

(2021) 01 KL CK 0566

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11121, 11947 Of 2019

M.K. Raju And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 25-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0566

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : K.P. Satheesan, P. Mohandas, S. Vibheeshanan, K. Sudhinkumar, S.K. Adhithyan, Muhammed Ibrahim Abdul Samad, Abu Pullan, P. Benjamin Paul, Varun C. Vijay, Millu Dandapani

Judgement

1. The issue raised in these writ petitions is with regard to the eligibility of the petitioners herein for time bound higher grade in the scale of pay of

Assistant Engineer. The petitioner in W.P. (C).No.11121 of 2019 was appointed as Overseer Grade-III in the Kerala Water Authority on 15.01.1982.

He was promoted as Second Grade Draftsman and subsequently as Draftsman Grade-I. The pay revision order which was implemented in the Water

Authority by order dated 30.07.2007 provided for grant of 8, 16 and 23 years time bound higher grade. The petitioner claimed 23 years time bound

higher grade in the scale of pay of Assistant Engineer with effect from 15.01.2005 when he completed 23 years of service. The claim for time bound

higher grade was based on the contention that he was qualified for promotion to the post of Assistant Engineer. This claim was rejected on the ground

that the petitioner had been promoted as First Grade Overseer only on 21.02.2009 and had completed two years of service as First Grade Overseer

only in 2011. The petitioner was granted the scale of pay Rs.8610-13480 which

was the corresponding third time bound higher grade and was denied the scale of Rs.11410-20680 which was the equivalent pay of Assistant Engineer with effect from 15.01.2005 on the ground that he was not qualified as on that date. The petitioner had been granted promotion as Overseer Grade-I only in 2009. However, the date of promotion had been reassigned and the assigned date for promotion as Overseer Grade-I was 26.10.1997. The petitioner therefore contended that the two years service as First Grade Overseer for promotion as Assistant Engineer should be reckoned from his assigned date of promotion, that is, 26.10.1997. If the assigned date is taken into account, the petitioner will be fully qualified for promotion as Assistant Engineer and would therefore be eligible for the scale of pay as Assistant Engineer as his third time bound higher grade with effect from 15.01.2005.

2. This Court, by Exts.P4 and P7 judgments, had considered the matter and had held that the rejection of the claim was bad. The respondents were directed to reconsider the claim of the petitioner for grant of scale of pay of Assistant Engineer as his third time bound higher grade on completion of 23 years of service with effect from 15.01.2005, taking note of the assigned date for promotion as Draftsman/Overseer Grade-I. The claim has again been rejected and hence this writ petition.

3. The petitioners in W.P.(C).No.11947 of 2019 had entered service as third grade Overseer on 01.10.1982 and 04.12.1982 respectively. They were granted the benefit of third time bound higher grade only in the scale of pay attached to the post of first grade Draftsman with effect from 11.11.2000 and 04.12.2000 respectively. They had filed Exts.P3 and P4 representations seeking the grant of benefit of 23 years time bound higher grade with effect from 01.11.2005 and 04.12.2005 in the scale of pay of Assistant Engineer. They contend that their dates of promotion as first grade Overseer had been revised as 26.10.1997 and that the two years service as first grade Draftsman should therefore be reckoned from that date. It is contended that if the assigned date of promotion as first grade Overseer is taken into account, both the petitioners would be eligible for the third time bound higher grade in the scale of pay of Assistant Engineer on the date on which they complete 23 years of service. The said benefit has been declined by the impugned order.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the Kerala Water Authority.

5. It is contended by the learned counsel appearing for the petitioners that the assigned date of promotion as Overseer Grade-I/Draftsman Grade-I is

the relevant date for reckoning the two years of service which is a qualification for promotion to the post of Assistant Engineer. If the assigned date is

taken into account, all the petitioners have completed the two years of service in 1999 itself and therefore they would be entitled to the scale of pay of

the promoted post on the dates when they complete 23 years of aggregate service. Though this aspect was directed to be considered, it is submitted

that the respondents are repeatedly denying the benefit to the petitioners without any justification.

6. It is further contended by the learned counsel for the petitioners that though the provisional seniority list produced as Ext.P6 in W.P.(C).No.11121

of 2019 where the reassigned dates had been assigned to the petitioners had been challenged before this Court, the challenge had been repelled on the

ground that the persons likely to be affected had not been made parties to the writ petition. The SLP filed against the said judgment was also rejected.

Thereafter, the matter stands remanded to the learned Single Judge to hear on merits after impleading all the parties likely to be affected by the orders

passed. It is submitted that, as of now, the assigning of dates of promotion in 1997 stands without any modification and that as such, the said dates are

liable to be taken into account for all purposes.

7. A decision of a Division Bench of this Court in State of Kerala and Others v. K.Indira and another [2019 (5) KHC 383] is relied on by the learned

counsel for the petitioners to contend that the period from the date of retrospective promotion is to be reckoned as qualifying service, where such

service is prescribed as a qualification. It is further contended that this Court, in Ext.P7 judgment, had categorically found that the posts of Overseer

Grade-II and Overseer Grade-I involved no change of duties and responsibilities. It is contended that Ext.P12 (wrongly mentioned as Ext.P10, which

is produced along with the reply affidavit filed by the petitioner) produced along with W.P.(C).No.11121 of 2019 would clearly show that the duties

and responsibilities of both the posts are the same. It is contended that Exts.R2(d) and R2(e) communications relied on by the respondents are not

Government Orders and cannot alter Ext.P12 in any manner.

8. A counter affidavit has been placed on record in these writ petitions. It is stated that only qualified candidates are entitled to the scale of pay

attached to the promotion post as their third time bound higher grade and unqualified hands are eligible only for the next higher scale of pay with

reference to the post that they were holding. It is stated that the petitioners were working as Draftsman Grade-II and were not qualified for

appointment to the post of Assistant Engineer since they did not have two years experience as Draftsman Grade-I which is a qualification prescribed

for promotion as Assistant Engineer. It is stated that the date of promotion of the petitioners as Draftsman Grade-I being in the year 2009, they would

be eligible for the third time bound higher grade in the scale of Assistant Engineer only after two years from their date of appointment as Draftsman

Grade-I, which has already been granted to them. It is stated that as on the date of completion of 23 years of aggregate service, the petitioners would

be eligible only for the scale of pay which is to be granted as higher grade in respect of the post of Draftsman. It is contended that though a

retrospective promotion had been granted to the petitioners and an assigned date in the year 1997 had been assigned for promotion to the post of

Draftsman Grade-I, the nature and duties and responsibilities of Draftsman Grade-II and Draftsman Grade-I were distinct and different and therefore

the said assigned date could not be taken note of for considering the eligibility.

9. I have considered the contentions advanced on either side. It is not in dispute before me that the petitioners have completed 23 years of service in

the year 2005. The question is only with regard to the grant of scale of pay of Assistant Engineer with effect from their eligible dates. It is also not in

dispute that all the petitioners had been assigned prior dates, that is, in the year 1997 for their promotion as Draftsman Grade-I. The said situation

continues. A Division Bench of this Court in *State of Kerala and others v. K.Indira and another* (cited supra) considered a similar factual situation and

held that, 'where a retrospective promotion had been granted with consequential arrears of pay and where there is no change in duties and

responsibilities between the two posts, the qualifying service should start from the date of retrospective promotion granted to the incumbents'. On an

appreciation of the facts and circumstances, the Division Bench found that the

promotions granted in that case were not notional and that the petitioners are eligible to count the period from their assigned dates towards qualifying service for the purpose of grant of higher grade. Though the respondents have placed a detailed counter affidavit on record, there is no contention raised that the promotion of the petitioners from the earlier dates were purely notional and that no benefits would enure to them on the basis of the reassignment of seniority and dates of promotion as per Ext.P6. In this case as well, the assigning of prior dates to the promotions of the petitioners was on the finding that there were vacancies of first grade Overseers available in 1997 in the quota set apart for promotees. Taking note of the availability of vacancies, a provisional seniority list giving the promotees seniority reckoning the advice date of the direct recruits had been issued. In the said seniority list, all the petitioners had been assigned 26.10.1997 as their date of appointment as Overseer Grade-II. The said seniority list remains in force.

10. The Apex Court in *Bhakra Beas Management Board v. Krishan Kumar Vij and another* [2010 (8) SCC 701] held that a person would be eligible

for higher pay scale as time bound higher grade only if he fulfills all eligibility criteria including length of service. However in *UOI and others v.*

K.B.Rajoria [2000 (3) SCC 562], the Apex Court held that when the earlier date of promotion is granted to right a wrong done to an incumbent, the

date of notional re-fixation of seniority should be taken into account for reckoning qualifying service for promotion. It was further held that 'qualifying service' for promotion cannot always be equated with actual service.

11. The finding in the impugned orders that the assigned dates are not liable to be taken into account for the purpose of deciding the eligibility of the

petitioners is completely unwarranted. Though the question had been repeatedly directed to be considered, the respondents had again dismissed the

claim raised by the petitioners on the ground that their actual date of promotion was only in 2009. Ext.P12 in W.P.(C).No.11121 of 2019 has been

produced by the petitioner to show that the duties and responsibilities of the posts of Overseer Grade-II and Overseer Grade-I are identical. If that be

so, the contention that the qualifying service could be counted only from the actual date of promotion cannot be sustained.

In the result, the impugned orders are set aside. There will be a direction to the

respondents to grant the petitioners the scale of pay of Assistant Engineer as their third time bound higher grade on completion of 23 years of service. Necessary shall be done within a period of three months from the date of receipt of a copy of this judgment.