

(2015) 01 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 12916 of 2007 (K) and 19842 of 2008

T.P. Aravindakshan

APPELLANT

Vs

The Commissioner, Guruvayoor Devaswom

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 01 KL CK 0049

Hon'ble Judges : A.V. Ramakrishna Pillai, J.

Bench : Single Bench

Advocate : S. Radhakrishnan, for the Appellant; U.K. Ramakrishnan, Senior Advocate, M. Ramesh Chander, SC, GDB, V. Krishna Menon and P. Vijayamma, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Ramakrishna Pillai, J.—The petitioners in WP(C) No. 12916/2007 challenge Exts.P11 and P12 orders delaying and curtailing the benefits granted under Ext.P2. They also seek the benefit of time bound higher grade in accordance with Exts.P3 to P7 with effect from the date, on which they have completed 25 years of service.

2. Petitioners in WP(C) No. 12916/2007 have joined the Kshethra Kalanilayam under Guruvayoor Devaswom as Krishnanattam Artists during the period from 1967 to 1971 after severe training and practice for a period of ten years. As the salary given to the employees of Kshethra Kalanilayam was very meager, representations were made by the employees of the Devaswom; and the Guruvayoor Devaswom appointed an expert committee to submit a report on the pay structure of the Krishnanattam Artists. The report submitted by the expert committee was approved by the Devaswom and the pay structure of Krishnanattam Artists were revised with effect from 01.07.1993. On 25.11.1998, the Government of Kerala implemented Time Bound Higher Grade (TBHG) to all its employees, who are stagnating in the entry post/promotion post/TBHG for

more than a specified period. On 20.06.2002, the Guruvayoor Devaswom implemented the scheme to its employees and on 04.09.2002, the 2nd respondent extended the benefit of TBHG to the petitioners with effect from the date they have completed 25 years of service, i.e., with effect from 1994-1996. On 16.12.2002, the 1st respondent cancelled the order and ordered to recover the benefit of TBHG granted to the petitioners. This order was challenged before this Court in WP(C) No. 32232/2005, which was disposed of directing the 1st respondent to reconsider the matter afresh. The 1st respondent reconsidered the matter and held that since the salary revision on 01.07.1993 should be treated as a first higher grade, any other higher grade can be granted by reckoning the service after 01.07.1993 only and not from the date of entry to service. The 1st respondent decided to implement time bound higher grade only from 02.09.2002, which is the date of the order extending the benefit to the petitioners. However, on 26.05.2005, the 2nd respondent informed the petitioners that the TBHG will be implemented only with effect from May 2005. The petitioners point out that the Devaswom has no authority to curtail the benefit to the petitioners alone, which is granted by the State Government and implemented in Guruvayoor Devaswom. It is with this background, they have come up before this Court.

3. The petitioner in WP(C) No. 19842/2008, who is a former Edakka Player of the Kshethra Kalanilayam of the Guruvayoor Devaswom, has come up before this Court with the writ petition challenging Exts.P10 and P11 orders, by which the benefits granted under Ext.P2 were delayed and curtailed. The petitioner also seeks the benefit of time bound higher grade in accordance with Ext.P2 with effect from the date, on which he had completed 23 years of service in the third higher grade.

4. The petitioner in WP(C) No. 19842/2008 joined the Kshethra Kalanilayam on 01.01.1972 as Edakka Player. This, according to the petitioner, was after severe training and practice for a period of ten years. The salary of the employees of the Kshethra Kalanilayam was very meager. On 25.11.1998, the Government of Kerala implemented TBHG to all its employees, who are stagnating in the entry post/promotion post/TBHG for more than a specified period. On 20.06.2002, the Guruvayoor Devaswom implemented the scheme to its employees. On 04.09.2002, the 2nd respondent extended the benefit of TBHG to the petitioner with effect from 01.01.1997, on which he had completed 25 years service. On 16.12.2002, the 1st respondent cancelled the order and ordered to recover the benefit of TBHG granted to the petitioner. The petitioner approached this Court with W.P.(C) No. 34205/2003, which was disposed of directing the 1st respondent to reconsider the matter afresh. Later, the 1st respondent reconsidered the matter and held that since the salary revision on 01.07.1993 should be treated as a first higher grade, any other higher grade can be granted by reckoning the service after 01.07.1993 only and not from the date of entry in service. The 1st respondent decided to implement the TBHG only from 02.09.2002, which is the date of the order extending the benefit to the

petitioner. However, on 26.05.2005, the 2nd respondent informed the petitioner that the TBHG will be implemented only with effect from May 2005. The petitioner points out that the Devaswom has no authority, whatsoever, to curtail the benefit to the petitioner, which is granted by the State Government and implemented in Guruvayoor Devaswom. According to the petitioner, as per GO(P) No. 3000/98/Fin dated 25.11.1998, the higher grades are to be granted on completion of 10, 18 and 23 years of service. Therefore, on completion of 23 years of service, the petitioner is entitled to get the third TBHG from S9 scale to S12 scale. However, by Ext.P3, he was granted only S11 scale, that too, after completion of 25 years of service. His further grievance is that by Ext.P10, the Local Fund Audit approved the grant of higher grade on completion of 25 years of service; and according to them, it can only be to S10 scale, i.e., the next higher grade. As the petitioner was granted only the first time bound higher grade after 25 years of service, Exts.P10 and P11 orders delaying and curtailing the benefits granted under Ext.P2 are patently illegal and arbitrary; according to the petitioner. It is with this background, the petitioner has come up before this Court.

5. The respondent Devaswom had filed a counter affidavit in WP(C) No. 12916/2007. According to them, the Krishnanattam Artists started their career as trainees. During their training, they are paid an amount as stipend. During the period of training, these artists cannot be appointed for any other work in the Devaswom. After completion of training and after their first performance on stage, they have started their work as Grade III Artist of Krishnanattam in the Guruvayoor Devaswom. In accordance with the retirement of the senior artists, the new junior artists are promoted to the vacant posts. The duties and performance of the Krishnanattam artists are entirely different from the ordinary office work. They cannot be compared with other employees of the Guruvayoor Devaswom. Therefore, the rules prescribed under the various Acts relating to the service in Kerala cannot be sought to be applied with reference to the Krishnanattam Artists. It was taking into consideration the peculiar nature of the work of the Krishnanattam Artists such as the petitioners, they decided to grant benefits to the petitioners counting their service in the entry grade with effect from 01.07.1993 and not from the date of entry in service when they were minors and trainees. The 1st petitioner has demitted his office and he is no longer in service of the respondent Devaswom. He left the services of the Guruvayoor Devaswom at the age of 58 years after availing all service benefits under the voluntary retirement scheme. As per proceedings dated 20.03.1995 issued by the 1st respondent, separate special pay revision was implemented for the Krishnanattam Artists with effect from 01.07.1993. This was granted immediately after the general pay revision ordered for the employees of the State of Kerala in 1992. Thus, the Krishnanattam Artists happened to get benefits of two pay revisions. Therefore, it was stated in the proceedings by the 1st respondent that no fixation benefits can be granted and only fitment allowance is to be granted as per Ext.P1. The next pay revision was implemented

in the State of Kerala in 1998 as per a Government Order dated 25.11.1998 with retrospective effect from 01.03.1997. The pay scale of the Krishnanattam section had also been revised accordingly. The Krishnanattam Artists have subsequently applied for their respective time bound higher grade based on the 1998 pay revision order. The pay bill section of the Guruvayoor Devaswom, without fully comprehending the implied meaning involved in the order of the Commissioner as per Ext.P1, sanctioned respective time bound higher grades to the petitioners; and accordingly, the pay of the petitioners was refixed and they were being paid higher grade salary for some months. However, as it was discovered later that this was contrary to the order dated 20.03.1995, it was decided to cancel the above said grant of time bound higher grade and the consequential fixation of pay as evidenced by Ext.P8 order dated 16.12.2002. The 1st respondent has also ordered to recover the excess amounts paid to the petitioners mistakenly. That is how WP(C) No. 32232/2003 happened to be filed before this Court. Direction was given in the writ petition to consider the matter afresh. Pursuant to that, the 1st respondent has heard the petitioners and passed an order as per Ext.P11. During the time of hearing before the 1st respondent, the petitioners, who were heard in person, did not raise any objection with respect to the course of action proposed to be taken by the 1st respondent. It was with the permission of the petitioners that the date of financial benefits of the higher grade promotion was fixed with effect from 02.09.2002. Therefore, according to them, there is no illegality or infirmity in Ext.P11 order. Ext.P12 order is only a consequential order issued pursuant to Ext.P11 order. The Local Fund Audit Section had in their report specifically pointed out that this special pay sanctioned by the 1st respondent was unnecessary and the same should be considered as a higher grade or promotion. Krishnanattam Artists are presently getting highly dignified and exemplary emolument. In the entire Devaswom, there is very little scope for promotion and there is no merit or basis in the contentions of the petitioners that they do not have any promotional avenues. The special pay revision that was implemented with effect from 01.07.1993 for the Krishnanattam employees has to be considered as grade promotion. The income of the Devaswom is mainly derived from the offerings made by the devotees. Therefore, it is the duty of the Devaswom to minimise the expenses to be incurred to the best possible extent. The 1st respondent ordered that the recovery should only be effected in 20 instalments. The 1st respondent has authority to interpret his own proceedings. That is why, the unauthorized time bound higher grade sanctioned to the Krishnanattam Artists has to be cancelled. Therefore, the respondents prayed for a dismissal of the writ petitions.

6. Arguments have been heard.

7. The following are the cardinal issues to be considered in these writ petitions;

i. Whether the 1st respondent is empowered to curtail the benefits granted by the Government by Ext.P2 and implemented in Guruvayoor Devaswom to the employees of Kshethra Kalanilayam alone?

ii. Whether the Revision of Pay Scale granted to the employees could be treated as a first higher grade to deny the benefits of TBHG granted by the Government?

iii. Whether the petitioners in WP(C) No. 12916/2007 are entitled to get the benefit of time bound higher grade on the basis of Ext.P2 pay revision on completion of 10, 18 and 25 years of service? and

iv. Whether the petitioner in WP(C) No. 19842/2008 is entitled to get the benefit of time bound higher grade with effect from the date he had completed 23 years of service to S12 scale?

8. The pay scale of the petitioners was revised by Ext.P1 in the writ petitions with effect from 01.07.1993. This, according to the learned counsel for the petitioners, was considering their miserable plight that they were drawing only the lowest scale of pay for long years in spite of the fact that they are artists and performing very skilled and divine art of Krishnanattam. The employees of the respondent Devaswom are being granted the revision of scale of pay as and when the Government of Kerala is implementing Pay Revision Orders. This is an admitted fact. But, during the year 1998, their scale of pay was revised from Rs. 1400-2300 to Rs. 4600-7125. Here, the only question to be considered is regarding their entitlement under Ext.P2 pay revision implementation order, by which a benevolent time bound higher grade was implemented to the State Government and Guruvayoor Devaswom employees. In Ext.P2, it has been made clear that the employees, who remain in their entry post on the scale of pay of Rs. 4600-7125 (revised), would be granted three higher grades on completion of the period of qualifying service in their entry post/promotion post/time bound higher grades together. This time bound higher grade is granted to confer the benefit of higher grade for those, who are not getting any promotion within the specified period of 10, 18 and 23 years. In other words, the purpose is to avoid frustration due to stagnation. It is stipulated in Ext.P2 Government Order that the second higher grade would be available to all those, who may get their first promotion even in a shorter span than ten years by the operation of any of the existing norms for such promotion. That means, the intention of the Government was to confer the benefit of time bound higher grade on completion of specified qualifying service.

9. The argument advanced by the learned counsel for the petitioners is that just because their salary was revised on the recommendation of an expert committee by retaining them in the same post, the benefit conferred by Ext.P2 cannot be denied to them. It is relevant to note that later, as per 1998 Pay Revision, they were granted the benefit of time bound higher grade by Ext.P3 on completion of 25 years of service. Thus, their pay was fixed and they were granted the benefit also. As the benefits were postponed to 01.01.2002 as per Ext.P9 order in WP(C) No. 12916/2007, this Court interfered with the matter and directed the 1st respondent to reconsider the matter. Accordingly, the 1st respondent reconsidered the matter and decided to implement it with effect from 02.09.2002 only by Ext.P6. The 2nd respondent again modified it by further delaying it to

May 2005. This, according to the learned counsel for the petitioners, is illegal.

10. It is settled law that even if there is revision, the identity of pay scale is not changed and the beneficiaries are entitled to reckon the whole service for the grant of benefits granted by the Government. As per Ext.P1, the petitioners were sanctioned the revised pay scale of Rs. 1400-2300 with effect from 01.07.1993 only. But, the scale of pay was not altered or changed. The contrary interpretation in Exts.P8, P9, P10, P17 and P12 in WP(C) No. 12916/2007 is highly irrational and only intended to deny those benefits to the petitioners. If Exts.P11 and P12 in WP(C) No. 12916/2007 are implemented, the same will be having alarming consequence to the petitioners as far as their career is concerned. It will result in wiping out their service prior to 1993 and they will become losers and in effect deprived of the benefits granted by the Government. The stipulation in Ext.P11 in WP(C) No. 12916/2007 to count the service only from 1993 for time bound higher grade to fix the qualifying service of 10, 18 and 23 years is practically impossible as most of the petitioners crossed the age of 50 years. Therefore, Exts.P11 and P12 in WP(C) No. 12916/2007 are liable to be interfered with.

11. It is an admitted fact that Ext.P2 scheme was implemented to all the employees of Devaswom with effect from the date, on which they had completed the specified qualifying service in the entry post/promotion post/time bound higher grade, irrespective of the fact whether their salary was revised or not. In Ext.P11 in WP(C) No. 12916/2007, it is clearly admitted that Krishnanattam Artists were not granted the benefits of higher grade as was given in the case of other employees. They were granted the benefit of salary revision alone, that too, only once, on 01.07.1993. Now, when it was allowed, it was granted in such a way as not to confer that benefit to these persons, who are already on the verge of retirement. Therefore, the discriminatory attitude adopted against the Krishnanattam Artists is patently illegal and violative of Article 14 of the Constitution of India.

12. In the case of the petitioner in WP(C) No. 19842/2008, the petitioner, who was an Edakka Player, is entitled to get time bound higher grade on completion of the period of qualifying service in their entry post/promotion post/time bound higher grades together in accordance with Ext.P2, which was implemented in the respondent Devaswom. The denial of the same to the petitioner alone is arbitrary and illegal. By Ext.P3, he was granted single time bound higher grade on completion of 25 years of service from his date of entry in the service. However, in Ext.P6, it was modified to the effect that he would be entitled to the first time bound higher grade on completion of ten years of service from 01.07.1993, i.e., the date of first salary revision. In other words, the time bound higher grade granted with effect from 01.01.1997 was modified to first time bound higher grade with effect from August 2002. There is no justification for this. Subsequently, it stated in Ext.P7 that this first time bound higher grade would be implemented with effect from May 2005 only. However, subsequently, the 1st

respondent was pleased to grant the arrears of salary with effect from August 2002. Actually, the petitioner is entitled to get the third TBHG in S12 scale with effect from 01.01.1997. However, he was granted only the second higher grade on completion of 25 years of service. In Ext.P10, it is stated that his salary will have to be fixed on 01.03.1997 at Rs. 4800/- in the pay scale of Rs. 4600-8000/- instead of Rs. 5000-8150. The result is that even after completion of 25 years of service, his salary will have to be fixed at S10 from S9 and not at S11. In other words, he was granted only the first TBHG even after completion of 25 years of service even though he is entitled to S12 scale; i.e., the third TBHG. This curtailment by Exts.P10 and P11 is arbitrary, illegal and liable to be interfered with.

In the result, WP(C) No. 12916/2007 is disposed of;

- a) declaring that the petitioners therein are entitled to get their time bound higher grade on the basis of Ext.P2 Pay Revision Order on completion of 10, 18 and 23 years of service in the entry grade/promotion post/time bound higher grade together; and
- b) quashing Exts.P11 and P12 orders to the extent they deny the benefits of Ext.P2 with effect from the date they had completed the required qualifying service.

WP(C) No. 19842/2008 is disposed of;

- a) quashing Exts.P7 and P8 orders to the extent they deny the benefits of Ext.P2 with effect from the date the petitioner had completed the required qualifying service;
- b) quashing Ext.P10 to the extent it denies S12 pay scale with effect from the date the petitioner had completed the required qualifying service; and
- c) declaring that the petitioner is entitled to get his time bound higher grade on the basis of Ext.P2 Pay Revision Order on completion of 10, 18 and 23 years of service in the entry grade/promotion post/time bound higher grade together.

Formal orders to this effect shall be issued by the respondent Devaswom within a period of two months from the date of receipt of a copy of this judgment and the consequential monetary benefits shall be released to the petitioners in both the writ petitions immediately thereafter.