
(2005) 06 KL CK 0024
In the High Court Of Kerala
Case No : W.A. No. 1950 of 2003

Principal Secretary to Government

APPELLANT

Vs

Gopala

RESPONDENT

Date of Decision : 07-06-2005

Acts Referred:

Kerala Service Rules, 1958 — Rule 3, 3C

Citation : (2005) 4 KLT 190

Hon'ble Judges : K.T. Sankaran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : Lal George, Government Pleader, for the Appellant; Kodoth Sreedharan, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner (respondent in this appeal) retired from Government service while working as a Tahsildar on 30.9.2000. He joined the Revenue Establishment as Village Assistant on 17.8.1967. He was promoted as Village Officer on 22.12.1972. Later, he was promoted as Revenue Inspector on 14.7.1978. Thereafter, 10 years grade promotion was granted on 14.7.1988. Again he was granted 25 years grade promotion from 17.8.1992. He retired from service on 30.9.2000. The audit department raised an objection that grant of 25 years grade promotion with effect from 17.8.1992, even after two regular promotions and one grade promotion was not correct and it was ordered to be recovered from the D.C.R.G. Learned single Judge quashed Ext.P9 holding that refixation of pay of an employee not due to his mistake cannot be recovered after his retirement. This is challenged by the Government. According to the Special Government Pleader, 25 years grade promotion granted to the employee was not correct and any illegally paid amount by mistake can be recovered from the employee as made clear in Rule 3C of Part III of the Kerala Service Rules.

2. Both sides cited decisions in support of the respective contentions. In one set of decisions like *Jayasree v. State of Kerala* (2002 (3) KLT 803), *S.K. Saha and*

others Vs. Prem Prakash Agarwal and others, etc. it was held that excess payments made not due to the mistake of the employee during the tenure of service cannot be recovered later after his retirement. Whereas in P.H. Shamsuddhin Vs. State of Kerala and Others, and United India Insurance Co. Ltd. Vs. Roy, it was held that if excess payments are made, that can be recovered. Now, we will consider the correctness of Ext.P9. In Ext.P9, it is stated that the petitioner was illegally granted 25 years grade promotion because he was given two cadre promotions and again one grade promotion on 14.7.1988. Therefore, 25 years grade promotion cannot be granted with effect from 17.8.1992. Paragraph 2 of Ext.P9 reads as follows:

"He joined the department on 17.8.67 as Village Assistant, he was promoted to Village Officer cadre on 16.12.72, Revenue Inspector on 14.7.78 and 10 years grade on 14.7.1988. Even after giving 3 level promotions, he was granted 25 years grade promotion from 17.8.92 which he is not eligible for. This has resulted in payment of excess pay from 17.8.92 as the pay has been regulated."

In Writ Appeal also objection is only with regard to excess pay from 17.8.1992. But, in the operative portion of Ext.P9 it is noted that even the increments granted from 17.8.1988 has to be recovered. After making calculation, the excess pay stated to be calculated from 17.8.1988. The operative portion of Ext.P9 is as follows:

"From the above details it may be seen that the pay authorised to Sri. B.M. Gopala from 17.8.88 is in excess for what is actually due to him. Excess pay drawn from that date to the 6.12.99 i.e. up to the date of promotion to the cadre of Tahsildar, may be noted in the service book under proper attestation and service book forwarded to this office for further necessary action."

We make it clear that the benefits granted on 10 years grade promotion as on 14.7.1988 cannot be taken away. Grade promotion given to him on 17.8.1992 on completion of 25 years of service to avoid stagnation is not correct and consequent payment was made by mistake. Then the question is how far it is recovered. Now we will consider Rule 3. Rule 3C of Part III KSR reads as follows:

"3C. Notwithstanding anything contained in these Rules, recovery of excess payments made to an Officer by mistake within a period of four years before his retirement and which are detected within a period of four years after retirement may be made from his pension and other amounts due to him after retirement subject to the condition that such deduction if made from his pension shall be effected only in monthly instalments in whole rupees and that the amount of each instalment shall not exceed 10 per cent of the monthly pension admissible to him."

The above rule clearly states that recovery of excess payments made can be recovered if the excess payment was made four years prior to the date of retirement and it is detected within a period of four years after retirement. Here, the excess pay is for the period from 17.8.1992 to 6.12.1999, the date when he

got cadre promotion to Tahsildar.

He retired from service on 30.9.2000. So, the excess pay can be recovered only from 30.9.1996. So, Ext.P9 is set aside. Recovery of excess pay due to grant of grade promotion on 17.8.1992 can be effected only for the period from 30.9.1996 to 6.12.1999 subject to other conditions. Balance amount of DCRG and other pensionary benefits should be paid to him immediately.

The Writ Appeal is disposed of as above.