
(1997) 02 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No's. 7346, 7474, 8138 and 9864 of 1993

Somukuttan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Citation : (1997) 02 KL CK 0005

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : C.P. Sudhakara Prasad and Elvin Peter, for the Appellant; P.V. Asha, for the Respondent

Judgement

C.S. Rajan, J.—Petitioners in these Original Petitions are retired District Educational Officers. While working as High School Assistants, they were promoted as Assistant Educational Officers (A.E.O.) By G.O.(P) No. 57/80/G. Edn., dated 22nd May 1980, the post of A.E.O. was upgraded and the scale of pay was made equivalent to that of Headmaster. Consequently, the Petitioners were reverted as High School Assistants. Some of the persons affected by the above reversion filed Original Petitions before this Court. Finally the matter was taken up before the Supreme Court. The Supreme Court declared that the reversions were illegal. The above decision is reported in C.C. Padmanabhan and Others Vs. Director of Public Instructions and Others, . The operative portion of the above decision reads as follows:

In the result all the five appeals succeeded and are accepted. The impugned judgment is set aside and the orders "transferring" the Appellants from the post of A.E.Qs. to those of H.S.As. are quashed. As a necessary consequence if any of the Appellants had to relinquish charge of the post of A.E.O. in compliance with such orders, he shall be deemed to have continued to hold the post of an A.E.O. (inspite of and right from the date of the order of his transfer as H.S.A.) and to be entitled to all the benefits pertaining to that post, and the Respondents are directed to repost him as A.E.O. as expeditiously as possible and within a month

from the date of this order at the latest.

2. Claiming the benefit of the above judgment other persons who were reverted filed appeals before the Supreme Court. Those appeals, C.A. Nos. 4191 to 4194 of 1983 also were allowed by the Supreme Court by judgment dated 11th January 1985. Again the Supreme Court had to clarify the decision referred to above in C.M.P. Nos. 35840-42/1985, 36618/1985, 5209/1986 and 46505-08/1985. In the order dated 22nd January 1987 the Supreme Court clarified the matter as follows:

The Petitioners and those who are similarly situated will be entitled to the benefit of this Court's judgments dated 30th July 1980 and 11th January 1985 and will be given posting as Assistant Educational Officer in the upgraded post. They will be entitled to consequential benefits. Intervention Applications are allowed. These Civil Miscellaneous Petitions are disposed of accordingly.

3. By way of implementation of the above judgments/Orders Government issued G.O.(Rt.) No. 1951/87/G.Edn., dated 4th July 1987. By the above order the Government granted the benefit of the judgments of the Supreme Court to 52 persons who approached the Supreme Court. Claiming similar benefits the present Petitioners filed O.P. No. 9053 of 1987 before this Court which resulted in Exhibit P-1 judgment. A Division Bench of this Court in Exhibit P-(sic) judgment held that orders passed by the Government refusing the benefits of the directions contained in the judgment of the Supreme Court could not be sustained. It was also made clear that the Petitioners are entitled to the benefits contained in the directions given by the Supreme Court. Thus, the Government was directed to consider afresh the case of the Petitioners and to pass appropriate orders implementing the directions contained in the judgment of the Supreme Court.

4. Against Exhibit P-1 judgment Special Leave petitions were filed before the Supreme Court which were dismissed. Even thereafter, the Government did not implement the directions contained in Exhibit P-1 judgment. Therefore, C.C.C. No. 91/1990 was filed before this Court. Pending decision of the above contempt of Court case Government issued Exhibit P-2 order dated 31st December 1990 giving promotions to the Petitioners and Ors. with effect from 22nd May 1980. The following are the directions issued in Exhibit P-2 order:

(i) Those who were working as A.E.Os. on 22nd May 1980 will be assigned Gazetted Cadre of A.E.O. in the scale of pay of Rs. 700-1270 with effect from 22nd May 1980 and they will be continued in the post.

(ii) 80 (eighty) supernumerary posts of A.E. Os. in the scale of pay of Rs. 700-1280 are created with effect from 22nd May 1980 to accommodate the eligible persons (list appended) till the date of their promotion as regular H.M./ A.E.O. or retirement or till they otherwise ceased to be in service.

(iii) The D.P.I, will give them postings to regular vacancies of Gazetted A.E.Os. as and when arise; and

(iv) The above persons will be given arrears of salary and fixation of pay with effect from 22nd May 1980. They will also be entitled to grade promotion on completion of 7 years as A.E.O./H.M.

5. Before the issuance of Exhibit P-2 order the Government had issued G.O.(P) No. 133/90/G. Edn., dated 26th June 1990 amending the special rules for the Government General Education Service by which the feeder categories were changed in order to deny the rights accrued to the A.E.Os. who were beneficiaries of the Supreme Court judgment. The above special rules were declared as unconstitutional in O.P. No. 7496 of 1990. The Petitioner in O.P. No. 7346 of 1993 also filed O.P. No. 6369 of 1991, the judgment of which is Ext. P-3. In the above judgment the Respondents were directed to review the Petitioner's promotion to the cadre of District Educational Officer (D.E.O.) and Deputy Director of Education (D.D.) in accordance with law.

6. Since the Respondents did not implement the directions contained in Exhibit P-3 judgment within the time stipulated therein, C.M.P. No. 14657 of 1992 was filed for extension of time. The extension of time was granted by this Court on the following lines:

In this petition, six months' time from 4th July 1992 is sought for, for complying with the judgment. I grant this prayer on condition that the additional monetary benefits, that will be found due to the Petitioner on the implementation of the judgment, will carry interest at the rate of 12 per cent per annum from 4th September 1992 till the date of actual payment. After paying the interest if the Government are so inclined, should take action against the officers who have delayed re-computation of the pensionary benefits of the Petitioner.

7. Thereafter, Exhibit P-4 order dated 17th September 1992 was issued in implementation of the above directions. By Exhibit P-4 order sanction was accorded for notional promotion of 146 A.E.Os. mentioned in the statement appended to the order to the cadre of D.E.O./D.D. with effect from the respective dates noted against each name. Thus, the Petitioner in O.P. No. 7346 of 1993 was promoted as D.E.O. with effect from 12th May 1987 and as D.D. with effect from 28th November 1988. Similarly, the other Petitioners were also given notional promotions. Some of the Petitioners have serious disputes with regard to their dates of promotions as D.D.

8. According to the Petitioners, they were entitled to get arrears of salary from the dates of their respective promotion as D.E.O. and D.D. But that was not granted as per Exhibit P-4. Therefore, they filed representations before the Government claiming the arrears of salary on account of their notional promotions. Considering the above representations Exhibit P-6 (O.P. No. 7346 of 1993) was passed informing the Petitioner that he was not eligible for arrears of pay or other monetary benefits and the notional promotions would enure only for pensionary benefits. As against the Petitioner in O.P. No. 7346 of 1993 certain liabilities also have been fixed which were ordered to be recovered from his

pensionary benefits. In all these Original Petitions the main prayer is for a direction to the Respondents to pay arrears of salary due to the Petitioners on account of their notional promotions as D.E.O. and D.D. with interest.

9. Shri Elvin Peter, learned Counsel for the Petitioners argued forcefully by citing various decisions of this Court and of the Supreme Court in support of the contentions of the Petitioners for arrears of salary on account of their notional promotions. I am not referring to all these decisions because in a very well considered judgment by Justice Paripoornan (as he then was) reported in *Sivarajan v. State of Kerala* 1993 (2) KLT 287 considered this matter in extenso. The claim of the Petitioner therein for arrears of salary was based on the following directions given by this Court:

6. While disposing of O.P. No. 1239 of 1981 (Ext. P-3) this Court, in the judgment dated 8th January 1987, concluded thus:

...Therefore, the Government is directed to give all the benefits to the Petitioner if he is found eligible for promotion on the basis of the principles incorporated in the order mentioned above (order dated 6th September 1980....).

The Division Bench considering the impact of the above direction held that the Petitioner is entitled to arrears of salary in the following lines:

Having found that the Petitioner is entitled to the benefits contemplated in the Government order dated 6th September 1980, we are of the view that the Government should have given all consequential promotions and fixation of pay due on that basis to the Petitioner. The imposition of a condition that the consequential promotions and fixation of pay will be reckoned only for back arrears of pension was not justified in the light of the clear direction in Ext. P-3 judgment of this Court. In this view, Ext. P-5 order of the Government as also Ext. P-6(a) to the extent they denied the Petitioner arrears of pay and allowances consequent on the notional promotion, are bad in law. Such benefits could not be limited in the manner it was done in Ext. P-5, viz. that the consequential promotions and fixation of pay will be reckoned only for back arrears of pension. Such a limitation imposed on the benefits which the Petitioner was found entitled to, is unauthorised and illegal. Ext. P-3 judgment should have been given effect to without any condition. We hold so. We are of the view that the learned Single Judge was in error in holding that since the Appellant had not discharged the duties attached to the post to which he was notionally promoted he is not entitled to claim the salary attached to those posts. With respect, we hold that the learned Single Judge was wrong in limiting the relief, which the Petitioner was entitled to. He was entitled to "all the benefits" as per Ext. P-3. The Respondents have no case that the Petitioner was not given his due promotion due to a bona fide mistake or error that happened due to the exigencies in administration and that the authorities acted honestly and fairly at all times.

Smt. P.V. Asha, the learned Government Pleader, was equally vehement to deny the arrears of salary to the Petitioners. According to the learned Government

Pleader, she is in good company with at least three Supreme Court rulings. In *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, the Supreme Court quoted the judgment of the Madhya Pradesh High Court from which the above appeal arose in the Supreme Court with approval as follows:

It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the Petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them.

The same question was considered by the Supreme Court in the ruling reported in *Telecommunication Engineering Service Association (India) and Another Vs. Union of India (UOI) and Another*,

5. On the second question whether Petitioners were entitled to the payment of arrears of pay and allowances from the respective dates of their promotion, the Tribunal took the view that the High Court and various Benches of the Tribunal do not appear to have considered the magnitude of the problem arising out of the large scale revision of seniority and promotions consequent thereto retrospectively. It took the view that the normal rule of giving back wages to the persons concerned will not apply to such cases or in such situations. While relying upon *Paluru Ramkrishnaiah v. Union of India* it noted the observations of this Court that it is a well settled rule that there has to be no pay for no work although after due consideration a person is given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. At the most he would be entitled to refixation of his present pay on the basis of notional seniority granted to him so that his present salary would not be less than those who are immediately below him. The Tribunal further noticed that as large-scale revision of seniority and consequent promotions with retrospective effect might be anticipated in the instant case, the aforesaid ruling of the Supreme Court would apply and the relief should be moulded accordingly.

The above principle was reiterated by the Supreme Court in the ruling reported in *State of Haryana and Others Vs. O.P. Gupta, etc.,* .

7. This Court in *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, at page 109] considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the

higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others*, in paragraph 16.

10. There cannot be any dispute with regard to the principles enunciated by the Supreme Court that a person was not entitled to any pay and allowances during the period for which he did not perform the duties of higher post, although he was given notional promotion. In such cases, it may be open for the Government to deny the claim of any financial benefit retrospectively. It always happens that seniority lists undergo periodical changes resulting in alteration of the dates of promotions in various categories. Consequent on such revision of seniority promotions also had to be reviewed. By virtue of such review, persons may get anterior dates. Sometimes, a wrong date of promotion given to a senior may undergo change to the date of promotion of his immediate junior. In such cases the retrospective promotions given to individuals may not carry with them the right to get arrears of salary. That is because he did not perform his duties in the higher posts but was given only a fictional promotion. These are the cases which were the subject-matter of the decisions referred to above. When a Court declares that a particular individual is entitled to get earlier date of promotion and such a promotion was unjustly denied to him, such retrospective promotion will definitely stand on an entirely different footing. Such a question came up before this Court in *Narayana Menon v. State of Kerala* 1978 KLT 29 wherein Justice Khalid (as he then was) stated the law thus:

...when a person entitled to a particular post on promotion has been reverted or whose service has been wrongly terminated for no fault of his but on account of the wrong committed by his employer, then he is entitled to the pecuniary benefit that he would have got had he continued in the post or promoted at the due time.

11. In view of these principles settled by the Courts let us analyse the facts of these cases. In *C.C. Padmanabhan and Others Vs. Director of Public Instructions and Others*, the Supreme Court held that the reversions of A.E.Os. are illegal. In the order dated 22nd January 1987 the Supreme Court declared that the Petitioners therein and those who are similarly situated would be entitled to the benefits of the Supreme Court judgments and would be given posting as A.E.Os. in the upgraded posts. They would be entitled to consequential benefits. The judgments/orders of the Supreme Court were considered by this Court in Ext. P-1 judgment. In Exhibit P-1 judgment this Court took the definite stand that the Supreme Court in unambiguous terms declared that the Supreme Court was not confining the benefit of the directions contained in the judgments to the parties to those judgments. This Court further held that merely because the Petitioners did not approach the Supreme Court it is not proper to take them to task or castigate them for not having litigated. Such an approach is uncivilised, irrational

and unjust. Finally, in Exhibit P-1 judgment the Government was directed to pass consequential orders implementing the directions contained in the judgment of the Supreme Court. Thereafter, by Exhibit P-4 order the Petitioners were given only notional promotions and not the consequential (monetary) benefits.

12. When the Supreme Court as well as this Court successively upheld the claims of the persons like the Petitioners who did not approach the Courts for the redressal of their grievances, there is absolutely no justification for the Government to deny all the consequential benefits as declared by the Supreme Court to the Petitioners. In the Government Order dated 4th July 1987 the benefits of Supreme Court ruling by way of payment of monetary benefits on account of the notional promotions were given to 52 persons who approached the Supreme Court. To confine the benefits only to those 52 persons is arbitrary and illegal. As held by the Supreme Court in a number of decisions in service matters the Government is bound to take a uniform view. When the Courts declared the law, the Government is bound to implement the same uniformly to all the officers concerned. To say that only persons who approached the Court would be given the benefits of the declaration of law is really discriminatory and arbitrary. It is also not conducive to the administrative efficiency to drive all the officers to Courts for redressal of their grievances when the law was already declared by the Courts.

13. Under these circumstances, I quash G.O.(Rt.) No. 3538/92/G1. Edn., dated 17th September 1992 (Ext. P-4 in O.P. 7346/1993) in so far it denies the monetary benefits to the Petitioners on account of their notional promotions as D.E.Os. and D.Ds. It is also made clear that if anybody has not approached this Court for the above relief, they also must be granted the relief by not taking the attitude that the benefit of this judgment is confined only to the Petitioners herein. The monetary benefits as declared by this Court must be worked out and paid to the Petitioners and Ors. who are similarly situated within three months from the date of receipt of a copy of this judgment.

14. With regard to the individual grievances of the Petitioners regarding their notional dates of promotion as either D.E.O. or D.D. they are directed to file representations before the appropriate authority pointing out the discrepancies. If such representations are filed within one month from the date of receipt of a copy of this judgment the same will be disposed of by the appropriate authorities within two months thereafter.

15. Exhibits P-6 to P-10 in O.P. No. 7346 of 1995 are also quashed. The Respondents are directed to fix the liability against the Petitioner in O.P. No. 7346 of 1993, if there is any such liability, in accordance with law.

With the above directions and observations the Original Petitions are disposed of.