
(2013) 07 KL CK 0202

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13798 of 2012 (Y)

M. Venugopalan Nair

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 4 KHC 627

Hon'ble Judges : Mr. C.K. Abdul Rehim, J.

Bench : Single Bench

Advocate : Sri. Babu Joseph Kuruvathazha, Standing Counsel, KSRTC, for the Respondent; Sri. K.P. Justine, (Karipat), Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. C.K. Abdul Rehim, J. - Petitioners are retired employees of the Kerala State Road Transport Corporation (KSRTC). Their grievance is against discrimination allegedly shown with respect to payment of the increment allowed in "Dearness Allowance" (DA) among the serving employees and retired personnel. Whenever increment in D.A is declared by the Government, all Corporations/Boards and Public Sector Undertakings except KSRTC are paying such increase to their retired employees with effect from the date of such declaration. But in KSRTC such increment is being paid to the pensioners, only with effect from a belated date. It is pointed out that, with respect to increase in D.A. declared by the Government during the year 2011, KSRTC took a decision to allow the increase for serving employees with effect from 01-02-2011 onwards. But the increase was given to pensioners only with effect from 01-03-2011. According to the petitioners there is no rhyme or reason to delay the benefits to pensioners alone. Such decision will amount to discrimination, violating Article 14 and 21 of the Constitution of India, is the contention. Therefore the petitioners seek a declaration that the pensioners in KSRTC are entitled for getting the increase in D.A in the same month on which it is paid to serving employees.

2. In this regard it is relevant to note that the petitioners have approached this

court on an earlier occasion. In Ext.P17 judgment this court directed the KSRTC to re-consider the matter. The petitioners were permitted to file representation before the 1st respondent and it was directed to be disposed of. Exhibit P18 is the consequential order issued in this regard. It is mentioned that salary of serving employees in the KSRTC is being paid on the last working day of every month, whereas pension with respect to retired employees is being paid in advance at the beginning of the month usually before 10th. Therefore practically the pensioners are getting benefit of the increased D.A. only after few days when compared to the serving employees. According to KSRTC there is only a marginal delay of few days occurred in the matter of payment of increased D.A. Hence the request was declined. It is challenging Ext.P18, this writ petition is filed.

3. In the counter affidavit filed by the respondents it is contended that there is absolutely no Rule/Guidelines/Regulations insisting upon payment of the increase in D.A with effect from the same date for serving employees and retired employees. According to KSRTC it is a matter coming within the realm of its policy decision. It is left open to the discretion of the authority concerned to take a decision to disburse the increase in D.A on different dates. Therefore it is contended that there is no discrimination as alleged. It is evident that increase in D.A. declared by the Government will become eligible for the employees and pensioners of KSRTC, only if KSRTC takes a decision to effect such increase in the matter of its employees and pensioners. But it is evident from records that KSRTC had always taken decision to effect increase in D.A in par with the increase declared by the Government. Question is as to whether the KSRTC is justified in fixing different dates in bringing effect payment of such D.A. to serving employees and retired personnel.

4. Learned standing counsel contended that the serving employees and retired employees are two different and distinct classes. Once KSRTC takes a decision to disburse such benefits to distinct classes on different dates, no discrimination can be attributed, is the contention. It is to be accepted that serving employees and pensioners fall within two distinct and different categories. But question to be considered is as to whether the decision for giving benefits on different dates among those categories is justified or not. When it comes to the question of sustainability or justification of such decision, the objective has to be looked into. Merely because they fall within two categories there cannot have different yardsticks in the matter of payment of benefits. Once KSRTC takes a decision to implement the revision of D.A, the same should have been uniformly applied. Unless there is any nexus with any objective sought to be achieved, no justifiable reasoning can be there for the differentiation among the two categories, and in such situation it will amount to discrimination. Therefore I am of the view that there is justification in the claim made by the petitioner seeking declaration for uniform treatment. However, I am not inclined to allow the relief sought for to the extent of directing payment of the increased D.A which was brought into effect in the year 2011, at this point of time.

5. Hence the writ petition is disposed of directing the respondents to follow the above observations in the matter of implementation of increase in the D.A payable to its employees, both serving and retired, in future.