
(1979) 02 KL CK 0025
In the High Court Of Kerala
Case No : W.A. 55 of 1976

State of Kerala

APPELLANT

Vs

K. Ratnamma and Others

RESPONDENT

Date of Decision : 15-02-1979

Acts Referred:

Kerala Service Rules, 1958 — Rule 12(7), 26, 7

Citation : (1979) 02 KL CK 0025

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : C.S. Rajan, Government Pleader, for the Appellant; V. Sivaraman Nair and V.M. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—The Government has appealed against the decision of a learned Judge who quashed Exts.P-10 and P-2 orders fixing the writ Petitioner's pay while on deputation as the pay drawn by her in her substantive appointment as Lecturer at the time of deputation and not the higher scale of pay as Professor to which post she had been provisionally promoted at the time of deputation; and Ext. P-2 order which rejected the Petitioner's representation that she was entitled to be paid at the higher rate of pay applicable to a Professor.

2. The writ-Petitioner was a Senior Lecturer with a II Class in the D.A.M. course (Diploma in Ayurvedic Medicine). Being only a II Class graduate she was unqualified for promotion as Professor which required a I Class Degree. In 1971 she was selected for appointment to the Postgraduate Course. But as the terms for deputation were unattractive and as she was then entitled to Only a stipend of Rs. 200 she discontinued her course. By Ext.P-5 G.O. dated 25th August 1972, the terms of deputationists and the monetary benefits to which they were entitled while undergoing the postgraduate course in Ayurveda were bettered. The relevant portion of Ext.P-5 dated 25th August 1972 which accomplished this ran thus:

The Government have examined the request of the teachers to give deputation with monetary benefits for undergoing the Postgraduate course in Ayurveda. They are pleased to sanction deputation to the two batches of teachers of the Ayurveda Colleges who were selected for the course in the seats reserved for them and who are now undergoing the Postgraduate course in Ayurveda, subject to the terms and conditions laid down in G.O. (P) 303/70/Fin., dated 12th May 1970 and that the stipend drawn by them will be reduced from the pay and allowances due to them. The duration of the Postgraduate course is three years.

A copy of G.O. (P) 303/70/Fin., dated 12th May 1970 referred to in Ext.P-5 is what has been produced as Ext.P-6. Dealing with the terms and conditions of deputation that G.O. provided as follows:

Terms and Conditions of Deputation. -- (i) Candidates will be paid during the period of deputation the pay and allowances admissible to them but for the deputation.

Ext.P-7 G.O. dated 14th September 1973 is the order deputing the writ-Petitioner for Postgraduate course. The relevant portion of the said order reads;

The Government have examined the request and they are pleased to permit Smt. K. Ratnamma, Professor, Ayurveda College, Trippunithura to continue her postgraduate studies in Ayurveda, in the Postgraduate Centre, Ayurveda College, Trivandrum with the benefits ordered in the G.O. read as second paper.

Smt. Ratnamma, Professor, who is also holding charge of the Principal, Ayurveda College, Trippunithura will hand over charge to Smt. Lilly Sankunny, Professor who will hold additional charge of the post of Principal, Ayurveda College, Trippunithura, so as to enable her to join the course immediately.

The Director of Indigenous Medicine will forward necessary proposals for filling up the post of Professor vice Smt. Retnamma.

The G.O. read as second paper is Ext.P-5 G.O. Paragraph 11 of the counter-affidavit has detailed the correspondence between the Government and the Accountant General in the matter of issuance of a pay certificate that the Petitioner would have been paid pay as a Provisional Professor but for the deputation. Eventually, the Accountant General fixed the salary of the writ Petitioner only at the lower scale admissible to a Lecturer (vide Ext. P-10). He also directed recoveries of the Government dues as noted in the last pay certificate to be effected. (The Petitioner had been wrongly paid at the higher scale). The Petitioner made Ext. P-11 representation requesting the Government to issue directions to the Accountant General to withdraw the restrictions on her pay and allowances with retrospective effect. This was rejected by Ext.P-12 order of the Government. The writ petition was to quash Ext.P-10 and Ext.P-12 orders of the Accountant General and the Government respectively. The learned Judge allowed the writ petition holding that Exts.P-10 and P-12 orders are not legally sustainable, and, as the Petitioner had been taken for the Postgraduate Course

while she was holding the post of Professor -- even though provisionally -- she was entitled to be paid the higher scale of pay and allowance attaching to the post of Professor and not the lower scale attaching to the post of Lecturer.

3. We are unable to agree with the reasoning and the conclusion of the learned Judge. The learned Government Pleader rightly pointed out that the order is essentially governed by Rule 26 of Part I of the K.S.R. The said Rule, in so far as it is relevant, reads:

26. When an officer is treated as on duty under Rule 12(7)(iii), the Government may, at their option, authorise payment to him of the pay of his substantive appointment or of any lower rate of pay which they may consider suitable, provided that the pay admissible may, if the Government so direct, be, instead of either of the rates just specified, the pay of any officiating appointment which the officer would have drawn but for undergoing such training, subject however to the condition that this rate of pay shall not be allowed for a period longer than that for which the officer would have held the officiating appointment had he not been placed on such a course of training.

(We omit the rest of the rule as unnecessary, although the Government ruling appended at the bottom of the Rule appears to be pertinent).

Under the said Rule, normally, the payment, to an Officer treated on duty under Rule 7(iii), is to be either the rate of pay of the substantive appointment, or any lower rate of pay, considered suitable. There is an exception to this normal rule, that, if, the Government so directs, then, instead of either of the above two rates, the rate of pay of any officiating appointment, which the officer would have drawn but for the training may be paid to the officer. There can be little doubt that the writ Petitioner's substantive appointment at the time of option was that of a Lecturer. This was so because she was having only a provisional or a temporary appointment as a Professor; and even that, as seen from Ext.P-7, and as stated by the Government in Ext.P-12, had been terminated on deputation. Therefore, on the normal rule indicated in Rule 26 of the K.S.R., the writ Petitioner would be entitled to be paid only at the scale applicable to Lecturers and no more. However, the question for examination would be whether under the proviso, the Government had directed payment at the scales applicable to her officiating appointment -- assuming that the provisional appointment is to be treated as such. We seen nothing in Ext.P-5 to come to this conclusion. On the other hand, dealing with "terms and conditions", Ext.P-5 merely stated that these would be governed by Ext.P-6 G.O. That G.O. was clear that payment would be at the rates admissible to the deputationists, but for the deputation. This only turns attention to Rule 26 of the K.S.R. which we have already dealt with and considered. There is no direction by the Government within the meaning of the exception indicated by Rule 26 to the normal two modes of payment sanctioned. We are unable to concur with the learned Judge that the case is not governed by Rule 26 of Part I of the K.S.R.

We allow this appeal and set aside the judgment of the learned Judge and direct that O.P. No. 3303 of 1974 will stand dismissed. There will be no order as to costs.