

The Rubber Board vs Chandrika Devi.M

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Court : Kerala

Decided On : Feb-05-2025

Judge : Honourable Mr. Justice Amit Rawal, Honourable Mr. Justice K. V. Jayakumar

Appeal No. : WA/1052/2020

Appellant : The Rubber Board

Respondent : Chandrika Devi.M

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR WEDNESDAY, THE 5TH DAY OF FEBRUARY 2025 / 16TH MAGHA, 1946 WA NO. 1047 OF 2020 AGAINST THE JUDGMENT DATED 13.02.2020 IN WP(C) NO.27732 OF 2015 OF HIGH COURT OF KERALA APPELLANTS/2ND & 3RD RESPONDENTS IN W.P.: 1 CHAIRMAN RUBBER BOARD, P.B NO.1122 RUBBER BOARD, P.B NO. 1122, JAIL ROAD, KOTTAYAM 686 002 2 THE SECRETARY-CUM-DIRECTOR (FINANCE) RUBBER BOARD, P.B NO. 1122, SUB JAIL ROAD, KOTTAYAM 686 002

BY ADVS. V.ABRAHAM MARKOS ABRAHAM JOSEPH MARKOS ISAAC THOMAS P.G.CHANDAPILLAI ABRAHAM ALEXANDER JOSEPH MARKOS SHARAD JOSEPH KODANTHARA RESPONDENT/PETITIONER & 1ST RESPONDENT IN W.P.: 1 SUMA GEORGE AGED 57 YEARS W/O. GEORGE THOMAS, ASSISTANT SUSTEM OFFICER, COMPUTER DIVISION, RUBBER BOARD, KOTTAYAM RESIDING AT CHELAMATTOM HOUSE, THOTTACKAD P.O, KOTTAYAM 686 539 2 UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA, UDYOG BHAVAN, NEW DELHI 110 011

WA NO. 1047 OF 2020 -2- BY ADV. SRI.HARIDAS P.NAIR, CGC SRI.T.C.KRISHNA (DSGI IN CHARGE) THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.02.2025, ALONG WITH WA.896/2020, 1052/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WA NO. 1047 OF 2020 -3-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR WEDNESDAY, THE 5TH DAY OF FEBRUARY 2025 / 16TH MAGHA, WA NO. 896 OF 2020 AGAINST THE JUDGMENT DATED 13.02.2020 IN WP(C) NO.11529 OF 2015 OF HIGH COURT OF KERALA APPELLANT/RESPONDENT NO.1: THE RUBBER BOARD, COLLECTORATE PO, KEEZHUKUNNU, KOTTAYAM 686002 REPRESENTED BY ITS SECRETARY.

BY ADVS. ABRAHAM JOSEPH MARKOS SRI.V.ABRAHAM MARKOS SRI.ISAAC THOMAS SRI.P.G.CHANDAPILLAI ABRAHAM SHRI.VIPIN ANTO H.M. SHRI.ALEXANDER JOSEPH MARKOS SHRI.SHARAD JOSEPH KODANTHARA RESPONDENTS/PETITIONER IN WP/RESPONDENTS: 1 BABY MATHEW W/O.THANKACHAN ZACHARIAS, SYSTEMS OFFICER, EDP DIVISION, RUBBER BOARD, COLLECTORATE PO, KOTTAYAM 686002(RESIDING AT KANNADY

THUNDIYIL, NORTH OF BISHOP'S HOUSE, WA NO. 1047 OF 2020 -4-CHENGANACHERRY 686101).

2 THE PRINCIPAL DIRECTOR OF COMMERCIAL AUDIT AND EX OFFICIO MEMBER OF THE AUDIT BOARD OFFICE OF THE PRINCIPAL DIRECTOR OF COMMERCIAL AUDIT AND OFFICIO MEMBER AUDIT BOARD 4 CH OFFICE, GREAMS ROAD, THOUSAND LIGHTS, CHENNAI, TAMIL NADU 600006

3 UNION OF INDIA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF PERSONNEL TRAINING, GOVERNMENT OF INDIA, BLOCK 04,3RD FLOOR, OLD JNU CAMPUS, NEW MEHRAULI ROAD, NEW DELHI-110 067 BY ADVS. SRI.T.C.KRISHNA (DSGI IN CHARGE) SRI.ASOK M.CHERIAN SRI.P.VIJAYAKUMAR SRI.SATHEESH N THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.02.2025, ALONG WITH WA.1047/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WA NO. 1047 OF 2020 -5-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR WEDNESDAY, THE 5TH DAY OF FEBRUARY 2025 / 16TH MAGHA, WA NO. 1052 OF 2020 AGAINST THE JUDGMENT DATED 13.02.2020 IN WP(C) NO.11531 OF 2015 OF HIGH COURT OF KERALA APPELLANT/1ST RESPONDENT: THE RUBBER BOARD COLLECTORATE P.O., KEEZHUKUNNU, REPRESENTED B ITS SECRETARY, P.B.NO.1122, SUB-JAIL ROAD, KOTTAYAM-686 002 BY ADVS. V.ABRAHAM MARKOS SRI.P.G.CHANDAPILLAI ABRAHAM RESPONDENT/PETITIONER IN W.P. & 2ND RESPONDENT: 1 CHANDRIKA DEVI.M AGED 58 YEARS W/O.K.V JAYAKUMAR, ASST. SYSTEMS OFFICER, EDP DIVISION, RUBBER BOARD, COLLECTORATE P.O., KOTTAYAM-686 002, (RESIDING AT NANDANAM, ARPOOKARA EAST P.O., KOTTAYAM-686 008) WA NO.

1047 OF 2020 -6- 2 THE PRINCIPAL DIRECTOR OF COMMERCIAL AUDIT AND EX OFFICIO MEMBER OF THE AUDIT BOARD, OFFICE OF THE PRINCIPAL DIRECTOR OF COMMERCIAL AUDIT AND EX OFFICIO MEMBER OF THE AUDIT BOARD, 4-CH OFFICE, GREAMS ROAD, THOUSAND LIGHTS, CHENNAI,TAMIL NADU-600 006 BY ADVS. SRI.T.C.KRISHNA (DSGI IN CHARGE) SRI.ASOK M.CHERIAN SRI.P.VIJAYAKUMAR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.02.2025, ALONG WITH WA.1047/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WA NO. 1047 OF 2020 -7-

JUDGMENT

[WA Nos.1047/2020, 896/2020, 1052/2020]

AMIT RAWAL, J.

This order shall dispose of three writ appeals preferred by the Rubber Board against the common

judgment of the Single Bench dated 13.02.2020,

whereby the writ petitions, challenging the action of the Rubber Board in recovering the amount allegedly and erroneously paid under the Modified Assured Career Progression (MACP) by granting the third up-gradation, have been allowed and the impugned order has been quashed.

2. All respondents/writ petitioners were

appointed as Lower Divisional Clerks and Statistical Assistants having a pay scale of Rs.1400-2300 as per the 4th Central Pay Commission. Recruitment Rules for the post of Computer Programmer, Exhibit R1(b), envisaged that the selection is on the basis of test and training and the method of recruitment was promotion. The WA NO. 1047 OF 2020 -8- categories of posts from which promotion can be made was on the basis of a departmental test to determine aptitude followed by training

on computer application and evaluation of performance with a condition that the employees eligible must possess a minimum educational qualification of pass in S.S.L.C. or equivalent course. The whole controversy revolves around the recruitment rules where against column No.5 of method of recruitment, expression promotion has been referred to. If at all it had been a promotion, there would have been a seniority list of the Statistical Assistants or Lower Divisional Clerks but, in fact the said rule meant only for the employees of the Rubber Board to avail the chance of selection on the basis of the test and training.

3. All the employees, on the basis of the

aforementioned rule, were appointed as Computer Programmer and Data Entry Machine Operators, having different pay scale. Thereafter, all the aforementioned posts merged together with effect from 01.04.1991 WA NO. 1047 OF 2020 -9- as Programmer cum Processing Assistant in the pay scale of Rs.2000-3200 as per 4th Central Pay Commission, which were later revised from time to time. The department granted them the 3 rd MACP with effect from on 15.02.2002 as they had put in ten(10) years of stagnated service. The question which arose for withdrawing the aforementioned benefit was on the basis of an audit objection, that recruitment as Computer Programmer or Data Entry Operator was the first upgradation and not an appointment by selection and re-designation as Programmer cum Processing Assistant was second upgradation. With effect from February 2002, on recommendation of 5th Central Pay Commission, were placed in the pay scale of Rs.8000- 13500 under the cadre review scheme, which was to be considered as third upgradation. Realizing the aforementioned factum, notice was issued for recovery of the excess amount, which was challenged before the single bench. Learned Single bench, on analysis of the WA NO. 1047 OF 2020 - 10- evidence, allowed the writ petition.

4. Learned counsel appearing on behalf of

the petitioner submitted that the recruitment rules is the barometer for the purpose of the eligibility or non- eligibility of the third up-gradation under the MACP after having rendered ten(10) years of stagnated service, as, the first up-gradation was strictly as per the recruitment rules which did not envisage any appointment, but

only promotion. He further submitted that the learned Single Bench had erroneously considered common seniority list of Data Entry Operator, which was not the issue raised even by the respondents/writ petitioners. The Modified Career Progression Scheme, when promulgated, had different doubts and clarifications was sought that regular service for the purposes of MACP is from the date of joining the post and direct entry cadre, whereas the respondents - writ petitioners, after having undergone the aptitude and other test, were promoted and it would be WA NO. 1047 OF 2020 -11- considered as first financial up-gradation, therefore the benefit of first MACP, after having rendered ten(10) years of stagnated service, was not liable to be accorded or sanctioned. The action for recovery of the amount was justified.

5. On the other hand learned counsel

appearing on behalf of the respondents countered the aforementioned arguments and submitted that the terms and conditions of the appointment letter do not leave any matter of doubt that it was an appointment and not a promotion. The expression promotion in the rule is only for the purpose that the employees of the Rubber Board were only eligible to undergo the tests and further submitted that the findings of the facts and law arrived at by the learned Single Bench do not require any different interpretation.

6. We have heard learned counsel for the parties and appraised the paper books.

7. Recruitment rules for the post of WA NO. 1047 OF 2020 -12- Computer Programmer reads as under: RECRUITMENT RULE FOR THE POST OF Computer Programmer

1. Name of the Post : Computer Programmer

2. Classification : Group C

3. Scale of Pay : Rs.425-800

4. Whether selection or : Selection on the basis of test and non-selection training

5. Method of recruitment : Promotion

6. Categories of posts from : Selection on the basis of a departmental

which promotion can be test to determine aptitude, followed by made training on computer application and evaluation of performance. Employees of the Board possessing a minimum educational qualification of a pass in SSLC or equivalent shall be eligible to appear for the test.

8. All the respondents/writ petitioners had

rendered two(2) years of service when the process of selection to the post of Computer Programmer or Data Entry Operator was initiated. Even in the communication dated 03.09.1991 of the Government of India, Ministry of Commerce, it was clarified that the post of Computer Programmer was not a promotion, but an appointment. The contents of the letter reads as under:

orders of the Chairman fixing interse seniority of the personnel drafted to the post of Programmer-cum-processing Assistant on the WA NO. 1047 OF 2020 -13-

basis of their grace and length of service in the Rubber Board was issued vide OM No. re-examination of the matter considering the representation in this regard it has been decided that seniority of the personnel holding the post of Programmer-cum-Processing Assistant may be fixed based on the original ranking recommended by the Computer Consultants who conducted the evaluation and assessment tests for the trainees sponsored by us in computer programming. The posting as Computer Programmer was not a promotion, but an appointment and the length of service in the previous post is not relevant in fixing the seniority in the new cadre of Programmers selected. The fact that programmer-cum-Processing Assistant is only a redesignation of the post of Computer Programmer has also been taken into account in arriving at this decision. The seniority of the four personnel holding the post of programmer-cum-Processing Assistant is therefore, refixed as follows:-

1 Shri S Naveena Kumar 2 Smt. Baby Mathew 3 Shri N Peethambaran 4 Shri U Suryanarayana Bhatt. These orders are issued in partial WA NO. 1047 OF 2020 -

14- modification of the OM No.23/1(2)/91/EST dated 1st April, 1991.

9. The appointment letter issued to one of the Computer Programmers is worth extraction. The same reads as under:

The following Statistical Assistants and LD Clerks, who have undergone the course on Computer Programming in April, 1986 run by M/s. Pallavan Transport Consultancy Service Ltd., Madras, are appointed as Trainee Computer - Computer Programmers on Rs.425/- p.m. in the scale of pay of Rs. 425 -

800. On relief they should report before the Financial Adviser.

1. Sri S Naveena Kumar, Statistical Assistant, S & P Dn.

2. Smt Baby Mathew, Statistical Assistant, Research Dept.

3. Sri N Peethambaran, LD Clerk, Regional Office, Palghat.

4. Sri U Surya Narayana Bhat, LD Clerk, RO, Mangalore. On satisfactory completion of training, they will be posted as Computer Programmers in the scale of pay of Rs.425 - 800. WA NO. 1047 OF 2020 -15-

9. If at all it was a case of promotion, the

expression promotion would have been used and not appointment, or it would have been an appointment on promotion. Therefore, said appointment cannot be considered to be the first upgradation and denied the benefit of the first part of the MACP Scheme, financial upgradation after having rendered ten(10) years of stagnated service. Though after having appointed as Data Entry Operator or Computer Programmer, the post was re-designated and named as Programmer cum Processing Assistant, which was upgraded in 2002 and that would have been a second upgradation and not the third upgradation.

10. The finding rendered by the learned single bench reads as under:

21. Therefore, I am of the view that the upgradations given to the petitioners after their appointment in the EDP Division alone shall be taken into account for the

purpose of financial upgradation under MACP Scheme. Even assuming that the method of appointment to WA NO. 1047 OF 2020 -16-

the posts in EDP is by way of promotion, even when it is in a different hierarchy of posts, they would be entitled to be considered for the benefit of MACP with reference to the date on which they were appointed as Data Entry Machine Operators/Computer Programmers in the EDP unit. Even if the argument of the learned Standing Counsel that the Chairman was competent to take a decision with respect to recruitment to new posts under Section 27(7) of Chapter 5 of the Rubber Board Act and as per the Recruitment Rules which got ratification subsequently, which provides for promotion as the method of appointment is accepted, I am of the view that the petitioners, who are governed by separate seniority list in the Electronic Data Processing Division which is a separate cadre, having regard to the entire process of selection for appointment to the post in a separate Department which is functioning separately, without any consideration for their length of service in the Rubber Board, based on their initial appointments as LDC/Statistical Assistants, are liable to be considered as having been absorbed or recruited to the new cadre.

22. In the above circumstances of the case, I

am of the considered view that the audit objections raised in the case of the petitioners in all these Writ Petitions and the consequential action of the Rubber Board in withdrawing the WA NO. 1047 OF 2020 -17-

benefit of MACPS and in re-fixing their pay are unsustainable and accordingly the impugned orders in all these Writ Petitions i.e Exts.P6 and P7 in W.P.(C).No. 27732/2015, Exts.P9 and P11 orders in W.P.(C).Nos 11529/2015 and petitioners shall stand set aside. The benefits given to them prior to the orders which are set aside shall stand restored and they shall be granted consequential benefits.

11. As an upshot of our findings as well as the view noticed by the learned Single Bench, we are of the

view that nothing survives in the appeal as the order

under challenge is perfectly legal and justified and do not call for any interference. Writ appeals stand dismissed. Sd/- AMIT RAWAL JUDGE Sd/- K. V. JAYAKUMAR JUDGE vv

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