
(1991) 06 KL CK 0048
In the High Court Of Kerala
Case No : O.P. No. 10366 of 1987 H

V.O. Rossa

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-06-1991

Acts Referred:

Citation : (1991) 06 KL CK 0048

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : M.C. Nambiar, for the Appellant; K. Thankappan, Government Pleader, for the Respondent

Judgement

Chettur Sankaran Nair, J.—Petitioner seeks to quash Ext. P-4 order of the Government, rejecting her request for pay and allowances during the period of training, as also the request for higher grade of pay.

2. Petitioner commenced service as a Part Time Craft Teacher on 19th February 1959. She was later appointed as a Full Time Craft Teacher, on 26th June 1961. Thereafter, the Department deputed her for Teachers' Training Course between the period 6th June 1963 and 30th March 1965. She claimed full salary and allowances for that period: A request for re-fixation of pay, reckoning part time service, as eligible service for fixation of pay was also made. The requests were turned down. Upon that she moved this Court by O.P. 5251/83. By Ext. P-3, a learned Judge of this Court directed the Government to consider the matter afresh, and determine eligibility of Petitioner for the benefits claimed, calling the attention of the Government to the decision of this Court in Vasu Pillai v. State of Kerala ILR 1986 Ker 674 (D.B.). In that case the Division Bench held that "part time contingency service" and "full time contingency service" are species of the genus "contingency service", and declared that the Petitioner before the court was entitled to get credit for part time service.

3. Pursuant to Ext. P-3 judgment, the Government passed Ext. P-4. The

Government took the view that Petitioner was not entitled to full salary and allowances during the period of training, as the full time post occupied by her had been converted into a part time post. The request for higher grade was also rejected.

4. On the basis of Ext. P-2, learned Counsel for Petitioner submitted that a Craft Teacher deputed by the Department for Teachers' Training Course is eligible for full pay and allowances, subject only to the condition, that no appointment of a substitute was made. Relevant portion of Ext. P-2 reads:

...Craft Teachers deputed by the Department for Teachers' Training Course alone during the period from 1962 to 1968 will be given full pay and allowances subject to the condition that appointment of substitutes to the vacancies of Craft Teachers deputed for T.T.C. were not made.

It is not disputed by Respondents that Ext. P-2 confers such a benefit. Paragraph 2 of the counter-affidavit endorses the stand of the Petitioner. But, the Respondents would say that the benefit is not available, as the post was subsequently converted into, a part-time post. Ext. P-4 states that the permanent post occupied by Petitioner had been re-converted into a part time post "in the meanwhile". Paragraph 2 of the counter-affidavit states, that Petitioner:

...was promoted as Full Time Craft Teacher with effect from 26th June 1961. While she was working as Full Time Craft Teacher, she was selected to undergo Teachers' Training Course and relieved from the school on 4th June 1963.... In the In the meanwhile the full time post of Craft Teachers in the school was reduced to part time with effect from the year 1964-65.

It is not stated when the post was converted into a part time post, or whether such conversion would have retrospective operation, depriving Petitioner of a benefit that enured to her at the time, she was deputed for training. According to the Government Pleader, conversion of the post would interact on the benefit earned and availed of by the Petitioner.

5. I am unable to accept the submission. Subsequent course of events, cannot deprive an official of an entitlement available under the rules at the material time and earned by him or her. In *T.R. Kapur and Others Vs. State of Haryana and Others*, the Supreme Court held that the power to amend a Rule retrospectively is available to the Rule making authority, but that;

this Rule is subject to a well recognised principle, that benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect.

The principle was reiterated in *P.D. Aggarwal and Others Vs. State of U.P. and Others*, . In *Padmanabha Pillai v. University of Kerala* and Ors. 1982 KLT 503, Kochu Thommen, J. held that even if a genuine mistake was made by the authority in granting a benefit, such benefit enuring to an official cannot be taken

away. Similar is the view taken by a Division Bench of this Court in *State of Kerala v. Radhamony Amma* 1991 (1) KLT 602. On the date when Petitioner was deputed for training, she was entitled to the benefit of salary and allowances and this entitlement was recognised in Ext. P-2. A future fiat, converting a permanent post to a temporary post, cannot vicariously interact, to deprive the Petitioner of the benefit she had earned. Principle and precedent support the claim made by Petitioner.

6. Besides, the conversion of the post into a part time post is not supported by stated or discernible reasons. The counter-affidavit is silent about the reason, if any, and it proceeds on the assumption that the Respondents are free to act at will, in such matters. A public authority cannot act capriciously. Discretion even where it is available, must be limited by reason and law. Unfettered discretion is alien to public law. A network of restrictive principles, will interdict such exercise. Even in situations where principles of estoppel are not attracted, rules of fair procedure require that state of things once settled, cannot be unsettled without good reason. In *Rathi Alloys and Steel Ltd., Alwar Vs. Collector, Central Excise, Jaipur*, the Supreme Court held so. In this view also the action of the Respondents cannot be upheld.

7. However, the claim for a higher grade cannot be accepted. No Rule or principle is cited to support the claim. The decision cited by the learned judge in Ext. P-3 judgment, will have no application to the circumstances of the case. That was a case where the scope of Rule 14A of Part III of the K.S.R. arose for consideration. The Rule is to the effect that "contingent employees absorbed in regular establishments will be allowed to count 50 per cent of the contingency service for purposes of pension". In time and space, the Rule governs grant of pension alone. By analogy, it cannot be extended to other regions. The view taken in Ext. P-4 to that extent, does not call for interference.

8. In the result, it is declared that Petitioner is entitled to receive full pay and allowances in terms of Ext. P-2 for the period of training since no substitute was appointed to the post occupied by the Petitioner. The claim to higher grade cannot be granted.

Writ petition is disposed of as above. Parties will suffer their costs.