
(2014) 11 KL CK 0172
In the High Court Of Kerala
Case No : WP(C). No. 26554 of 2008 (J)

P.M. Yohannan

APPELLANT

Vs

The Managing Director

RESPONDENT

Date of Decision : 22-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0172

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : M.C. Cherian, M.A. Thomas Kutty, Saramma Cherian, Asha Cherian and P.M. Saneer, Advocate for the Appellant; J. Krishna Kumar, Ambika Devi and George Mathew, SCs, Advocate for the Respondent

Judgement

P.V. Asha, J.—This Writ Petition is filed challenging the cancellation of promotion granted to petitioner in 1986, as NMR skilled Operator and the higher grade and consequential benefits based on that, after his retirement from service in 2008, resulting in huge reduction of his terminal benefits. The facts leading to the impugned action of respondents are as follows.

2. Petitioner retired from service on 30.06.2006 while working as Skilled Operator in Kerala Water Authority . He commenced service as S.L.R Worker in the erstwhile Public Health Engineering Department (P.H.E.D) on 15.09.1972. He was absorbed in N.M.R service with effect from 04.08.1977. He was promoted as N.M.R Skilled Operator on 22.02.1986, as per Ext. P1 order issued by the Executive Engineer, PH Division, Perumbavur. Immediately after his promotion as NMR Skilled Operator, he was absorbed in regular establishment with effect from 1.04.1984, pursuant to orders passed by the Kerala Water Authority on 30.3.1986, based on general orders issued by Govt. in G.O(Rt) No. 2012/85/LA & SWD dt. 26.6.1985 for absorption of NMR employees with effect from 01.04.1984. He was granted higher grade with effect from 1.10.1994 and his pay was fixed in the scale of Rs. 1445-2440, as per Ext. P2 order. He was getting his pay fixed in accordance with the pay-revision orders issued from time to time in

the appropriate pay scale. On 11.05.2006, the Accounts Officer of the 1st respondent, as per Ext. P3 letter, informed the Executive Engineer P.H Division that the promotion given to the petitioner as N.M.R Skilled Operator, was after his absorption in regular establishment and hence it was irregular, as the Executive Engineer was not competent to promote regular establishment workers as Operators. It was stated therein that promotion was in order in case the petitioner was promoted while remaining as an NMR employee and hence he requested to revise the same, by taking up the matter with the office of the Managing Director, Kerala Water Authority. That letter was issued at a time when the petitioner had only about 1 more month for retirement on superannuation. As petitioner did not get his retirement benefits and on coming to know about the letter from the Accounts Officer, on inquiry, he approached the Managing Director by submitting representations Exts. P4 and P5 requesting to expedite the proceedings for finalisation of his pensionary benefits. After a personal hearing on 17.12.2007 in the office of the Managing Director of the Kerala Water Authority, the Managing Director issued Ext. P7 order on 21.12.2007 saying that the petitioner was absorbed in the regular establishment as Unskilled Worker w.e.f 1.4.84 in the light of G.O(Rt) No. 2012/85/LA & SWD dt.26.6.1985 and order No. 12515/GLI/85/HO dt.30.3.86 of the Managing Director of the Kerala Water Authority. Therefore the promotion given to him by the Executive Engineer after his absorption into regular establishment was irregular. Directions were issued to re-fix the higher grades and re-calculate the pensionary benefits due to him accordingly. Consequent to this, the Executive Engineer issued Ext. P8 order on 11.1.2008 cancelling his promotion as Operator w.e.f 22.2.1986 as well as the time bound higher grade for 8 years of service granted to him w.e.f 1.10.1994. It was directed to fix his pay in the category of unskilled worker. Accordingly, by another order passed on 6.2.2008 - Ext. P9, the Assistant Executive Engineer, Perumbavur re-fixed the pay of the petitioner treating him as Unskilled Worker, at reduced rates.

3. Aggrieved by the cancellation of the promotion as well as proceedings of re-fixation of pay consequent to it, the petitioner approached this Court in W.P(c) No. 5724/2008. This Court by Ext. P10 judgment dated 21.2.2008 directed the Managing Director to consider the case of the petitioner treating the impugned orders as a show cause notice and to pass orders afresh after hearing the petitioner. It was also directed that the petitioner shall be paid provisional pension in the meanwhile. Thereafter the petitioner submitted a representation before the Managing Director detailing his grievances on account of denial of pensionary benefits and the service rendered by him right from 1972, and stating that he was not aware of the competence of authorities to order promotion or absorption and requesting to finalise his retirement benefits, based on the pay he was drawing.

4. The Managing Director thereupon issued Ext. P15 order practically rewriting the earlier order which was passed on 21.12.2007, rejecting the claim of the petitioner to allow the pensionary benefits restoring the orders of promotion and

grant of grade promotion. It was stated that the promotion granted to him as NMR Operator after absorption into regular establishment and fixation of pay ordered in his case were irregular and hence liable to be cancelled and therefore he was eligible for pensionary benefits admissible in the status of Unskilled Worker.

5. The petitioner has approached this Court in this Writ Petition in the above circumstances challenging the orders Exts. P3, P7, P8, P9 and P15 and praying for a direction to regularise his promotion and to restore the benefits which he was drawing on the basis of the promotion granted to him w.e.f 22.2.1986.

6. I have heard the learned counsel appearing for the petitioner Smt. Asha Cherian as well as Sri George Mathew, the learned Standing Counsel appearing for the Kerala Water Authority. The learned counsel for the petitioner submitted that the cancellation of promotion and the revisional higher grades as well as re-fixation of pay and pension consequent to it, at this stage after a period of more than 22 years after the grant of promotion is highly unjust and arbitrary. At the same time, the learned Standing Counsel vehemently opposed the prayers and submitted that they have only corrected a mistake.

7. It is seen that the promotion as NMR unskilled Operator, which is now found to be irregular was granted to petitioner on 22.02.1986. The objection to that promotion is stated to be that it was after his absorption into regular establishment. But it is pertinent to note that the absorption of the petitioner, was only after 30.03.1986. It was on the basis of a general order issued by Government - G.O(Rt) No. 2012/85/LA & SWD dated 26.6.1985, which was implemented by the Managing Director only as per his order dated 30.03.1986. The petitioner was physically absorbed only after 30.03.1986. Well before such absorption, he was already promoted as NMR Skilled Operator on 22.02.1986. In fact the absorption in regular establishment comes only after his promotion. It is only because of the general order issued by Govt. that he happened to be absorbed in the year 1986, though with retrospective effect, after his actual and physical promotion as NMR skilled Operator. The absorption ordered by the Government was only for providing benefit to the low paid employees working in NMR. On account of such absorption, the benefit which the petitioner had been enjoying as on that day, cannot be taken away or reduced or in any way result in injustice to the persons like petitioner, putting them in a stage worse. The respondents failed to see that the absorption was ordered only on 30-3-1986, whereas promotion was on 22.02.1986, by an authority competent at the relevant time. Therefore there is absolutely no basis for the cancellation of promotion and for the consequential proceedings, even when the absorption was with retrospective effect from 1984. The respondent Water Authority ought to have seen that the general orders for absorption of the workers in the lowest strata to the regular establishment were not intended to result in injustice to them, but only to advance their service conditions. Therefore the respondents cannot be permitted to reduce the benefits admissible which were admissible to

petitioner while he was working as NMR or if he was continuing as NMR. It is also pertinent to note that what was detected in Ext. P3 as well as Ext. P7 was only an irregularity, which means that the same could have been rectified. On that ground also the impugned action can only be viewed as highhanded.

8. Even otherwise, I do not find any rationale in cancelling a promotion which was granted in the year 1986, after a period of about 20-22 years, as done in this case, by the impugned orders in 2008. The petitioner was never at fault. Even assuming that it was because of a mistake committed by the respondents, petitioner cannot be penalised. It is pertinent to note that the Accounts Officer had initially stated that there was only an irregularity in as much as the promotion was effected by the Executive Engineer, which could be corrected by the Managing Director. But thereafter instead of rectifying the defects, they cancelled it and withdrew the orders granting higher grades granted to him. Petitioner is put to prejudice on account of no fault on his part, that too without any sort of intimation to him. On account of the alleged irregularities, if at all there were any, occurred at the instance of the respondents, a person like petitioner, who had been working in the lower strata with the least educational qualification, under the establishment of respondents and who never contributed anything towards the alleged irregularities, cannot be subjected to such predicaments, that too after serving about 34 years under the establishment. There is absolutely no reason for adopting such arbitrary measures towards the low paid employees. The petitioner has not contributed anything for any earlier or out of turn promotion or fixation of any scale of pay which is not admissible for him. A person who was working as SLR initially and thereafter as NMR and thereafter as Operator cannot be expected to detect or realise the mistakes if any, if at all, committed in granting him promotion or in fixing his pay, by the respondents. He had been working all these 34 years with the expectation that he will be getting retirement benefits on the basis of the pay he was drawing. The action of the respondents shattering his expectations at the time of and subsequent to his retirement, is highly unfortunate and should have been avoided. Such action cannot be permitted to affect any of the monetary benefits admissible to him and he should be treated as having retired from service, with all the benefits he was actually drawing at the time of retirement.

9. The Hon'ble Supreme Court has considered a similar issue in a recent decision of the Hon'ble Supreme Court reported in *Kusheswar Nath Pandey Vs. State of Bihar and Others*, , which fortifies my view in this matter. There the appellant was a correspondence clerk, whose time bound promotion granted on 13-11-1998, w.e.f 1.09.1991 was cancelled on 16.9.2009. The promotion was cancelled on the ground that he had not passed a promotional examination, prior to promotion. The Single Judge of the High Court allowed the writ petition and quashed the cancellation holding that time-bound promotion granted eleven years earlier was not because of any fault or fraudulent act on the part of the appellant, and therefore could not be cancelled. But the Division Bench reversed it. In the SLP filed against that, the Apex Court held as follows:

"9. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time-bound promotion which was given to him and some eleven years thereafter, the authorities of the Bihar Government woke up and according to them the time-bound promotion was wrongly given and that the relevant rules are being relied upon and that too after the appellant had passed the required examination.

10. In our view, this approach was totally unjustified. xxxxxx"

Hence the appellant therein was able to enjoy all the benefits granted to him.

10. Going by the judgments of the apex court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , Syed Abdul Qadir and Others Vs. State of Bihar and Others, , etc, recovery and refixation of pay is not permissible in the case of low paid employees and especially in circumstances like those in the present case. In State of Bihar and Others Vs. Pandey Jagdishwar Prasad, , the Apex court held as follows :

"19. It is not needed for this Court to verify the veracity of the statements made by the parties. If at all the respondent entered the second date of birth at a subsequent period of time, the authorities concerned should have detected it and there should have been a detailed enquiry to determine whether the respondent was responsible for the same. It has been held in a catena of judicial pronouncements that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee."

11. In the light of the above circumstances, I quash the impugned orders Exts. P3, P7, P8, P9 and P15 and direct the respondents to restore all the benefits due to the petitioner, as was admissible to him before the impugned orders were issued. The respondents shall thereafter compute, sanction and authorise the pensionary benefits due to the petitioner accordingly, based on the pay he was drawing before the issuance of the orders Exts. P3, P7, P8, P9 and P15 and to disburse the same within a period of three months from the date of receipt of a copy of this judgment, failing which the entire amount shall carry interest at the rate of 6% per annum from the 01.11.2006. In case any revision of pay has been effected under the respondents, with effect from a date prior to retirement of petitioner i.e 30.06.2006, petitioner shall be granted the benefit of that and his retirement benefits shall be settled based on such pay.

This Writ Petition is accordingly allowed.