
(1978) 05 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 650 of 1976

Nalinam and Another

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 24-05-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 05 KL CK 0002

Hon'ble Judges : V. Balakrishna Eradi, J;S.K. Kader, J

Bench : Division Bench

Advocate : C.K. Sivasankara Panicker and P.G.P. Panicker, for the Appellant;
Government Pleader for 1st Respondent and K.P. Radhakrishna Menon and K.K.
Ravindranath for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Eradi, J.—There are two Petitioners in this original petition. Both of them are working at present as Lecturers in private colleges owned and managed by the Nair Service Society. The Petitioners were originally appointed as Junior Lecturers on 12th October 1970. After having functioned as such for the rest of the academic year both the Petitioners were relieved from service on 31st March 1971 on which date the colleges concerned were closed for the summer recess. They were both subsequently reappointed as Junior Lecturers on 15th July 1971. Subsequently by orders dated 26th April 1972 the management promoted the Petitioners as Lecturers with effect from 1st April 1972. The request of the management for grant of approval to the action taken by it for so promoting the Petitioners was pending with the Kerala University for more than three years. Ultimately by the orders evidenced by Exts. P-1 and P-2 passed on 21st October 1975 and 24th September 1975 respectively the Vice-Chancellor of the University granted approval to the promotion of the Petitioners as Lecturers with effect from 1st April 1972 itself. He, however, superadded a condition in those orders that "the teacher will not be eligible for back arrears consequent on this

promotion". The scheme for direct payment of the salaries of teachers of private colleges was brought into force on 1st September 1972. Even though the Petitioners were then actually working as Lecturers they were granted only the salaries applicable to the Junior Lecturers, probably on account of the fact that the orders have not been passed by the University for promotion to the category of Lecturers. The Petitioners thereupon made representations to the State Government but no orders are said to have been passed on those representations even till now.

2. On 4th August 1975 the Government acting on a representation made before it by the All Kerala Private College Teachers' Association passed the order Ext. P-3 whereunder, amongst other things, concurrence was accorded by the Government to the Kerala and Calicut Universities to approve the promotions of 34 Junior Lecturers who had been promoted by the management of the N.S.S. Colleges to the category of Lecturers with effect from 1st April 1972 subject to the condition that no payment of back arrears will be allowed to such teachers. Subsequently on 4th September 1975 the Government issued further orders in the matter in modification of the terms of Ext. P-3. Clause 2 contained in Ext. P-4 reads:

The post of Junior Lecturer to which a member of the teaching staff is initially recruited in a college, will be converted automatically into that of Lecturer as and when he has put in two years of service and the incumbent fitted into that post automatically. This benefit will be available with effect from the beginning of the academic year 1973-74.

The complaint of the Petitioners is that notwithstanding the above direction contained in Clause 2 of Ext. P-4 the Petitioners have been denied their legitimate claims for payment of salary in the category of Lecturers with effect from the beginning of the academic year 1973-74. They have, therefore, come upto this Court seeking appropriate relief under Article 226 of the Constitution so as to enable them to receive the benefit of the salary in the category of Lecturers at least from the beginning of the academic year 1973-74.

3. On behalf of the 1st Respondent -- State of Kerala -- the learned Government Pleader contended before us that the Petitioners would be entitled to the benefit of Clause 2 of Ext. P-4 only with effect from the dates on which they completed two years of continuous service in the category of Junior Lecturers and in view of the fact that there was a break in their service from 31st March 1971 till 15th July 1971 the Petitioners can be deemed to have become entitled to automatic promotion to the grade of Lecturer only with effect from 15th July 1971. This contention advanced by the Government Pleader is not supported by the language used by the Government in Clause 2 of Ext. P-4. Going by the words used in Clause 2 the only condition for eligibility for the benefit of the said clause is that a Junior Lecturer should have put in two years of service. There is no stipulation that such service should be continuous. So long as the service put in by the concerned Junior Lecturer was regular in character he is entitled to have

the totality of the period of such service taken into account irrespective of any break therein since the adjective "continuous" has not been used in Clause 2 to qualify the word "service". We have therefore no hesitation to reject this argument advanced by the Government Pleader. The stand taken in the counter-affidavit is quite different from what is now contended by the Government Pleader. The defence put forward in the counter-affidavit is that under the terms of Ext. P-3 -- Which alone has been referred to in the counter-affidavit (totally ignoring the fact that those terms have been modified under Ext. P-4) the Petitioners would become eligible for the grant of salary in the grade of lecturers only after they complete three years of service in the category of Junior Lecturers. It is unfortunate that greater care has not been taken by the Department in instructing counsel for the Government at the stage of preparation of the counter-affidavit and the fact of passing the G.O. Ext. P-4 had not been made known to the counsel who drafted the counter-affidavit.

4. Counsel appearing for the Kerala University faintly advanced an argument before us that in view of the conditions incorporated in Exts. P-1 and P-2 whereunder the promotion of the Petitioners to the category of Lecturers was approved by the University the Petitioners are not now entitled to urge that they should be paid arrears of salary in the category of Lecturers from the commencement of the academic year 1973-74. We see no merit at all in this contention. Counsel for the University has not been able to show to us any source of power under the Kerala University Act, Statutes and Ordinances issued thereunder empowering University to incorporate such a condition while granting approval to the promotions of the Petitioners to the category of Lecturers. We have no hesitation to hold that it was totally beyond the jurisdiction of the University to incorporate the said condition in the orders Exts. P-1 and P-2. The said condition contained in Exts. P-1 and P-2 being illegal will stand deleted from those orders and the approval granted under those orders will be treated as unconditional.

5. In view of our conclusion that for the purpose of Clause 2 of Ext. P-4, service need not be continuous, it is clear from the undisputed facts relating to the history of service of the two Petitioners that both of them had put in more than two years of service as Junior Lecturers prior to 1st June 1973 on which date the academic year 1973-74 commenced. Hence both of them are entitled to be paid salary in the grade of Lecturers with effect from the commencement of the academic year 1973-74. There will accordingly be a direction to the State Government to take immediate action to see that the arrears of salary due to the Petitioners on the above basis are disbursed to them within a period not exceeding three months from today. The original petition is allowed to the extent indicated above. The parties will bear their respective costs.