(2014) 08 KL CK 0213

In the High Court Of Kerala

Case No : WP(C). No. 3533 of 2014(N)

Rosamma A.V. APPELLANT

Vs

The University of Calicut RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0213

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : N. Anand, Advocate for the Appellant; Santhosh Mathew, SC, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a person who retired from the services of the 1st respondent University on 31.3.2010. At the time of retirement, she was holding the post of Assistant (Selection Grade). The service particulars of the petitioner, as narrated in the writ petition, would disclose that she was initially appointed as a Counter-cum-packer under the 1st respondent University on 26.5.1979. Thereafter, pursuant to a bifurcation of the said post, she was designated as Counter with effect from 18.6.1979. She was later granted revised pay in the said post with effect from 21.6.1979. Thereafter, she was appointed as a Clerical Assistant on 5.4.1986. She was later promoted as Assistant Grade-II with effect from 9.4.1991. She then obtained grade promotions in the post of Assistant and accordingly attained the First grade, Senior grade and Selection grade, on 25.6.2002, 20.7.2002 and 23.9.2006 respectively. As already noted, she was an Assistant in the Selection Grade when she retired from services on 31.3.2010.

2. The grievance of the petitioner in the writ petition is with regard to the sanctioning of pensionary benefits that are due to her on account of the services rendered under the 1st respondent University. While at the time of retirement, a portion of the pensionary benefits were withheld on account of Annexure R1(a) audit objection received by the 1st respondent University, the said audit

objection was subsequently waived by the respondent University considering the fact that the audit objection pertained to events that had taken place almost 30 years ago. It was under these circumstances that Ext. P7 order came to be passed by the 1st respondent University granting sanction for the payment of the entire revised pension, without withholding any amount in respect of the audit objection that was raised against the petitioner. The petitioner accordingly received the entire benefits that were due to her as per her entitlement.

3. Based on the recommendations of the IXth Pay Commission, the pay applicable to the petitioner was revised to the scale of Rs. 16980-31360 with effect from 1.7.2009 by Ext. P9 order. The effect of Ext. P9 order on the arrears of pay and pension due to the petitioner was that she stood entitled to additional amounts from the respondent University. When the proposal in Ext. P9 was sent to the Government, the Joint Director of Local Fund Audit (JDLFA), the additional 3rd respondent herein, noted objections to the payment of the differential amounts, consequent to Ext. P9, to the petitioner. It was pointed out by the said respondent, placing reliance on the same objections as were earlier noted by him and which were subsequently waived by the respondent University, that certain amounts had to be withheld from the payments to be made to the petitioner. Acting on the objections noted by the additional 3rd respondent, the respondent University proceeded to issue Ext. P10 order wherein, while sanctioning the revised pensionary benefits to the petitioner pursuant to the recommendations of the IXth Pay Commission, it was noted that the amount covered by the audit objection was being withheld. The said amount comprised of Rs. 40,057/- towards the earlier audit objection and Rs. 72,427/- towards the benefits of the revised pay revision as applicable to the former sum. Thus, a total amount of Rs. 1,12,484/- was deducted from the payments that were made to the petitioner towards revised pensionary benefits. It is this action of the respondent University that is impugned by the petitioner in the present writ petition.

4. In the counter affidavit filed by the respondent University, the University takes the stand that while it had earlier waived the audit objection noted by the additional 3rd respondent, the present action was pursuant to a fresh audit objection that was brought to its notice by the additional 3rd respondent. It is stated that the State Government had, through specific letters circulated to the respondent University, indicated that it would view actions by the Universities, in disregarding audit objections, seriously and that the University had to ensure that there would be no overlooking of audit objections brought to its notice. It was under these circumstances that when the objections were pointed out by the additional 3rd respondent, the respondent University was compelled to take heed of it and issue Ext. P10 order withholding amounts that were otherwise due to the petitioner.

5. I have heard Adv. Sri. N. Anand, learned counsel appearing on behalf of the petitioner and also Adv. Sri. Santhosh Mathew, Standing counsel appearing on behalf of the respondent University.

6. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that the writ petition must succeed. As already noted, this is a case where the audit objection against the grant of pensionary benefits to the petitioner, when raised for the first time when the petitioner retired from service in 2010, was considered by the respondent University and a decision taken to waive the audit objection. It was consequent to the said decision of the University that Ext. P7 order came to be passed whereby the petitioner received the entire pensionary benefits that were due to her in 2010. It is significant to note that the said decision of the University has not been reviewed or varied through any subsequent order. It is also relevant to note that there has been no objection raised by the additional 3rd respondent or the Government to Ext. P7 order of the University. Under these circumstances, the objection raised by the additional 3rd respondent at the time of sanctioning of revised pensionary benefits consequent to the recommendations of the IXth Pay Commission, being essentially the same as that which was earlier raised in 2009 and which had been expressly waived by the respondent University, cannot, in my opinion, be a reason to withhold payments that are otherwise due to the petitioner. Having already exercised its discretion, in the matter of waiver of the audit objection pertaining to the petitioner, it would be unfair on the part of the respondent University to be a different line in this case based solely on letters received from the State Government which, in my opinion, do not have any application to the particular facts of this case. The letters of the State Government, as noted in Annexure R1(e) order produced by the respondent University, clearly apply only in respect of audit objections that were pointed out to the respondent University subsequent to 2012, the year in which those letters were issued. It cannot, at any rate, apply to cases where the University had consciously taken a decision to waive audit objections. It needs to be noted that, in the ultimate analysis, the decision to cause proper accounts to be maintained relating to the funds of the University and to review the Government teachers salary, is one that has to be taken by the Syndicate of the respondent University in accordance with the powers and duties delegated to it under Chapter 6 of the Calicut University First Statutes, 1977. Viewed from this angle also, Ext. P10 order of the respondent University, to the extent it withholds amounts that are due by citing an audit objection which was already waived by them, cannot be legally sustained. Resultantly, I quash Ext. P10 order to the extent it withholds amounts from the revised pensionary benefits that are payable to the petitioner. The respondent University shall take immediate steps to release the withheld amounts to the petitioner, at any rate within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed as above.