

(1987) 07 KL CK 0016
In the High Court Of Kerala

Subramoniam and Others

APPELLANT

Vs

Kerala Agricultural University

RESPONDENT

Date of Decision : 02-07-1987

Acts Referred:

Citation : (1987) 2 LLJ 488

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Judgement

Sivaraman Nair, J.—Petitioners are employees of the Kerala Agricultural University. They were directly recruited as Lower Division Clerks. Promotion tests were prescribed by the first Ordinance prescribing the test in Manual of Office Procedure as necessary for probation in the post of L.D. Clerk and Account Test for promotion to higher posts. In respect of other matters, the University made the provisions of the Kerala State and Subordinate Services Rules applicable to the petitioners. The petitioners claim promotion during the period of exemption available under Rule 13A of the Kerala State and Subordinate Services Rules. But disregarding such claims, test qualified juniors were promoted earlier. The first petitioner filed O.P. No. 1533 of 1977 claiming exemption from acquiring the test qualification for two years from the date of promulgation of the University Ordinance prescribing the probation and promotion tests, and a review of promotions to the posts of U.D. Clerk effected after 1st February 1972. That Original Petition was allowed. Since the directions contained in the judgment were not given effect to, petitioners 2 and 3 filed O.P. 2079/79. That Original Petition was allowed by judgment dated 21st December 1979. Pursuant to the directions in the above judgment, the University rejected the claims of the petitioners for exemption in its order dated 19th December 1980. The petitioners along with some others filed O.P. 1373/80 against that order. Part of the relief was granted by a single Judge of this Court who disposed of that Original Petition. In Writ Appeal Nos. 172/82 & 207/82, a Division Bench of this Court in its judgment dated 28th March 1983 held that:

The appellants succeed. The consequence is that, we see no reason to accept the case of the University that the appellants were not asked to pass a new test in 1976. Consequently the appellants are entitled to seniority over those who have superceded 5 them during the relevant period and we hold that the appellants are entitled to restoration of rank. The juniors to the appellants with test qualification could not have superceded them during the period of two years. It is so declared. The University may work out the consequences and prepare the seniority list accordingly.

Petitioners complain that even inspite of this judgment of the Division Bench of this Court, the University did not pass consequential orders and they had filed C.M.P. No. 21917/83 and C.M.P. No. 7397/84 for directions to the University to implement the judgment of the Division Bench of this Court. Ext. P1 order was passed on 5th May 1984. The petitioners were given notional promotion. Their ranks were refixed and consequently, they were given the benefit of refixation of salary as well. But the University refused to pay them arrears of salary consequent on the notional promotion and re-fixation of salary. Petitioners submitted Exts. P2 to P4 representations requesting for monetary benefits as well. Those representations were rejected out of hand in Ext. P5 order. The petitioners challenge Exts. P1 and P5 orders, the effect of which, according to them, is to deny them the benefits of promotion which they were legally entitled to. but were wrongly withheld from them. They also submit that they were entitled to be treated in the same manner as University teachers who were given monetary benefits on revision of pay in Ext. P6 orders.

2. Counsel for the petitioner submits that. the effect of Ext. P1 order is to uphold the claim of the petitioners for earlier promotion. Admittedly such promotions were withheld and their juniors were promoted earlier. Had the petitioners been promoted in their turn, they would have obtained monetary benefits as well. If it is conceded that they were entitled to earlier promotion, the respondents are bound to give them arrears of salary which they would have been entitled to, had they been given due promotions at the appropriate time. It was so done in the case of teaching staff as is evident from Ext. P6. Counsel submits that there is no particular reason why it shall not be so done in the case of the petitioners. Reliance is placed. on the decisions of this Court in *Narayana Menon v. State of Kerala* 1978 KLT 29 and *Rajappan Nair v. State of Kerala* 1984 KLT 141. Reference is also made to the decision reported in *Philomina v. State of Kerala* 1984 KLT 59. In all the three decisions this Court had held that normally, and except in exceptional circumstances, a Government servant is entitled to be paid salary which he would have been entitled to but for the wrong denial of promotions or delay in ordering such promotions. Khalid, J. (as he then was) in *Narayana Menon's* case (supra) held that the Government servant is naturally entitled to all benefits of promotion which is his due and which was delayed or denied not on account of his conduct or laches. Poti, C.J. speaking for the Bench in *Rajappan Nair's* case (supra) held that denial of monetary benefits consequent on delayed promotion was only partial restoration and the restoration which he is

entitled to would be effective only if the whole of the monetary benefits consequent on the retrospective promotion was awarded to him. A slightly different note was struck in Philomina's case (supra) by another Division Bench of this Court. My learned brother Kochu Thommen, J. speaking for the Bench held that no Government servant is entitled to be paid for work which he has not done except in exceptional cases. He, however, held that the case of a person kept out of Work or denied or deprived of his rightful place by an illegal order which, upon declaration or admission of its illegality, becomes wholly destitute of legal efficacy, is one of the exceptions. Cases where an innocent mistake made by the administration resulted in a Government employee being kept out of work, did not, according to that decision, entitle the concerned Government servant to claim salary for the period when he did not work, albeit for no fault of his.

3. Counsel for the respondents submit that the entitlement of the petitioners for promotion according to seniority during the period of exemption was declared by this Court only on 28th March 1983. According to him, the University could not pass consequential orders immediately thereafter due to the pendency of appeals before a Full Bench in which the question of availability of exemption was itself an issue. Ext. P1 order was issued immediately after the Full Bench rendered its decision. Counsel for the respondents submits that the University has already paid the higher salary to the juniors who had actually worked in the promotion post and therefore, it is not obliged to pay the difference of salary to the petitioners since that will be payment twice over first to the persons who actually worked in the higher post, and then to those who are notionally deemed to have been entitled to work in such posts. According to him, the retrospective promotion and consequential refixation of pay with entitlement for arrears with effect from the date of actual promotion to the higher category is adequate restoration in the case of the petitioners. He therefore submits that the claim for difference in the salary which the petitioners had actually drawn and that which they would have drawn is not entertainable. It is also submitted that the denial of promotion was due to an honest mistake or an innocent error about the effect of the statutory rules which had to be clarified by this Court.

4. It is evident that the petitioners had been asserting their claims for promotion on the basis of seniority during the period of exemption without insisting upon possession of test qualification. They have succeeded in their claim for such promotion which was wrongly denied to them and were given to their juniors. It is only natural that they are entitled to restoration of all benefits which they could have got but for the denial of their due promotion. It is of course true that even while granting the right of the Government servant to restoration of benefits which he would have been entitled to, had his legitimate claim been recognised in time, it is necessary to consider the impact of innocent errors which are not uncommon in matters of administration and the possible effect of restoration resulting in imposition of undue burden on the economy of the State. It is necessary to reconcile these seemingly conflicting principles. In *Philomina v.*

State of Kerala (*supra*) this Court held that an order notionally promoting a Government servant to the higher cadre with effect from an anterior date as a result of which she earned higher salary and other benefits including seniority, increments and promotion would be fair recompense.

5. On a consideration of the above decision with reference to the facts of this case. I am of the opinion that the petitioners are entitled to monetary benefits at least within a reasonable time after the Division Bench pronounced in their favour on 28th March 1983 by upholding their claim that they ought to have been promoted during the two year period of exemption only on the basis of seniority. Had orders been passed within a reasonable time after the judgment of the Division Bench, the petitioners would have obtained the benefit of promotion including monetary benefits by actually working in the higher post. That benefit was denied to them due to inaction on the part of the University. May be, the University was waiting hopefully for a Full Bench to uphold its viewpoint in other similar cases. That was hardly a justification for the University to deny the benefit of actual promotion and monetary benefits to the petitioners.

6. In this view, I quash Exts. P1 and P5 orders in so far as they deny monetary benefits of retrospective notional promotion to the petitioners. I direct that the respondents shall pay such monetary benefits to the petitioners with effect from a date one month after 28th March 1983, the date of the judgment of the Division Bench. The University shall pay the amount of such arrears to the petitioners within a period not exceeding two months from the date of receipt of a copy of this judgment.

The Original Petition is allowed as above with costs. Issue photostat copy of this judgment to counsel for petitioners on usual terms.