State of Kerala, vs C.S.Mohanakumar,

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SooperKanoon Citation : sooperkanoon.com/1363218

Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : OP(KAT)/232/2019

Appellant : State of Kerala,

Respondent : C.S.Mohanakumar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945 OP(KAT) NO. 232 OF 2019 AGAINST THE ORDER OA 1423/2017 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM PETITIONER/S: STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRTARY TO GOVT. FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN 695001 BY ADV GOVERNMENT PLEADER (SR.) SHRI A.J.VARGHESE -:2:-103/ RESPONDENT/S:

1 C.S.MOHANAKUMAR, S/O. LATE A. CHELLAPPAN, SENIOR FINANCE OFFICER (RTD),KUMAR BHAVAN, MATHEMPALA, PALUKAL P.O, KANYAKUMARI DISTRICT PIN 629 170 THIRUVANANTHAPURAM, KERALA PIN- 695023. 2 V.P KUTTISANKARAN, S/O. RAMUNNI NAIR (LATE), SENIOR FINANCE OFFICER (RTD), KAROLI HOUSE, MANKAVE P.O, KOZHIKODE PIN 3 V. SAJEENDRAN, S/O. LATE GOVINDAN, SENIOR FINANCE OFFICER (RTD), ROSHINI SADAN, CHALA EAST P.O, KANNUR, PIN 670621. BY ADV RAJESH P.NAIR

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 7.11.2023, THE COURT ON 22/12/2023 DELIVERED THE FOLLOWING: -:3:-103/

J U D G M E N T

A. Muhamed Mustaque, J.

The short point that arises for consideration is whether the respondents who were the applicants before the Kerala Administrative Tribunal, are entitled to arrears of pay in the cadre of Finance Officer Grade-I, from the date on which their immediate juniors were promoted. The Tribunal answered in favour of the applicants. The State challenges this order of the

Tribunal in this original petition. The Government by an order

dated 1/12/2015, after many litigations, found that the applicants were entitled for promotion in the cadre of Finance Officer Grade-I, in respect of first applicant on 20/10/2004 and in respect of other applicants with effect from 14/1/2003 without back arrears but reckoning the period notionally for pensionary benefits.

2. Aggrieved by the above order, the applicants approached

the Tribunal. The Tribunal noting that there is no change of -:4:-103/ duty consequent upon the promotion and applicants having challenged the promotion given to their juniors immediately after they were promoted, and on finding that the applicants were illegally denied promotion, found that the applicants are entitled to the pay and allowances in the post to which they were promoted, from the date of regularisation.

3. The learned Government Pleader Shri A.J.Varghese,

challenging this order argued in extenso, and placed reliance on the judgment of the Apex Court in Union of India and Others v. N.C.Murali and Others [(2017) 13 SCC 575]. It is appropriate to refer to paras 17 and 19 of the above judgment which reads thus:

17. In view of the law laid down in the abovementioned cases, it

is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallise on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected.

19. The present is a case where admittedly DPC was not held from

1984 till October 2001. Although various reasons have been given by the appellants for not holding DPC, it is not necessary for us for the purpose of this case to enter into such reasons to find out as to -:5:-103/

whether there is any justification for not holding the DPC for the relevant years. Suffice it to say, the promotions having been effected after DPC was held and those who were entitled have been given promotions, the litigation initiated by the respondents before the Tribunal should have been closed. The directions of the Tribunal to give retrospective pro forma promotion and retrospective seniority w.e.f. the date of vacancy when they were eligible, ought not to have been issued. However, taking into consideration the fact that the said promotions were effected in 2001 and after the order of the Tribunal in 2003, the benefit of retrospective pro forma promotion was also extended by the Government in compliance with the order of the Tribunal, benefit of which order had been availed of by the respondents who were promoted and most of them having already been superannuated, at this distance of time, we are not inclined to interfere with the order of the Tribunal as affirmed by the High Court.

4. The learned Government Pleader then placed reliance on Rule 23(a) of Chapter III Part-I KSR.

5. The learned counsel for the respondents submits that duties and responsibilities are the same, and that arbitrary denial of promotion cannot result in denial of legitimate pay due to them. -:6:-103/

6. It is appropriate to refer to Rule 23 of Chapter III, Part-I KSR which reads thus:

23. (a) Subject to any exceptions specifically made in these rules,

an Officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties. If the charge is transferred afternoon, the transfer does not affect pay and allowances until the next day.

[Exception.- An Officer deputed for a course of instruction or training which is ordered to be treated as duty, if promoted to a higher post in the regular line during such course of instruction or training, may draw the pay thereof, without joining it, the benefit of promotion being given from the date his junior assumes charge of the higher post.]

(b) If, however, the substantive appointment of an officer is

changed while he is officiating in an appointment, or if, while so officiating, an Officer is appointed for the first time, to some substantive office, then, provided that the tenure of his officiating appointment is not

> interrupted by his new substantive appointment, he may draw the pay thereof without joining it from the date on which he is appointed thereto, or from any later date on which the substantive office becomes vacant.

(c) [In the case of notional promotions back arrears of pay and allowances are not admissible. -:7:-103/

d) Promotions which do not involve change of duties shall have effect from the date of occurrence of vacancy, or the date of acquiring eligibility for promotions, whichever is later, but monetary benefit shall be admissible only for a maximum period of one year prior to the date of order of promotion

7. The Apex Court did not lay down any proposition that the promotion given retrospectively cannot be given financial

benefit. It is appropriate to refer to para 18 of the judgment

in M.C.Murali case (supra) which reads thus:

18. However, there may be cases when the promotions have to be

> retrospectively made with or without financial benefits. A well-known example of giving retrospective promotion is cases of sealed cover procedure when the recommendations are kept in sealed cover procedure awaiting the outcome of disciplinary proceedings. There may be other circumstances in which a person is entitled to be given the benefit of retrospective promotion including a case where statutory rules mandates effecting promotion by particular time or on occurrence of vacancy.

On the other hand, Rule 23(d) KSR which came into force with effect from 1/3/2007 allows monetary benefits for the maximum period of one year prior to the date of order of promotion. That means, in a promotion which do not involve change of duties prior -:8:-103/ to 1/3/2007, the Government servant is entitled to claim arrears of pay from the date of regularisation. This is a case, admittedly where regularsiation was given from the date prior to dated 6/5/1992, the duties of Finance Assistant and Finance Officer have been mentioned and, their duties, powers and responsibilities are one and the same. That be the case, there is no scope for interference with the order of the Tribunal. The original petition is, therefore, dismissed. Sd/- A.MUHAMED MUSTAQUE , JUDGE Sd/- SHOBA ANNAMMA EAPEN, JUDGE ms -:9:-103/ APPENDIX OF OP(KAT) 232/2019 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE O.A NO. 1423/2017 ALONG WITH ANNEXURES Exhibit P1(A1) TRUE COPY OF THE JUDGMENT DATED 02.08.2004 OF THE HON'BLE HIGH COURT IN OP.NO.10391/99. Exhibit P1(A2) TRUE COPY OF THE NOTIFICATION NO.78888/ESTT.B/2006/FIN DATED 24.02.2006 ISSUED BY FINANCE DEPARTMENT. Exhibit P1(A3) TRUE COPY OF JUDGMENT DATED 26.06.2006 OF HON'BLE HIGH COURT IN WP(C) 21608/2005. Exhibit P1(A4) TRUE COPY OF JUDGMENT DATED 17.09.2010 OF THE HON'BLE HIGH COURT IN WP(C) Exhibit P1(A5) TRUE COPY OF G.O(RT)NO.8776/2010/FIN DATED 04.12.2010. Exhibit P1(A6) TRUE COPY OF G.O(RT)NO.10422/2015/FIN DATED 01.12.2015. Exhibit P1(A7) TRUE COPY OF ORDER IN TA 2798/2012 DATED 20.10.2016 OF KERALA ADMINISTRATIVE TRIBUNAL. Exhibit P1(A8) TRUE COPY OF JUDGMENT IN M.K.SUCHEENDRAN VS. STATE OF KERALA (2005(3)KLT 499). Exhibit P1(A9) TRUE COPY OF JUDGMENT IN THOMAS PAUL VS.STATE OF KERALA IN WP(C) NO.32386/2008. Exhibit P1(A10) TRUE COPY OF JUDGMENT IN STATE OF KERALA VS.E.K.BHASKARAN PILLAI (2007 IN SC 417 (17.04.2007). Exhibit P1(A11) TRUE COPY OF G.O(RT)NO.1460/2017/FIN DATED 22.02.2017. Exhibit P1(A12) TRUE COPY OF G.O(P)NO.388/92/FIN DATED 06.05.1992. EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 1ST PETITIONER HEREIN IN THE O.A EXHIBIT P3 TRUE COPY OF THE MA 738/2018 ALONG WITH ANNEXURES. -:10:-103/ Exhibit P3(A13) TRUE COPY OF GOVERNMENT FILE NO.78888/ESTT.B2/2004/FIN OBTAINED UNDER RTI ACT. Exhibit P3(A14) TRUE COPY OF G.O(MS)NO.214/2006/FIN DATED 18.05.2006. Exhibit P3(A15) TRUE COPY OF G.O(RT)NO.5024/2007/FIN DATED 26.07.2017 ASSIGNING SENIORITY TO THE APPLICANTS. Exhibit P3(A16) TRUE COPY OF G.O(RT)NO.263/2003/FIN DATED 13.01.2003. Exhibit P3(A17) TRUE COPY OF G.O(RT)NO.6468/2006/FIN DATED 19.09.2006. Exhibit P3(A18) TRUE COPY OF

G.O(RT)NO.6787/2004/FIN DATED 08.10.2004. Exhibit P3(A19) TRUE COPY OF G.O(RT)NO.272/2005/FIN DATED 10.01.2005. Exhibit P3(A20) TRUE COPY OF G.O(RT)NO.3071/2005/FIN DATED 12.04.2005. Exhibit P3(A21) TRUE COPY OF G.O(RT)NO.4494/2005/FIN DATED 10.06.2005. Exhibit P3(A22) TRUE COPY OF G.O(RT)NO.8512/2012/FIN DATED 03.10.2012. EXHIBIT P4 TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENT EXHIBIT P5 TRUE COPY OF THE REJOINDER ON THE ADDITIONAL REPLY STATEMENT EXHIBIT P6 TRUE COPY OF THE ORDER DATED 08-02-2019