
(2014) 06 KL CK 0135
In the High Court Of Kerala
Case No : Writ Appeal No. 223 of 2010

Secretary to Government

APPELLANT

Vs

Surendran

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Constitution of India, 1950 — Article 320(3)(b)

Citation : (2014) 3 KLT 115

Hon'ble Judges : Antony Dominic, J; Alexander Thomas, J

Bench : Division Bench

Advocate : S. Jamal), Advocate for the Appellant; P.C. Sasidharan, Advocate for the Respondent

Judgement

Antony Dominic, J.—The short question raised before us in this appeal is whether the learned Single Judge was justified in upholding the claim of respondents 1 and 2 that they are entitled to the first time bound higher grade in the scale of pay of Rs. 2060-3200/-, applicable to the post of Chief Photographer in the Photographic Bureau of Police Department. Facts of the case are that respondents 1 and 2 were Police Photographers, who had entered service on 12.8.1995 and 19.8.1995 respectively. In Ext. P1 Pay Revision Order, the first higher grade was sanctioned to Government employees on completion of 10 years of service in the entry post. However, in Ext. P2 order it was also provided thus:

"(vii) If there is a promotion post in respect of the categories of posts (entry) coming under pay range from Rs. 775-1065 to 1640-2900 and its scale of pay is higher than the time bound grade proposed above, then the qualified incumbent will be given the scale of pay of the promotion post in the direct line of promotion as time bound higher grade. While assigning higher grades, only qualified hands i.e., those possessing the qualifications prescribed for the promotion post, will get the scales of pay of regular promotion posts. Unqualified hands will be allowed the next higher scale of pay above that of the scale of pay of the post

held at that time, in the standard scales of pay."

2. According to the respondents, promotions were being effected from among photographers to the post of Chief Photographer and they have produced Exts. P13, P14 and P15 orders to substantiate this contention. They, therefore, contended that, in view of clause (vii) of the Pay Revision Order referred to above, they are eligible for the scale of pay to the higher post of Chief Photographer. Although the appellants contended that the post of Chief Photographer is not a promotion post for photographers, and that appointments are made "by-transfer" rendering respondents 1 and 2 ineligible for the benefit claimed, in the judgment under appeal, the learned Single Judge held that this is a fit case for considering the post of Chief Photographer as a promotion post for photographers for the purpose of grant of higher grade. On that basis, the learned Judge directed that respondents be granted the scale of pay to the post of Chief photographer. This judgment is under challenge before us.

3. We heard the learned Sr. Government Pleader appearing for the appellants and also the learned counsel appearing for respondents.

4. According to the learned Sr. Government Pleader, clause (vii) of the Pay Revision Order relied on by the respondents, is applicable only in the case of a promotion post in the direct line of promotion. He contended that going by the Special Rules in respect of the post of Chief Photographer in the Police Department 1992, the method of appointment to the post of Chief Photographer is "by-transfer" from the category of photographers in the Photographic Bureau of the Police Department. On this basis, he contended that since the Chief Photographer's post is not a promotion post, Photographers are not eligible to claim fixation in the scale of pay prescribed for the post of Chief Photographer, relying on clause (vii) extracted above.

5. On the other hand, learned counsel appearing for respondents 1 and 2 referred to the provisions of the General Rules of K.S. & S.S.R. and contended that in the rules the words "promotion" and "transfer" are used interchangeably and that the appellants themselves have treated the post of Chief Photographer as a promotion post to photographers. Counsel referred us to Exts. P13, 14 and 15 in this context. On this basis, he contended that in effect and substance Chief Photographer is a promotion post and that therefore the respondents were justified in claiming the benefit of clause (vii) of the Pay Revision Order.

6. We have considered the submissions made at the Bar. We have already referred to clause (vii) of Pay Revision Order, which has been produced as Ext. P2 in the Writ Petition. Reading of this provision shows that this provision will be applicable only in cases where promotion posts are available in the direct line of promotion and in such a case, Government servant, who is qualified for the promotion post and has completed 10 years service in the entry cadre, will be eligible for fixation in the scale of pay of the promotion post as time bound higher grade.

7. Admittedly, the post of Photographers in the Photographic Bureau of Police Department are posts coming within the subordinate service and are not having any promotional avenues. In so far as the post of Chief Photographer is concerned, that post is governed by the Special Rules in respect of the post of Chief Photographer in the Police Department 1992. R.3 of the Rules prescribing the method of appointment reads thus:

"Method of appointment:- Appointment to the post shall be made by the method specified below:--

a. By transfer from the category of Photographers in the Photographic Bureau of the Police Department.

b. In the absence of suitable hands for appointment by transfer under item (1) above, by direct recruitment."

8. From the rule it is clear that the post of Chief Photographer is not a promotion post for Photographers and appointment to the post of Chief Photographer is made "by-transfer" from the category of Photographers.

9. The contention that promotion and by-transfer appointment are in substance one and the same, cannot be accepted. The expressions "promotions" and "recruitment by transfer" are defined in R. 2(11) and (13) of Part I K.S. & S.S.R. as follows:

"(11) "Promotion" means the appointment of a member of any category or grade of a service or a class of service to a higher category or grade of such service or class.

(13) A candidate is said to be "recruited by transfer" to a service -

(i) if his appointment to the service is in accordance with the orders issued or rules prescribed for recruitment by transfer to the service; and

(ii) if at the time of his first appointment thereto -

(a) he is either a full member or an approved probationer in any other service, the rules for which prescribe a period of probation for members thereof:

Provided that where the Special Rules for a service provide for recruitment by transfer to any class or category thereof from any specified class or category of another service, a candidate shall, unless the recruitment is made from a post carrying an identical scale of pay, be a full member or an approved probationer in the class or category so specified: or

(b) he is the holder of a post in any other service for which no probation has been prescribed, and has put in satisfactory service in that post for a period of two years on duty within a continuous period of three years.

A reading of the above shows that promotion is an appointment of a member of any category or grade of a service or a class of service to a higher category or

grade in such service or class. It was therefore, that in Tarsem Singh and Another Vs. State of Punjab and Others, the Apex Court held that promotion as understood under the service law jurisprudence means advancement in rank, grade or both and that promotion is always a step towards advancement to higher position, grade or honour.

10. However, if R. 2(13) which defines "recruitment by transfer" is examined, it can be seen that appointment made by that method is to another service. It is also evident that such appointment by transfer can be to an equivalent post or to a higher post or grade, which is always outside the service. Therefore, as contended by the counsel for the respondents, even if the words "promotion" and "transfer" are used interchangeably in the context of R. 5, in so far as R. 2(11) and (13) are concerned, these two expressions stand on different footing and carry different meanings. In this context, we should also make reference to Art. 320(3)(b) of the Constitution of India, providing for the functions of the Public Service Commission which also makes a distinction between recruitment, promotions and transfers. Meaning of the expressions being as above, even though the word used in Exts. P13, P14 and P15 is promotion, that cannot in any manner improve the case of the respondents. Appreciated in the above background, in so far as this case is concerned, we will have to necessarily accept the contention of the appellants that since the post of Chief Photographer is not a promotion post in the direct line of promotion to the Photographers in the Photographic Bureau of the Police Department, the respondents could not have validly claimed time bound higher grade as contemplated in Ext. P2 order in the scale of pay to the post of Chief Photographer.

For the aforesaid reasons, we are unable to sustain the judgment of the learned Single Judge. Judgment of the learned Single Judge is set aside and the appeal is allowed as above.