

(2002) 05 KL CK 0032

In the High Court Of Kerala

Case No : OP No. 8591 of 1996 (W)

P.O. Thomas, Life Irrigation Pump Operator Worker Grade II Minor Irrigation Section, M. Narayanankutty, Life Irrigation Pump Operator Worker Grade II Minor Irrigation Section, K.V. Kochunaayanan, Life Irrigation Pump Operator Worker Grade II Minor Irrigation Section, C.T. Varghese, Life Irrigation Pump Operator Worker Grade II Minor Irrigation Section, V.V. Joseph, Life Irrigation Pump Operator Worker Grade II Minor Irrigation Section and T. Radhakrishnan, Life Irrigation Pump Operator Worker Grade II Minor Irrigation Section

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Citation : (2002) 05 KL CK 0032

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : K.A. Abraham and P. Ali, for the Appellant; L. Alocious Thomas, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—The petitioners were Skilled Labour Roll (for short "the SLR") Workers in the Irrigation Department. Based on the report of the Committee for regularisation of NMR/CLR/SLR Workers, Ext.P1 Government Order was issued on 17-9-1985 taking a policy decision to absorb all NMR workers, who have completed five years" service as on 19-5-1983 to the regular establishment, after creating sufficient number of posts. It was also provided that as and when vacancies arose in the regular establishment in the posts created for absorbing NMR workers, it should be filled up by regularising the existing SLR workers on the basis of seniority.

2. There were three existing scales of pay allowable for NMR workers and it was provided that the regularisation should be in the three scales and that category

wages shall not be payable to them.

3. Ext. P2 letter shows that the workers like the petitioners, who were engaged on SLR basis in the various Lift Irrigation Stations, were re-designated as SLR Lift Irrigation Operators. Under Ext.P3 Government Order dated 14-7-1986, the salary for NMR Lift Irrigation Operators were revised from Rs. 190 - 285 to Rs. 290 - 425. In the next pay revision the said scale was again revised as Rs. 575 - 900, whereas the pay scale Rs. 185 - 245 which was also one of the pay scales allowed for NMR workers was revised as Rs. 550 - 800.

4. Ext. P4 Government Order was issued on 27-12-1987 consequent on implementation of Ext.P1 proposals. In the vacancies caused by regularisation of NMR workers, SLR workers including the petitioners were provisionally absorbed; but instead of granting them the scale of Rs. 575 - 900, it was stipulated in Ext. P4 that they should be placed on the scale of worker Grade II viz., Rs. 550 - 800. The petitioners were shown as persons with Sl. Nos. 185 to 187 and 189 to 191 in the list of SLR workers appended to Ext. P4.

5. Consequent on regularisation as "worker Grade II", the petitioners were sent over to the Roads Division of the PWD, though until then they were actually working as Pump Operators. Ext.P5 Government Order dated 8-3-1989 was then issued to redress the grievance raised in this regard and it was directed that the Chief Engineer would have the powers to shift the vacant posts created for absorption of NMR workers to the Divisions where the SLR workers were to be engaged according to the necessity. Accordingly, Ext.P6 order was issued by the Chief Engineer on 3-7-1990 and all the present petitioners, along with 5 others, were sent over to the Minor Irrigation Division, Thrissur, to attend the works under that Division. Petitioners 4 to 6 were accordingly absorbed as NMR workers in the regular establishment in the Minor Irrigation division, Thrissur, with effect from 1-7-1986 and the petitioners 1 to 3 were absorbed as above with effect from 1-8-86 as per Ext. P7 order.

6. In Ext. P8 letter, the Assistant Executive Engineer, Minor Irrigation Division, reported to the Executive Engineer that NMR workers like the petitioners, who are actually Grade II workers, were engaged for operating motors and pumps in the various Lift Irrigation Schemes. In Exts.P9 and P10 representations, the 1st petitioner had admitted that the shift from Roads Division to the Minor Irrigation Division was on his request and contended that on such absorption and posting he was entitled to the pay scale of Rs. 575 - 900 in so far as he was working as SLR Pump Operator earlier in the corresponding pay scale of Rs. 190 - 285.

7. In the next Pay Revision, the pay scale of Assistant Pump Operator was revised as Rs. 805 - 1190. The request in Ext.P10 was that the 1st petitioner might be granted this pay scale in view of the fact that he was actually working as Pump Operator. The petitioners filed O.P. No. 9635/95 seeking passing of appropriate orders in the representation filed before the Minister for Irrigation (present Ext. P11) wherein the prayer was to grant to the petitioners the pay

scale of Rs. 805 - 1190 which was the scale of Assistant Pump Operators. The Original Petition was disposed of on 22-6-1995 with a direction that the representation might be considered and disposed of within three months. Ultimately, the Government informed the petitioners vide Ext. P16 that the scale of pay Rs. 805 - 1190 which was the pay scale fixed for Lift Irrigation Assistant Pump Operators could not be granted to the petitioners in view of the fact that they were not possessing the qualifications prescribed under the Special Rules for the post of Assistant Pump Operators and that considering the fact that they were Grade II workers only, the lesser scale of Rs. 805-1190 was admissible to them. The petitioners are aggrieved by the above stand and it is their contention that they should get the scale fixed for Assistant Pump Operators especially in view of Ext. P14 judgment passed in the case of similar claimants and in view of the orders of the Chief Engineer implementing the same vide Ext.P18.

8. The stand taken by the State in the counter is that notwithstanding the shift from the PWD Roads Division to the Minor Irrigation Division on request made by the petitioners, they would continue to get only the pay scale of Grade II workers in the PWD Roads Division and not the pay scale for Assistant Pump Operators irrespective of the question whether they were actually discharging the functions of Pump Operators. As long as the petitioners do not have the qualifications prescribed for the Assistant Pump Operators in Ext.P15 Special Rules, they cannot claim the status or pay scale of Assistant Pump Operators. It is also pointed out that what was allowed as per Ext. P18 was a special relief which was confined to the petitioners in O.P. Nos. 4181, 6586 and 9492 of 1988 and that the petitioners cannot claim the said benefit.

9. On a consideration of the rival contentions, I am of the view that the petitioners deserve the relief that they seek herein for more than one reason. First of all, Ext.P15 shows that there is no category of Grade II workers in the Kerala Engineering Service (Life Irrigation Branch) Special Rules. The said service consists of Pump Driver, Assistant Pump Operator, Pump Cleaner and Canal Watcher and the Rule has come into force with effect from 1-4-1968 i.e., even before the passing of Ext.P1 Government Order. Having allowed the request of the petitioners to be brought into the Minor Irrigation Division, the Government is bound to absorb them into one or the other posts contemplated in the Special Rules and it cannot be heard to contend that they would be given only the pay scale as allowed to worker Grade II which was the post held by them after absorption in the PWD Roads Division. That apart, there is no reason to discriminate the petitioners and to deny them the relief that was allowed in Ext.P18 order which admittedly was passed pursuant to the directions contained in Ext.P14 judgment.

10. A perusal of Ext.P14 shows that the three Original Petitions disposed of as per that judgment were filed by 41 persons who were working as Pump Cleaners and 5 persons (petitioners in O.P. No. 9492/98) who were working as Assistant Pump Operators. Prior to their absorption in the Irrigation Department, they

were all workers in the PWD. The claim therein was also that they should be absorbed as Assistant Pump Operators. The court noted that the direction in the present Ext.P1 Government Order was that the petitioners should be regularised after creating sufficient number of posts in the regular establishment; that the words "regularised" and "regular establishment" indicated that they should be absorbed only into the existing posts in the cadre and that the regularisation cannot be against a non-existing post. In view of the fact that there was no post of Grade II Workers, it was declared that the petitioners in O.P. No. 9492/98, who were working as Assistant Pump Operators, should be absorbed as such and that the other petitioners, who were working as Pump Cleaners, should be absorbed as such from the date of their assuming charge of those posts.

11. It is seen from Ext.P14 that the Government had no contention in those Original Petitions that the petitioners therein could not be absorbed to the aforesaid posts for want of adequate qualifications. Even if they did not have the qualifications prescribed for direct recruitment to the post of Pump Cleaner or Assistant Pump Operator, once they were absorbed into the regular cadre, they would be entitled to get all the consequential benefits. In fact, this is what is granted by passing of Ext.P18 orders implementing the directives contained in Ext.P14.

12. I do not find anything in Ext.P14 or in Ext.P18 justifying a conclusion that the aforesaid benefit already granted by the Chief Engineer to the petitioners in the said Original Petitions could be denied to the present petitioners or that the present petitioners" stand on a different footing or with any disability which was not suffered by the petitioners in Ext.P14 Original Petitions. If the State had a contention that Grade II workers shifted from PWD Roads Division to Minor Irrigation Division could not be absorbed as Assistant Pump Operators or Pump Cleaners under the Special Rules for want of adequate qualifications, that was a matter which could and should have been raised before the Court either in Ext.P14 O.Ps. or by filing appropriate appeals. No such efforts was made and the Government has conceded to the demand of the petitioners in Ext.P14 O.Ps. Having done so, it is inequitable for the Government to turn round and contend now that the present petitioners alone should be denied the benefit of Ext.P14 decision or the treatment granted to others similarly situated under Ext.P18 order of the Chief Engineer.

13. It is true that the petitioners do not possess the qualifications prescribed in Ext.P15 for the Assistant Pump Operators; but then the Government had already absorbed them in the Minor Irrigation Division and directed them to discharge the function of Assistant Pump Operators right from the year 1986. As long as there is no other post against which they could be absorbed under the Special Rules, justice demand that their absorption be against the post in which they were asked to work. If that is so, the petitioners are entitled to be absorbed as Assistant Pump Operators with all consequential benefits including the salary fixed for the post.

14. I am aware that based on the demands made by persons like the petitioners the Government has granted to them the relief of Grade promotion vide Ext.P17 order. The grant of Grade promotion will not be adequate relief for the petitioners in view Ext.P14 judgment and Ext.P18 stand that they are not entitled to get both the benefit simultaneously. Whatever that be, I am of the view that as long as Exts.P14 and Ext.P18 stand unchallenged and as long as there is no post of Grade II workers in Ext.P15 Special Rules, the petitioners are entitled to succeed. It is declared that the petitioners 1, 2 and 3 are to be treated as regularised with effect from 1-7-1986 and the petitioners 4, 5 and 6 are treated as regularised with effect from 1-8-1986 in the cadre of Assistant Pump Operators in the Minor Irrigation Division with all attendant benefits such as seniority, promotion and back wages with effect from the date on which they joined duty pursuant to Ext.P7 order. Necessary orders will be passed implementing this directive within a period of three months from the date on which a copy of this judgment is served on the respondents 1 and 2.

The Original Petition is allowed as above.