

(2008) 06 KL CK 0028

In the High Court Of Kerala

Case No : W.A. No's. 671 and 1053 of 2008

State of Kerala and Others

APPELLANT

Vs

Premavalsan and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2008) 3 ILR (Ker) 151 : (2008) 2 KarLJ 801 : (2008) 2 KLJ 801 : (2008) 3 KLT 320

Hon'ble Judges : P.N. Ravindran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : S. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—The writ petitioners in these cases are working as Police Drivers (Head Constables) in the armed reserve camp, Kannur. By Ext. P5 order, the Government excluded the training period from the service. The learned single Judge based on an executive order dated 23-4-2003 issued by the Director General of Police set aside Ext. P5. The executive order dated 23-4-2004 read as follows: In the above circumstances the period of inservice training (imparted soon after recruitment) will have to be counted as "Service" for all purposes (except for probation). Therefore it is now clarified that the period of training of directly recruited drivers will be counted for the purpose of increment and higher grade.

Cases of those Drivers whose increments and higher grades were revised in accordance with PHQ letter dated 8-5-2000 (referred 2nd above) will be refixed as ordered above. Meanwhile the Govt. is being addressed to amend para 8 of the Rules in respect of probation.

Relying on that, the learned single Judge held that the service training undergone should be treated as part of the service.

The Government filed this appeal. In the appeal memorandum, the Government relied on the decision of a Division Bench of this Court in *The State of Kerala and Others Vs. Thirumeni and Others*, . That judgment was mainly on the question of time bar. Secondly it was relating to Police Constables. Even in the case of Police personnel a Division Bench of this Court in *Lakshmanan v. State of Kerala - 1995 (1) KLT 115* found that inservice training rendered is to be taken as service. In appeal, the Hon"ble Supreme Court accepted the above position in Civil Appeal No. 2018 of 2000. The Supreme Court observed as follows: The High Court has consistently taken the view that the period of training undergone by the respondent should be treated as period spent on duty for the purpose of scale of pay, increments and other consequential benefits. This view was expressed by the High Court in the case of *Lakshmanan v. State of Kerala - 1995 (1) KLT 115* and that decision in turn follows other decisions in *Louis Vs. Kerala Public Service Commission and Another*, and *Haridasan and Another Vs. State of Kerala and Others*, . As this has been the consistent view and the orders in those cases not having been challenged before this court, we do not think that it is a fit case for our interference under article 136 of the Constitution. The appeal is, therefore, dismissed.

The learned Government Pleader relied on the decision of the Division Bench in *Nandanam Vs. Jyothish Kumar*, . In that case the period of training was not treated as duty as it was a pre-appointment training.

2. Rule 7 of the Special Rules in this case provides as follows:

Training:- Every persons appointed under these rules by direct recruitment, shall undergo inservice training for a period of 6 months and every persons other than Police Constable appointed under these rules by transfer shall undergo inservice training for a period of 3 months in the District Armed Reserve/Armed Police Battalions/Police Training College/Police Training Schools.

Therefore, the rule clearly states that the persons appointed shall undergo "inservice training" for a period of six months. Of course, Rule 8 provides that probation will start after training. But inservice training cannot be termed as pre-appointment training and therefore inservice training should be counted in the service. The learned Government Pleader also relied on a clarification issued by the Government on 14-12-2007. By an executive order, rules cannot be changed. We are bound by the decision of the Apex Court on the same point. Since the Special Rules specifically say that it is "inservice training", the Government is bound to consider the training period of the writ petitioners as service for the purpose of granting benefits.

The Writ Appeals are dismissed.