

(2016) 04 KL CK 0023

In the High Court Of Kerala

Case No : W.A. No. 1656 of 2007 (A) in O.P. 24885/1998

State of Kerala and Others

APPELLANT

Vs

P.K. Kesavan and Others

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Citation : (2016) 2 KerLJ 351 : (2016) 2 KLT 100 : (2016) 2 LLN 702

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : Girija Gopal, Special Government Pleader, for the Appellant; U.P. Balakrishnan, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J.

1. This Writ Appeal has been filed by the State against the judgment and order of the learned Single Judge dated 14.02.2007 in O.P. No. 24885 of 1998. Learned Single Judge allowed the Original Petition filed by the petitioners. Aggrieved by the said judgment, the State has come up in appeal.

2. Brief facts of the case necessary for deciding the appeal are: Both the petitioners entered in service as trainee Police Constables in Armed Police Battalion on 01.08.1974. After training they were regularly appointed as Police Constables with effect from 01.06.1975. They were promoted as Hawildar on 20.04.1981. On their willingness they were reverted as Police Constables and transferred to District Armed Reserve on 07.06.1982 where they were promoted as Head Constables on 08.06.1982. On their written request petitioners were transferred to local police. They joined local police on 18.12.1991. From 18.12.1991 they were working as Police Constables but due to administrative delay, their pay was not regularised immediately and their pay was regularised on 31.10.1993 and certain excess amounts from 18.12.1991 to 31.12.1993 was recovered. Petitioners were granted 20 years higher grade from 01.06.1995 in

the scale of Assistant Sub Inspector. The 1st petitioner submitted a representation on 05.06.1996 praying that he may be granted 10 years and 20 years higher grade. The representation was rejected by letter dated 04.10.1996 of the Inspector General of Police, Ext. P11. The Inspector General of Police mentioned in his letter that 20 years higher grade has been sanctioned with effect from 01.06.1995. It was further mentioned that the period of service as Hawildar will be excluded from the grant of higher grade in the category of Police Constable. The 1st petitioner filed O.P. No. 20457 of 1997 in this Court. This Court directed the authority to consider the claim. By letter, Ext. P15 the representation submitted by the 1st petitioner was again rejected. Second petitioner was also sanctioned 20 years higher grade with effect from 01.06.1995. Both petitioners aggrieved by the action of the respondents have filed the Writ Petition praying for the following reliefs:

""i) issue a writ of certiorari, or other appropriate writ, order or direction calling for the records leading to Exts. P12, P13 and P15.

ii) declare that the petitioners are entitled to get 10 years time bound higher grade as they have completed 10 years as Police Constable and 20 years second time bound higher grade by reckoning their services as Police Constable and Head Constable together, as ordered in Exts. P2, P4 and P6.

iii) issue a writ of mandamus or other writ, order or direction commanding the respondents to grant the benefits as prayed for in the above prayer No. ii and also to restore the petitioners the amount of Rs. 4694 and Rs. 3000 respectively recovered from the petitioners" without any authority of law and to restore their salary in the post of Head Constable.

iv) issue such other writ order or direction which this Hon"ble Court deem fit to grant in the facts and circumstances of the case

v) award the cost of this Original Petition."

3. A counter affidavit was filed by the respondents pleading that petitioners were not entitled to 10 years higher grade since they had not completed 10 years service in the entry level on account of intermittent promotion as Hawildar and in view of the fact that total period the petitioners completed was 20 years hence they were granted 20 years higher grade. Learned Single Judge by judgment dated 14.02.2007 directed to recompute the higher grade promotion benefit of the petitioners treating them as continuing Police Constables in the Armed Forces Battalion ever since their appointment and taking into account their entire service in all the three departments. It is useful to quote the direction:

"Accordingly, the same are hereby quashed. There would be a consequent direction to the respondents to re-compute the higher grade promotion benefits of the petitioners treating them as continuing as Police Constables ever since their appointment in Armed Police Battalion and taking into account the entire service put in by them in all the three departments. Accordingly, the service

benefits arising therefrom arising therefrom in the matter of granting higher grades shall be recomputed and arrears given to them. This process shall be completed within a period of two months from the date of receipt of a copy of this judgment."

4. The State aggrieved by the said judgment has come up in appeal.

5. Smt. Girija Gopal, learned Senior Government Pleader contends that petitioners did not remain in the entry cadre as Police Constable for 10 years, hence they were not entitled for the grant of the first, 10 years higher grade. As soon as the petitioners completed 20 years compiling period in the entry cadre and promoted cadre, they were sanctioned 20 years grade with effect from 01.06.1995. It is contended that the purpose of granting higher grade is to give benefit to an employee who could not get promotion for a period of 10 years and stagnates in the entry level. It is submitted that the learned Single Judge erred in directing the entire period to be treated as service in the Police Constable ignoring the actual fact of promotion and working of the petitioners in the higher grade of Hawildar/Constable where they have received the benefit of higher pay scale also.

6. Although notices were served on the respondents in this Writ Appeal, no one appeared at the time of hearing.

7. We have considered the submissions of learned Special Government Pleader and perused the records.

8. Petitioners in the Writ Petition has brought on record copy of Government Order dated 01.11.1989 which were recommendations on revision of pay and allied matters on the recommendations of the Vth Kerala Pay Commission. In paragraph 6(b), the Government Order provided for time bound grade promotions. It is useful to extract the following part of the Government Order:

"(b) Time bound grade promotions

9. The Scheme of time bound/non-cadre promotion has been received by the Commission which has recommended its liberalisation. Government accept these some with some improvement in the limit of eligible range of posts for the 25 year grades. The 25 year grades recommended for those in the first four scales of pay viz., from Rs. 750-1025 to 825-1830.

10. The revised scheme of time bound/non-cadre promotions will be as follows with reference to the scales of pay of initial recruitment.

(i) Employees in the revised scales of pay ranging from Rs. 750-1025 to Rs. 1050-1830 will be allowed promotion to higher grade on completion of 10 years of service, a second higher grade after either 10 years of service in the first higher grade or a total service of 20 years in the two grades together, whichever is earlier and a third higher grade on completion of a total service of 25 years in the three grades together on the following pattern."

Government issued a Circular dated 06.11.1992 with regard to time bound grade promotion as per Government Order dated 01.11.1989. Government laid down the general principles for sanctioning of time bound higher grade in the Central Pay Revision Order dated 01.11.1989. Paragraphs 2(i) and 2(xiii) is quoted below:

"2(i) Those remain in the entry grade without promotion in the normal course will become eligible for higher grades on completion of prescribed periods of service, i.e., 10, 20 and 25 years of service in the entry grade. The existing time bound grade promotion scheme is as modified and specified in para 10 of G.O.(P) 480/89/Fin dated 1.11.1989. It takes effect from 1.7.1988. It ensures (a) three time bound higher grades to the employees who are appointed initially in posts having scales of pay ranging from Rs. 750-1025 to Rs. 1050-1830 (b) two time bound higher grades to the employees who are appointed initially in posts having scales of pay ranging from Rs. 1100-2070 to Rs. 1650-3175 and (c) one time bound higher grade to those appointed initially in posts having the scale of pay of Rs. 1830-3425).

2(xiii) Those who got promotion for some time and reverted and are continuing in the entry grade/same grade will be allowed the benefit of service excluding the period during which they were holding the higher post on promotion. G.O(P) No. 707/81(373)/Fin dated 28.10.1981). However the broken periods of service in the higher post due to reversion to a lower post will be reckoned for computing the total qualifying service in the higher post for sanctioning higher grade subject to the restriction laid down in the ruling below rule 33(a) Part-I, Kerala Service Rules. In other words, such broken periods can be reckoned for higher grade only if they qualify for normal increments (G.O(P) 4983/481/Fin dated 20.1.1983)."

9. A subsequent Government Order dated 25.09.1993 (Ext. P5) was issued on the basis of the Pay Equalisation Committee Report with regard to time bound higher grade promotion. In paragraph 2 the following was stated:

"2. Scale of pay of entry posts and time bound higher grades for employees other than Teachers:

Employees who remain in their entry on scales of pay ranging from Rs. 775-1065 to Rs. 2500-4000 on completion of prescribed periods of service in these posts, will be granted higher grades as specified below:

(i) Those on entry posts with pay scales of Rs. 775-1065, Rs. 800-1200 and Rs. 825-1250 will be granted three higher grades as follows:

(a) The first higher grade on completion of 10 years of service in the entry post.

(b) The second higher grade on completion of either 10 years of service in the entry post.

(b) The second higher grade on completion of either 10 years of service in the first promoted posts or a total service of 20 years both in the entry post and first

regular promotion post/time bound higher grade together, whichever is earlier.

(c) The third higher grade on completion of 25 years of total service in the entry post and regular promotion post(s)/time bound higher grade together."

10. Now we revert to the facts of the present case to examine as to whether petitioners were entitled for the first higher grade after 10 years of their entry as claimed by the petitioners. Petitioners were appointed after training on 01.6.1975, they were promoted as Hawildars on 20.04.1981. They were reverted as Police Constables to District Armed Battalion on 07.6.1982 and immediately promoted as Police Constables on 8.6.1982. On their request they were transferred to local police on 18.12.1991 from which date they were again working as Police Constables.

11. Petitioners having not completed 10 years service in the entry cadre could be granted 20 years higher grade with effect from 01.06.1995 when their total period including the period in the entry cadre and promoted cadre completed 20 years. As noted above, the learned Single Judge issued directions to treat petitioners as continuing as Police Constables ever since their appointment in Armed Force Battalion taking into account entire service put by them in all the three Departments.

12. The system of recruitment of Police Constable as is indicated from the records is that Police Constables are recruited to Armed Force Battalion and can opt for transfer to the Armed Reserve which is done based on the willingness. When Police Constable is transferred to District Armed Reserve from Battalion he became junior-most in the respective Armed Reserve as per the provisions contained in the relevant Government Order and pay has to be revised based on Rule 27 of part II of the Kerala Service Rules. An incumbent who does not want to be transferred to the District Armed Force can continue in the Battalion itself as Police Constable/Hawildar. Armed Reserve Police Constable can get a transfer to the general executive in the same manner where he becomes the junior-most person in the general executive and consequent reduction in pay and allowances. Government has issued various Government Orders from time to time in this regard which have been brought on record by the appellants as Annexures A2 to A5. Petitioners were promoted as Hawildars on 20.04.1981, on their own request they were reverted as Police Constables and transferred to District Armed Reserve with effect from 07.06.1982. With effect from 08.06.1982 they were again promoted as Head Constables. Thus after entry into service as Police Constables they did not complete 10 years in entry service and even before the expiry of that period they obtained promotion and higher pay scale. From 08.06.1982 till 20.04.1991 petitioners continued as Head Constables and they were again transferred to the local police as Police Constables on 18.12.1991.

13. The purpose and object of grant of higher scale is to compensate an employee who is not able to get promotion during the period of 10 years. When a person after entry without completing 10 years receive promotion and get

reverted to from the promoted post to the lower post on his own willingness on account of various exigencies of service, the benefit of higher grade is not automatically given to him. As noted above, Circular dated 06.11.1992 states that "those who remain in the entry grade without promotion in the normal course will become eligible for higher grades on completion of prescribed periods of service, i.e., 10, 20 and 25 years of service in the entry grade." Thus remaining in the entry cadre for a period of 10 years is a condition for grant of higher grade on completion of the said period. In paragraph 2 (xiii) of the Circular dated 06.11.1992 it is made clear that the benefit of grade promotion can also be allowed to a person who got promotion for first time and reverted in the entry cadre. However, period during which they were holding the higher post is to be excluded. On the above principle also before the petitioners complete 10 years service in entry cadre, i.e., Police Constable, they became entitled to the benefit of second higher grade on completion of 20 years by compiling both the period in the entry post and promoted post. Direction of the learned Single Judge in the impugned judgment is contrary to the specific Government Orders. The learned Single Judge also referred to Ext. P4, Government Order dated 08.08.1995 which stated as follows:

"Order

In the light of the judgment of the Honourable High Court in the OP cited, Government are pleased to order that the benefit of time bound higher grade will also be extended to those who are prompted for short spells but reverted to lower post for want of vacancy and are continuing in the lower post. In such cases their service in the Higher post will also be reckoned for computing the prescribed qualifying service in the lower post provided they are eligible for time bound higher grade promotion as per the existing rules relating to time bound higher grade scheme.

The Government orders first and second and para 2 (xiii of Circular third) read above are hereby cancelled. But past cases settled on the basis of the above Government Orders will not be re-opened."

Benefit of the above Government Order for including the period spent on higher grade is hedged by a condition that person is reverted to the lower post for want of vacancy. Present is not a case where petitioners were reverted on account of want of vacancy rather present is a case where the the petitioners on their own request opted for Police Constables in the District Police. Petitioners were thus not entitled to the benefit of Ext. P4 and the learned Single Judge erred in holding that the petitioners are entitled to the benefit of Ext. P4 Government Order. Observations of the learned Single Judge that petitioners" reversion could not be termed as for want of vacancy also cannot be accepted. Paragraph 2(xiii) of Exhibit P3 Government Order dated 06.11.1992 referred to by the learned Single Judge has already been noticed by us which does not in any manner help the petitioners since the period on which an incumbent remained in the promoted post has to be excluded for counting his period in the entry cadre. In

the facts of the present case, if the period during the period in which petitioners remained in the promoted post is excluded they do not complete 10 years in the entry post.

14. In view of the foregoing discussion, we are of the view that the learned Single Judge erred in issuing the direction as noted above.

In the result, the Writ Appeal is allowed. Judgment dated 14.02.2007 in O.P. No. 24885 of 1998 of the learned Single Judge is set aside. Original Petition is dismissed.

No order as to costs.