**(1995) 07 KL CK 0040**

**In the High Court Of Kerala**

**Case No :** O.P. No. 8446 of 1993

S. Krishnanunni APPELLANT

Vs

State of Kerala RESPONDENT

**Date of Decision :** 27-07-1995

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (1995) 07 KL CK 0040

**Hon'ble Judges :** K. Narayana Kurup, J

**Bench :** Single Bench

**Advocate :** O. Ramachandran Nambiar, for the Appellant; V.K. Mohammed Youseff ), for the Respondent

**Final Decision :** Allowed

## Judgement

K. Narayana Kurup, J.—Petitioner is a senior Selection Grade District Judge belonging to the Kerala State Higher Judicial Service. As per Ext.P1 proceedings issued by the High Court of Kerala the petitioner, who was working as Forest Tribunal at Palakkad was posted as Director of Training in the High Court of Kerala and pursuant to Ext. P1 the petitioner joined as Director of Training. As per Ext.P2 order issued by the first respondent the petitioner was sanctioned a Special Pay at the rate of 10% of his Basic Pay from 22.12.1989 until he quits office. Following Ext. P2, the third respondent. Accountant General issued pay slip to the petitioner and the petitioner has been receiving the Special Pay as ordered in Ext.P2. However, according to the petitioner, the third respondent Accountant General omitted to include the Special Pay for the salary commencing from 1.7.1992 as is borne out by Ext.P3. The petitioner thereupon addressed Ext.P4 representation to the third respondent Accountant General requesting him to issue a revised pay slip by including the Special Pay. On receipt of Ext.P4, the third respondent in turn addressed Ext. P5 communication to the second respondent Commissioner & Secretary to Government, Home (C) Department seeking clarification as to whether the petitioner is eligible for Special Pay in relaxation of the existing "economy orders". The petitioner had also in the meantime addressed Ext.P6 communication to the fifth respondent, Registrar, High Court of Kerala requesting him to take the matter with the Accountant General and if necessary with the Government and restore the benefit denied to him. On receipt of Ext.P6 the fifth respondent addressed Ext.P7 letter to the second respondent requesting the latter to issue necessary directions to the third respondent Accountant General to restore payment of Special Pay to the petitioner. As per Ext.P8 letter addressed by the second respondent to the fifth respondent it is stated that the petitioner is not eligible for the Special Pay during the financial year in view of the Government''s critical ways and means position. Ext.P9 is an order passed by the first respondent State regarding enforcement of economy measures. Ext. P10 is an order passed by the first respondent wherein Special Pay of Rs. 500/- is seen granted to the Secretary to Kerala Public Men''s Corruption (Investigations and Inquiries) Commission. The prayer in the Original Petition is for the issuance of a writ of certiorari to quash Ext. P8 order passed by the second respondent and for the issuance of a writ of mandamus directing respondents 1, 2 and 4 to pay Special Pay to the petitioner at the rate mentioned in Ext.P2 order from 1.3.1992 onwards and directing the third respondent to issue pay slips to the petitioner in accordance with Ext. P2 order and for other incidental reliefs.

2. Having heard learned counsel for the petitioner and learned counsel appearing for the respondents, I do not find any reason why the request of the petitioner shall not be granted. Admittedly, the petitioner was appointed as Director of Training by Ext.P1 order of the High Court of Kerala and as per Ext. P2 order of the Government he is entitled to a Special Pay at the rate of 10% of his basic pay from 22.12.1989 until he quits office. Pursuant to Ext.P2 the petitioner, in fact, received Special Pay until it was abruptly stopped as per Ext.P3. The question, therefore, is whether the petitioner is eligible to the grant of special pay as has been ordered as per Ext.P2 proceedings of the Government. No doubt, the counter affidavit filed on behalf of the second respondent states that the Government had decided to observe the Financial Year 1992-93 as Economy year vide G.O.(P) No. 366/92/Fin. dt. 15.4.1992, and deputation allowance was one of the items banned by Government vide item (V) of the G.O dated 15.4.1992 and therefore the Accountant General has disallowed the Special Pay/deputation allowance to the petitioner. Going by the above statement, it becomes clear that what is being relied on by the Government in justification of withholding of Special Pay is G.O.(P) No. 366/92/Fin. dt. 15.4.1992, which is nothing but Ext. P9. It is seen that the Government have decided to observe the financial year 1992-93 as the ''Economy year'' and the following economy measures were enforced during the economy year: (v) No deputation allowance will be paid to Government servants on deputation.

So, what is being withheld is the payment of deputation allowance to Government servants on deputation. The question therefore, is whether the payment received by the petitioner as per Ext.P2 order of the Government is deputation allowance or special pay. The Government have a case that what is granted to the petitioner is the deputation allowance and in view of Ext.P9 they are justified in withholding the allowance. I do not think that the stand taken by the Government can be legally sustained. The definite case of the petitioner in Ext.P6 is that the Special Pay that was being paid to the petitioner was in lieu of the arduous nature of the work to be discharged by him in his capacity as the Director of Training. This is not disputed by the respondent. The nature of the work to be performed by the petitioner as Director of Training is entirely different from the nature of work done as a District Judge. As Director of Training the petitioner has to arrange training programme and to prepare lecture notes involving lot of academic work. Moreover, as Director of Training the petitioner has per force to work beyond office hours. Most often the day starts at 8.30 a.m. and ends at 6.30 p.m. during the training period. Therefore, I have no doubt in my mind that these factors might have weighed with the Government while passing Ext.P2 order granting Special Pay to the petitioner. Further guidance in this regard can be had from the definition of ''Special Pay'' occurring in Part I Rule 12 Clause 31 of the K.S.R. wherein ''Special Pay'' is defined as meaning an addition of the nature of pay to the emoluments of a post or of an office granted in consideration of the following:

(a) Where a post would call for a higher scale of pay in view of the additional and or higher responsibilities attached to it; or

(b) where the nature of work is specially arduous; or

(c) where an officer has to attend to work in addition to normal duties attached to his post

The Government have no case that what is being denied as a austerity measure is special pay. Their definite case is that what is being denied is deputation allowance and Ext. P9 relied on by the Government only shows that what is being denied is deputation allowance and not special pay. At any rate, no order has been brought to my notice under which the Government have taken a decision banning payment of Special Pay. All that could be seen from Ext.P9 G.O. is that the Government had decided to observe the financial year 1992-93 as the "Economy Year" and as a economy measure no deputation allowance will be paid to Government servants on deputation. But then, the question is whether deputation allowance and special pay are one and the same thing. I do not think so. In my view Special Pay cannot be equated with deputation allowance. In legal parlance special pay and deputation allowance have altogether different connotations. Whereas special pay can be granted for the arduous nature of the work done even while working the parent post, deputation allowance can be claimed only on being sent on a foreign service, in which case the officer receives his pay with sanction of government from any source other than the consolidated fund of India or of a State. Here, the petitioner is not on foreign service and he receives his pay out of the consolidated fund of the State. So, consideration germane to foreign service - deputation allowance including - are not attracted to the case of the petitioner. That apart, as already noted, what has been denied as per Ext. P9 is deputation allowance and by denying deputation allowance the petitioner could not be denied his special pay which is benefit attached to the post in contrast to deputation allowance which is a attached to the person. Therefore, I am inclined to take the view that the stand taken by the Government in the counter affidavit as noted above based on Ext.P9 order will be of no help to them in sustaining Ext.P8.

The petitioner has a further case that persons similarly situated have been granted Special Pay as is borne out by Ext. P10. I do not think that the work done by the petitioner is of a less arduous nature than the work performed by the incumbent of the post to whom Special Pay has been granted as per Ext.P10. Viewed in the above light, I am of the view that the action of the Government in denying Special Pay to the petitioner while granting the same to another individual similarly placed as borne out by Ext.P10 is discriminatory and violative of Article 14 of the Constitution of India. At any rate, the Government has no case that they have issued proper Government order taking away the right of Special Pay conferred on the petitioner by Ext.P2 G.O. In this connection, it has to be remembered that Ext.P8 is only a letter addressed by the Commissioner and Secretary to Government to the Registrar of the High Court of Kerala informing that the petitioner is not eligible for special pay during the financial year. Ext.P8 being only in the nature of a letter cannot take away what has been granted to the petitioner by Ext.P2 which is a Govt. Order. For all these reasons I am of the view that the impugned order Ext. P8 cannot be sustained. I, therefore, quash Ext. P8 and direct respondents 1, 2 and 4 to pay Special Pay to the petitioner at the rate mentioned in Ext.P2 order from 1.3.1992 onwards. There will be a further direction to the third respondent to issue pay slips to the petitioner in accordance with Ext. P2 order. It shall be done as expeditiously as possible, at any rate, within three months from today.

Original Petition is allowed as above.

 