

N.Jayan Vs. State of Kerala

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Court : Kerala

Decided On : Sep-08-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : N.Jayan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 8TH DAY OF SEPTEMBER 2015 17TH BHADRA, 1937 WP(C).No. 27646 of 2013 (E)

----- PETITIONER(S): ----- 1. N.JAYAN SREEDHALAM, PANNIKOTTIL, KARAD PARAMBA P.O. MALAPPURAM DISTRICT.

2. K. SAIDALAVI KOPPLAKKATTE HOUSE, PILIPARAMBA P.O. MALAPPURAM DISTRICT.

3. M. GOPALAKRISHNAN SRUTHI, PALLIKKAL P.O., CHELEMBRA MALAPPURAM DISTRICT-673 634.

4. VASU KANDARAMPATTA JIJI NIVAS, POTHODATH, PALLIKKAL P.O. MALAPPURAM - 673563. BY ADV. SRI.P.C.SASIDHARAN RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT HIGHER EDUCATION DEPARTMENT,

SECRETARIAT THIRUVANANTHAPURAM-695001.

2. THE UNIVERSITY OF CALICUT, REPRESENTED BY ITS REGISTRAR, THENHIPALAM MALAPPURAM - 673 635.

3. THE VICE CHANCELLOR, UNIVERSITY OF CALICUT, THENHIPALAM MALAPPURAM - 673 635.

4. THE JOINT DIRECTOR, LOCAL FUND AUDIT, UNIVERSITY OF CALICUT, THENHIPALAM MALAPPURAM - 673 635. R1-R4 BY ADV. GOVERNMENT PLEADER SRI S JAMAL R2 BY ADV. SRI.SANTHOSH MATHEW,SC,CALICUTY UNIVERSTIES THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/09/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 27646 of 2013 (E) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT-P1-TRUE COPY OF THE CIRCULAR DATED 11/03/1987 EXHIBIT-P2-TRUE COPY OF THE LIST OF PERSONS PROMOTED TO THE POST OF CLERICAL ASSISTANT FROM LAST GRADE SERVANTS. EXHIBIT-P3-TRUE COPY OF THE

ORDER

SANCTIONING PENSION TO THE 1ST PETITIONER. EXHIBIT-P3(A)-TRUE COPY OF THE

ORDER

SANCTIONING PENSION TO THE 2ND PETITIONER EXHIBIT-P3(B)-TRUE COPY OF THE

ORDER

SANCTIONING PENSION TO THE 3RD PETITIONER EXHIBIT-P3(C)-TRUE COPY OF THE

ORDER

SANCTIONING PENSION TO THE 4TH PETITIONER EXHIBIT-P4-TRUE COPY OF THE AUDIT OBJECTION RAISED BY THE 4TH RESPONDENT, RECEIVED UNDER THE RIGHT TO INFORMATION ACT, PERTAINING TO THE 1ST PETITIONER. EXHIBIT-P5-TRUE COPY OF THE LETTER ADDRESSED TO

THE GOVERNMENT DATED 03/10/2012, RECEIVED UNDER THE RIGHT TO INFORMATION ACT. EXHIBIT-P6-TRUE COPY OF THE COMMUNICATION ISSUED BY THE GOVERNMENT DATED 01/08/2013. EXHIBIT-P7-TRUE COPY OF THE

ORDER

ISSUED BY THE UNIVERSITY DATED 18/06/2005. EXHIBIT-P8-TRUE COPY OF THE

ORDER

ISSUED BY THE UNIVERSITY IN FAVOUR OF ONE OF THE PETITIONERS. EXT.P9: TRUE COPY OF THE

JUDGMENT

IN WPC NO, 3533 OF 2014 RESPONDENT(S)' EXHIBITS: NIL
----- TRUE COPY P.A TO JUDGE K. VINOD
CHANDRAN, J - - - - - W.P(C) No. 27646 of 2013
----- Dated this the 08th day of September, 2015

JUDGMENT

The petitioners 1 to 3 were initially appointed as Watchman and 4th petitioner as Gardner, in the respondent University. The petitioners were in the integrated class IV service of the University. By Ext.P1 circular, the University had brought out a scheme under which non-SSLC Class IV servants could also aspire for promotion as Clerical Assistant, provided the said employees pass an eligibility test conducted by the University.

2. The petitioners did not have the Secondary School Leaving Certificate and having passed the eligibility test, was promoted as Clerical Assistants by Ext.P2 dated 30.05.1997. Pursuant to the promotion, on completion of 10 years, they were granted I higher Grade and the II higher Grade on further completion of six years.

3. The petitioners retired on 30.03.2010. The Local Fund Audit of the Government while processing the pension WPC.No.27646/2013 :

2. : papers, however, raised an objection with respect to the petitioners having been granted the I higher Grade and the II higher grade. The objection was on the ground that Non-SSLC holders would not be entitled to such higher grade. In any event, the objections raised on audit, was overruled by the University, in the case of all the petitioners as is evidenced from Exts.P3, P3(a), P3(b) and P3(c). Pension was sanctioned and disbursed so also the other retirement benefits including DCRG on the basis of the last pay drawn by the petitioner after availing the I higher Grade and the II higher Grade.

4. The present controversy arose on the implementation of the 9th Pay Commission which granted revision of pay retrospectively w.e.f 1.7.2009. The petitioners hence sought for the disbursement of the dues as per the said revision as also the re-fixation of retirement benefits including pension as per the 9th Pay Commission. The same was refused to be processed on the basis of Ext.P4 order of the Local Fund Audit dated 14.06.2012. WPC.No.27646/2013 :

3. : The Registrar had also by Ext.P5 recommended that the petitioners revision be effected as claimed, which was rejected by Ext.P6 by the Government.

5. The learned Government Pleader, however, submits that the University being an institution entitled for grants-in-aid from the Government, the Rules and regulations stipulated by the Government has to be obeyed. However, the counter affidavit does not indicate any specific rule by which the non-SSLC holders has been declined higher grade. It is also to be noticed that on almost similar circumstances, where there was an audit objection against the grant of pensionary benefits, this Court had directed the University to release the withheld amounts to the petitioner therein as per Ext.P9.

6. A reading of Ext.P9 judgment would indicate that, that was also a case where there was an audit objection against the grant of pensionary benefits to the petitioner therein, raised for the first time, when the petitioner was retired from service in 2010. WPC.No.27646/2013 :

4. : The objection was considered and overruled by a specific decision of the University. The pensionary benefits were also granted on the basis of the last pay

drawn as on 2010. The Government had not raised any objection with respect to the grant of pension and only when the 9th Pay Commission was said to be implemented, the objection was raised. The declaration in Ext.P9 would squarely apply herein. Further, the Calicut University I statute 1977 by chapter VI3(8) provides so:

3. Powers and duties:- The syndicate shall, in addition to the powers and duties conferred and imposed on it by the Act and subject to the provisions thereof, have and exercise the following further powers and functions:- (i) xxx xxx xxx xxx xxx (viii) to cause proper accounts to be maintained relating to the Funds of the University and to review the Government Auditors Report. WPC.No.27646/2013 :

5. :

7. In such circumstance, the University's power to overrule an objection on audit is clearly provided in the Statute. As has been indicated in Ext.P9, a decision was taken to waive the audit objection when the pension was initially sanctioned. The government on the basis of a subsequent revision of pay, sought to revive the objection which already stood over-ruled. The power has also been conferred on the University to so over-rule the audit objection in the First Statutes as indicated hereinabove. In such circumstance, Exts.P4 and P6 shall stand set aside. The University shall disburse the benefits due under the 9th Pay Commission within three months from the date of receipt of a certified copy of this judgment. Writ petition allowed. Sd/- (K. VINOD CHANDRAN, JUDGE) jma //true copy/// P.A to Judge

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