

(2004) 08 KL CK 0036

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 10025 and 23971 of 2004

Sobhana K. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Citation : (2004) 2 KLJ 546 : (2004) 3 KLT 131

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; Nandakumar (GP), for the Respondent

Judgement

Kurian Joseph, J.—Counting of provisional service for the purpose of increment has always been a subject matter of head ache not only to the Government, but this court also. In view of the decisions in Hussain v. Kerala Water Authority, 1996 (2) KLT 555 and Jose Jacob v. State of Kerala, 1998(2) KLT 873, it is now well settled that provisional service prior to 1-10-1994 followed by regularisation or regular appointment with or without break in the same category of posts is liable to be counted for the purpose of increments and that by the revision of pay scale, the identity of the post and its scale of pay will not be lost. There remains still a question to be tackled - whether the regularisation of provisional service or regular appointment followed by the provisional service should be before 1-10-1994. Petitioners in the two cases are Junior Public Health Nurses. They have provisional service prior to 1-10-1994. But they entered regular service in the same post only after 1-10-1994. They are aggrieved since their provisional service prior to 1-10-1994 is not counted for the purpose of increments.

2. Rule 33 Part I Kerala Service Rules deals with the conditions on which service counts for increments in a time scale. Government decision No. 2 as it originally existed in the Rules reads as follows:-

Provisional service on regularisation with or without break in the same category

of post will be treated as officiating service ab initio for the limited purpose of granting of increments. Provisional service followed by a regular appointment with or without break in the same category of posts will also be treated as officiating service ab initio for the limited purpose of granting of increments.

The terms "same category" of post for the purpose denotes posts satisfying the following conditions:-

- (i) The posts should carry the same or identical scale of pay,
- (ii) The qualification and method of appointment should be the same.

The above decision shall be deemed to have come into force with effect from 1st November, 1956 but the monetary benefit thereof will be admissible only with effect from 24th July, 1967.

This decision was deleted with effect from 1-10-1994 as per Government order G.O.(P) 540/94/Fin. dated 30-09-1994. There is no dispute that all provisional service prior to 1-10-1994 regularisation with or without break in the same category of post or provisional service followed by regular appointment with or without break in the same category of post upto 1-10-1994 is liable to be counted for the purpose of increment. The question is whether for the purpose of counting the provisional service prior to 1-10-1994 should the regularisation thereof be prior to 1-10-1994 and whether the regular appointment followed by the provisional service with or without break be before 1-10-1994. On a close reading of the Government decision it is fairly clear that what the Government actually intended is to confer the benefit of provisional service rendered prior to 1-10-1994. Its regularisation may take years since generally the Government acts only slowly and many a time only on compulsion. Similarly regular appointment after provisional service in the same post might also take years and it depends on various factors. This benefit is discontinued only on 1-10-1994. Since the intention of the Government is to confer the benefit of the provisional service prior to 1-10-1994 to the employees who are regularised with or without break in the same category of posts and who got regular appointment in the same category of posts, it is immaterial as to when the regularisation is made or as to when the regular appointment is given. Therefore, it is declared that in the case of employees governed by the KSR, provisional service on regularisation with or without break in the same category of posts or provisional service followed by regular appointment with or without break in the same category of posts shall be granted the benefit of increment ignoring the fact that the regularisation or regular appointment is only after 1-10-1994. There will be a direction to the respondents to reconsider the case of the petitioners in the light of the declaration and issue orders afresh. This shall be done within a period of three months from the date of production of a copy of the judgment.

The writ petition is disposed of as above.