

Abdul Razak Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/718064

Court : Kerala

Decided On : Feb-08-2006

Reported in : 2006(1)KLT818

Judge : M. Ramachandran and; A.K. Basheer, JJ.

Acts : Kerala Service Rules - Rules 4, 88 and 110; ;Kerala State and Subordinate Services Rules - Rule 27

Appeal No. : W.A. No. 54 of 2006

Appellant : Abdul Razak

Respondent : State of Kerala

Advocate for Def. : M.A. Vaheeda Babu, Government Pleader

Advocate for Pet/Ap. : V. Ajith Narayanan. Adv.

Disposition : Appeal dismissed

Judgement :

M. Ramachandran, J.

1. Appellant was the petitioner in W.P.(C). No. 30609 of 2005. The representation submitted by him before the Government had been turned down on 07-07-2005 and although this was not specifically subjected to challenge, collaterally a claim

had been made in the Writ Petition pointing out that the period spent by him on leave without allowances is to be counted for the purpose of the grant of a higher grade.

2. The learned single Judge noticed that without challenging the earlier orders passed, the Writ Petition could not have been sustainable. On the merits also, it had been held that the claims of the petitioner for reckoning the period of leave without allowances for the purpose of grant of higher grade was legally not sustainable. Aggrieved thereby this Writ Appeal has been filed.

3. Sri. Ajith Narayanan, appearing on behalf of the appellant, submits that a grave error had been committed by the learned single Judge while considering the relevant rules and the matter requires examination, in greater detail. According to him, Rule 4 of Appendix XII-A of the Kerala Service Rules is sufficient enough to indicate that period spent on leave without allowances could have been reckonable for the purpose of grade promotion. Therefore, the judgment requires a reconsideration. Reliance was also sought to be made on a judgment rendered by a learned Judge in W.P.(C). No. 2948 of 2004 as also the decision reported in Krishna Warner v. Devendran 2005(4) KLT SN 51 - Case No. 66. We had heard Smt. M.A. Vaheeda Babu, the learned Government Pleader for the respondents.

4. We are afraid the appellant has practically misled himself when he has come up with such a contention. Rule 4 of Appendix XII-A of the K.S.R could be extracted herein below:

4. Permanent officers and non-permanent officers who have completed probation in their entry cadre in the regular service of Government may be granted leave without allowances under these rules. In such cases, for, and during the currency of the period of leave, the officers shall lose all service benefits such as the earning of leave including half pay leave, pension, gratuity, increment, etc., and also promotion chances as may arise with reference to their seniority in the posts from which they proceeded on leave. They shall also lose seniority in the higher grade/grades with reference to their juniors who might get promoted to such grade/grades before they rejoin duty.

The stress of the rule, as could be understood, is that officers shall lose all service benefits, when they avail of leave without allowances/Reference is made to earned leave, including half pay leave, pension, gratuity, increments etc. Promotion chances are also lost to them. The Rule in fact discourages possible claim, which may be urged in the matter of higher grades. In the eventuality of an officer, who availed of leave without allowances, getting a higher grade, that will not enable him to press for an advantage over his junior counter parts, who had remained in service, and by virtue of such service in the meanwhile were conferred with grade promotions. We find that instead of supporting the petitioner/appellant, the specific clause plugs any argument that possibly could have been raised by such group.

5. The decisions relied on may also not come to the advantage of the appellant/petitioner, since what was salvaged was the right of seniority, which would not have been deemed as lost in view of the provisions of Rule 27 of the Kerala State and Subordinate Services Rules. The sustenance attempted to be drawn is plainly unsustainable.

6. That a person may retain his position of seniority for whatever it is worth does not automatically lead to a presumption that he is to be deemed as having rendered service all throughout. Conferment of grade promotion is for ensuring that stagnation is avoided and disgruntlement does not result. After rendering service for a specified period in a post, an officer is deemed to have come over to the higher grade. The absence of a higher post itself is immaterial for giving such benefit. In respect of persons, who are able to secure promotion, benefit of grade promotions is not admissible. Thus the benefit is introduced with clear insight.

7. Rule 88 as also Rule 110(b) of Part I K.S.R prescribe that leave without allowances could be availed of when no other leave is admissible to the officer. Also when the officer applies for the grant of leave without allowances, it may be available. Naturally it has to be presumed that the officer is aware of the possibility of set backs in his service, as he is voluntarily keeping away from service. There is no case for the appellant that he had been deputed to any public sector enterprise. He had voluntarily availed of leave for employment abroad. It will not therefore be justifiable on his part to contend that notwithstanding all these he will be entitled, to

grade promotion, as if a bonanza for having joined Government service. He was never in public employment during such period and had nor suffered stagnation, as is normally understood. The wordings of Rule 4 of Appendix XII-A are sufficiently clear to show that the benefit might not have been admissible to such an officer. These, we find, are sufficient reasons to reject the contentions urged.

8. Sri. Ajith Narayanan refers to another aspect, which according to him, had been omitted to be noticed by the learned single Judge, namely that the claims of the appellant/petitioner with reference to unification of the scales, though highlighted in the Writ Petition had gone unnoticed. There is nothing to indicate that, such contentions had been raised before the learned Judge. Normally different cause of action cannot be clubbed in a single petition. There is no reason also shown as to why a review on this point had not been attempted to be made, as it alone would have been an acceptable procedure. At best, we may observe that the petitioner is entitled to a declaration that no other issue than the one relating to his claims, relating to grade promotions on the strength of Appendix XII-A had been subjected to examination in these proceedings, although such claims stand rejected.

We dismiss the Writ Appeal. There will be no order as to costs.