

Judgement

M. Ramachandran, J.—After undergoing 10 years training, the Petitioner had been appointed as Music Artist Grade III on 3-5-1997, by the Guruvayoor Devaswom. Although the training was over by 12-10-1996, for want of regularisation, he had been continued to be paid only a stipend. The Petitioner claims that he was attending to the work of Grade III Artist from the above said date.

2. Later on, in its wisdom, the Managing Committee had given retrospective effect to the appointment from 12-10-1996. But the employee had been advised that consequent thereto there will not be any monitory benefits. Perhaps taking into account the representation submitted by the Petitioner and persons similarly situated, by Ext. P-5 order dated 7-3-2000, the Managing Committee had extended the benefit of salary, in the prescribed scale, for the above said period as well. In respect of the petitioner, after adjusting the stipend paid for the period, additionally Rs. 11,355 had been given.

3. After over three years, on 24-5-2003 he had been advised that the monitory benefits so granted was proposed to be recovered. This was stated to be for the reason that the Local Fund Audit had objected about the grant of pay, since the statute did not postulate extension of such benefits. He was asked to pay back a

sum of Rs*. 11,355. The writ petition followed. The Petitioner submits that after extending the benefits, which was prescribed by a decision of the competent authority, it could not have been cancelled and that too after years.

4. Without going to the merits of the case, during the pendency of the writ petition, this Court had directed the Managing Committee to consider the matter afresh. However, by Ext. P-10 the Petitioner had been advised that there was no possibility for retracing the steps already taken.

5. Learned Counsel for the Respondent, justifying their stand, submits that although retrospectively and arrears of pay had been granted, it sprouted from an erroneous decision and without jurisdiction, and when such infirmity is pointed out, the mistake requires to be set right. Although the Petitioner contended that he was working as Grade HI Artist, according to the Respondent, there was nothing produced to indicate that he was working in the regular category. Immediately after receipt of the Audit Report, consequential steps were taken for rectification of the mistake, as expected of a statutory authority, and if such follow up steps were not taken, the Committee would have been found fault with. According to the counsel, the legal position would be that the employee was not authorised to appropriate the extra payments received by him. Once it was found that the payment was irregular, he had a duty to refund it. What was paid was not found to be an authorised payment. The time lag was of no consequence. An audit team was expected to critically examine the accounts and proceedings, and point out errors and omissions. The errors required to be set right. Therefore, the claims as presented in the writ petition were not entertainable. We may examine the rival contentions in the above context.

6. We find that the Petitioner had completed the training by 12-10-1996. Having been recommended for appointment, he would have been normally entitled to claim regularisation immediately thereafter. It is not argued that the training continued after the stipulated period often years. There was no orders to indicate that after the prescribed training period, training continued to be imparted. The position, therefore, would be that the Petitioner would have been put to work as a Grade III Artist, as delay in regularisation might have been due to administrative reasons. The contention of the Petitioner is that it will be unethical for an employer to contend that excess payments made even by an oversight always would be recoverable, ignoring passage of time, albeit that payments happened to be made unsolicited or were sanctioned by the competent authority after deliberations. But we are not prepared to endorse the arguments as above to the full extent. Irregular payments are possible to be recovered and should be recovered. The audit procedure is intended to detect irregularities and omissions. The recommendations are to be duly taken notice of for setting right the mistake. They are also intended for future guidance and to suggest otherwise would be an encouragement to break down the system. If there are rules authorising recovery, it will bind the parties. That appears to be one side of the picture.

7. When we independently examine the issue, it is possible to note that the rule should admit of exceptions as well. For instance, if an employee was required to shoulder higher responsibilities, consequent to the proceedings issued by the competent authority, later on when an error is found, it is not in any case automatic that the enhanced pay earned by him necessarily have to be regurgled. It may be unjust. In the present case, the circumstances highlighted would establish that the Petitioner had been put to work as a Grade III Artist, which post carried a time scale. Only the admissible pay had been paid over to him. He was not a trainee. Therefore the contention that only stipend would be paid for the period may not be acceptable.

8. The Supreme Court, in *Purshottam Lai Das v. State of Bihar* AIR 2006 S.C.W. 5325, had occasion to consider an issue, concerning the right of the employer to recover the excess salary paid. Promotions were made by the State of Bihar from Class IV to Class III post of Basic Health Workers, but later on it was found that it was done in violation of statutory rules. The beneficiaries were reverted and excess salary was ordered to be recovered. Challenge followed. The Patna High Court repelled the contentions raised by the Petitioners, which had led to the Special Leave Petition.

9. The Apex Court held that the reversion was legal and justified. But, it had been observed that it did not mean that the recovery of the higher salary paid was to automatically follow. We may quote paragraphs 10 and 11 of the judgment herein below:

10. High Court itself noted that the Appellants deserve sympathy as for no fault of theirs recoveries were directed when admittedly they worked in the promotional posts. But relief was denied on the ground that those who granted had committed gross irregularities.

11. While, therefore, not accepting the challenge to the orders of reversion on the peculiar circumstances noticed, we direct that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the concerned period.

10. We feel that the observations could be applied on all fours to the facts of this case, at least in so far as the relief portion is concerned. We do note that the Court was not examining the contention where the audit authority had objected to the payment. We are of the opinion that audit reports normally are to be given due weight, and rectification measures in respect of the objections are to follow. There is no scope for importing discretion here. The Department or organisation concerned also do not have any liberty to write off over payments, unless a decision come from an empowered authority.

11. Although we have explained the general principles, which normally are to be followed, the facts of the present case, however, require that interference is made in exercise of powers under Article 226 of the Constitution of India.

Exts.P-6, P-7 and P-10 will stand set aside. This position will not enable the Petitioner to claim any other benefits of service in a manner adversely affecting any of his colleagues, since rights declared are purely in respect of the salary earned by him for a short period. The writ petition is disposed of as above.