

(1982) 03 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 4125 of 1977-G

Rajappan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-03-1982

Acts Referred:

Citation : (1982) 03 KL CK 0024

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; R. Bhaskaran, J

Bench : Division Bench

Advocate : M. Ramachandran, for the Appellant; Government Pleader, for the Respondent

Judgement

Subramonian Poti, A.C.J.

1. It quite often happens that a Government Servant does not get his due promotion on the date he ought to have got it, but later it is given to him with retrospective effect from an earlier date. 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. This is a principle stated-by our learned brother Khalid, (J.) in *Narayana Menon v. State of Kerala* 1978 KLT 29, a principle concerning which we could not see how any exception could be taken. Since the question has been elaborately considered by our learned brother with which we are in respectful agreement we do not think we should go into this any further.

2. In the case before us 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. 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. It may be that such delayed promotion was not on account of any fault of the Government, but on account of conduct of the party himself. But in the normal run of cases where no such conduct can be attributed to the person who has the lost benefit of his appointment at the proper time when that is restored to him such restoration would be effective only if whatever would accompany that office would go to him. Otherwise it will only be a partial restoration resulting in loss to the person, a loss which he is not bound to bear. We therefore allow the Original Petition and direct that the Petitioner's pay be refixed in the grade of High School Assistant in accordance with Ext. P-5. This shall be done within six months from today.