

(1991) 03 KL CK 0013
In the High Court Of Kerala
Case No : O.P. 4507/87

Nelson Edward

APPELLANT

Vs

Kerala State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 13-03-1991

Acts Referred:

Citation : (1991) 03 KL CK 0013

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : C.P. Damodaran Nair, for the Appellant; M.P. Govindan Nair and P. Gopalakrishnan Nair, for the Respondent

Judgement

Varghese Kalliath, J.—Petitioner is a retired employee of the first Respondent. He claimed that he had a legitimate claim to be promoted as Machineman from 10th June 1954. Since this claim was not allowed, he filed a suit, O.S. No. 989 of 1986 before the Munsiff's Court, Trivandrum. The suit was decreed and the decree was confirmed. By virtue of the decree in O.S. No. 989 of 1986, Petitioner claimed arrears of salary and other monetary benefits, as if he has been promoted and appointed as Machineman on 10th June 1954. He filed an execution petition. The execution court denied his claim for arrears of salary, since the execution court can execute the decree in accordance with the direction contained in the decree and there was no direction for arrears of salary. But, in the order passed by the execution court, it has been made clear that the Petitioner has to be posted as a Machineman with retrospective effect from 10th June 1954 and his seniority has to be fixed up accordingly. Copy of the order is Ext. P-2. This order is now final, since no revision or appeal is seen to have been filed against this order, by the first Respondent Corporation.

2. The question that has to be considered in this case is a very simple question. By virtue of a court order, Petitioner got the entitlement to be promoted and appointed as Machineman from 10th June 1954. This has not been in this case. The first Respondent passed Ext. P-1 order stating that the Petitioner would be

absorbed as a Machineman from 1st July 1958 and he will be given notional service benefits from 1st April 1966 and monetary benefits from 17th February 1982. The question as to what all benefits, the Petitioner is entitled to, has to be decided on the basis of the binding decree and the subsequent order Ext. P-2. By Ext. P-2, it has been made clear that the Petitioner had the entitlement to be promoted and posted as Machineman from 10th June 1954. This mandate of the court has to be obeyed by the first Respondent in this case. For no reason, the first Respondent can avoid that mandate given by the court, unless and until, it is reversed by a court of law. The first Respondent has not attempted to do that, but the first Respondent has passed its own order, I would say, without reference to the court order. This attitude cannot be approved, since this Court has repeatedly said that when once an employee establishes his claim for an appointment on a particular day or for a promotion with effect from a particular date and for no fault of his, the same was denied, he is entitled to all the benefits, as if he has been appointed on the day on which he has been appointed. The Supreme Court had occasion to consider this question on several occasions.

3. In AIR 1977 1868 (SC) the Supreme Court held that the officer was entitled to be appointed to the cadre of Traffic Inspector and the Court directed that he should be appointed with effect from the date on which he approached the High Court with his grievance, that is, December 20, 1967. But the Supreme Court stated that, for the purpose of fitment, his service in that cadre as from 1st January 1959 should be taken into account. In AIR 1977 1868 (SC) , speaking for the Court, Justice Krishna Iyer said thus:

...Plainly put, he will be drawing a salary on December 20, 1967 on the basis of a notional appointment as Traffic Inspector as on January 1, 1959....

4. If the above said principle is applied, I have no hesitation to hold that the Petitioner in this case, has got an entitlement to draw the salary as a Machineman from 10th June 1954 on the basis of a notional appointment. The decision reported in AIR 1977 1868 (SC) was followed in 1984 KLT 59 (Philomina v. State of Kerala).

5. In 1984 KLT 141 (Rajappan Nair v. State of Kerala) a Division Bench of this Court had occasion to consider a similar question. This Court observed thus:

If for no fault of his, promotion to a Government servant is delayed and it is given to him later with retrospective effect from the date on which it was due, the Government servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments.

In that case, the court said that "by the judgment of this Court Ext. P-5, the Petitioner was found entitled to assignment of date of promotion as Senior Malayalam Pandit on 17th January 1959. Consequent upon such assignment of

date he has necessarily to be treated as Senior Malayalam Pandit from that date." Further the court said thus:

We have found the State quite often taking a stand that even if a person is retrospectively promoted in recognition of his rights since the person so promoted had not actually worked in that post he is not entitled to the emoluments of that post. We have not been shown the support of any Rule or logic to deny the benefit of the salary to the person so promoted.

6. In 1978 KLT 29 (Narayana Menon v. State of Kerala) Khalid, J. observed thus:

A Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his.

7. In view of the clear and plain statement of law on the subject, I see no difficulty to issue a direction to the first Respondent to give all the arrears of salary to the Petitioner and other monetary benefits on the basis that he has been appointed as a Machineman with effect from 10th June 1954. I further direct that all consequential monetary benefits must be given to the Petitioner on the basis that he was promoted and posted as a Machineman on 10th June 1954, since I am told that he is now retired. The orders denying these benefits, viz. Exts. P-1 and P-3 will stand quashed. O.P. is allowed. No order as to costs.