
(2004) 09 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 30165 of 1999

Rajendran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-09-2004

Acts Referred:

Kerala Service Rules, 1958 — Rule 33

Citation : (2004) 3 KLT 533

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : K. Shrihari Rao and N. Shobha, for the Appellant; Nandakumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—The issue for consideration in this case is whether the provisional service rendered by Government employees and aided school teachers prior to 27.11.1979 is liable to be counted for the purpose of grade promotions. There is no dispute that the provisional service rendered by aided school teachers, between 27.11.1979 and 1.10.1994 can be counted as qualifying service for the purpose of grade promotions. Petitioner has to his credit provisional service from 3.9.1970 to 31.3.1971. As a matter of fact the petitioner was initially granted the Higher grades reckoning the said service. However, there was an audit objection in the year 1994. According to the objection, since the benefit was conferred only by Government Order G.O, (P) No. 1041/79/Fin. dated 27.11.1979, the provisional service rendered thereafter alone is liable to be counted for grade promotion.

2. Detailed instructions on the implementation of the benefit of time bound Higher grade were issued as per Government Order G.O.(P) No. 1041/79/(142)/Fin. dated 27.11.1979. Paragraph 2 to the extent relevant for the purpose of this case reads as follows: -

"2. The Government, after ascertaining the views of the Service Organisations and after considering all the relevant factors, are pleased to issue the following instructions for the implementation of the orders contained in the G.Os. read above:

(i) The term "entry grade" shall be defined as the grade or category of post to which an employee is initially appointed in Government Service by direct recruitment, by the competent authority.

(ii) The service put in in the entry grade or post which will count for normal increments in that grade (scale of pay) shall be treated as qualifying service for purposes of computing the 13 years" period for granting the Higher grade. Provisional service also will be reckoned as qualifying service for the purpose of this rule, subject to the restrictions mentioned in Government Decision No. 2 under Rule 33 of K.S.R., Part I."

Subsequently as per G.O. (P) No. 517/88/(234)/Fin. dated 8.8.1988 it was clarified as follows: -

"It is also clarified that in the case of teachers also the provisional service will be reckoned as qualifying service for the purpose of time bound promotions subject to the restrictions mentioned in Government Decision No. 2 under Rule 33 of K.S.R., Part I.

These orders will have effect from 27.11.1979."

3. By Circular No. 3/95/(35)/Fin. dated 1.3.1995 it was clarified that the benefit of counting of provisional service for the purpose of increments and grades will not be available with effect from 1.10.1994. By Circular No. 52373/J2/98/G. Edn. dated 6.3.1998 of the General Education Department it was clarified that provisional service including broken periods on regular appointment will be counted as qualifying service for grade promotions in the case of teaching and non-teaching staff of aided schools also with effect from 27.11.1979. It was also clarified that such benefits will not be available to those aided school staff who get regular appointment with or without break on or after 1.10.1994 or whose provisional service got regularised with effect from 1.10.1994 or thereafter. To the extent relevant the circular reads as follows:-

"3. Based on the above orders and Circular instructions Government wish to further clarify that like the Government School Staff, teaching and non-teaching staff of Aided Schools are eligible for reckoning this provisional service including broken periods on regular appointment as qualifying service for grade promotions from 27.11.1979 onwards, provided the said service is eligible to be reckoned for increment and that provisional service including broken periods on regular appointment will be reckoned as qualifying service for grade promotions eventhough such services could not be reckoned for increments owing to change of scale of pay due to pay revision with effect from 6.6.1989. The above benefits will not be available to those Aided School teaching and non-teaching staff who

get regular appointment with or without break on or after 1.10.1994 or whose provisional service get regularised with effect from 1.10.1994."

4. As far as the issue of counting the provisional service prior to 1.10.1994 but not followed by regular appointment or regularisation before 1.10.1994 this Court has already held that such classification is unreasonable since that does not have the nexus to the object sought to be achieved. The object sought to be achieved is the conferment of the benefit of provisional service rendered prior to 1.10.1994. Therefore, there is no justification in denying the benefit on the ground that the same was not followed by regular appointment or regularisation prior to 1.10.1994. (See the decision reported in Sobhana K. and Others Vs. State of Kerala and Others, .

5. The crucial issue is as to the benefit of provisional service rendered prior to 27.11.1979. It is true that the benefit of counting of provisional service for the purpose of grade promotion was introduced for the first time as per Government Order dated 27.11.1979. That is the order by which time-bound Higher grade also was introduced. It is not stated in the said Government Order that the benefit of time-bound Higher grade will be conferred only in respect of service rendered after the Government Order. Likewise it is also not stated in the Government Order that the benefit of provisional service rendered after 27.11.1979 alone will be counted for the purpose of Higher grade. The Government only introduced certain new benefits, the benefits of time-bound Higher grade for those who completed 13 years would take in the provisional service rendered by the concerned employee. It is to be noted that while introducing the benefit of time-bound Higher grade the Government only clarified that provisional service also will be reckoned as qualifying service. Like the service in the entry grade, the provisional service was also not limited to a particular period. In the Government Order dated 8.8.1988 also what is stated among other things, is that the benefit of the Government Order dated 27.11.1979 will be extended to teachers also. In other words by the order dated 8.8.1988 it was clarified that teachers will be eligible to count the provisional service for the purpose of Higher grade. There is no order or clarification to the effect that the benefit of provisional service rendered prior to 27.11.1979 will not be reckoned for the purpose of Higher grade. For that matter even in the Circular issued in the General Education Department dated 6.3.1998 there is no mention that the provisional service prior to 27.11.1979 will not be counted for the purpose of Higher grade. What is clarified is only to the effect that the order has come into effect only on 27.11.1979. Thus it is clear that the intention of the Government is to grant the benefit of provisional service to the teaching and non-teaching staff both in the Government as well as aided sector for the purpose of time-bound Higher grade. There is no stipulation that the provisional service should be one rendered after 27.11.1979.

I quash the impugned orders. There will be a direction to the concerned controlling authority to count the provisional service rendered by the petitioner

prior to 27.11.1979 for the purpose of time-bound Higher grade. The needful shall be done within a period of three months from the date of production of a copy of the judgment.

The Writ Petition is allowed as above.