

Soman Vs. State of Kerala

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Court : Kerala

Decided On : Sep-09-1991

Reported in : (1993)ILLJ844Ker

Judge : Pareed Pillay, J.

Appeal No. : O.P. No. 9741/1987

Appellant : Soman

Respondent : State of Kerala

Advocate for Def. : E. Thankappan, Govt. Pleader

Advocate for Pet/Ap. : A.K. Avirah, Adv.

Disposition : Petition allowed

Judgement :

Pareed Pillay, J.

1. Case of the petitioner is that his promotions to various categories were denied and delayed for no fault of his and on account of it he has sustained substantial pecuniary loss. Government issued G.O. (RT) 276/87/F & CSD dated July 9, 1987 sanctioning notional promotion to the petitioner in the grade of District Supply Officer with effect from October 28, 1983 without the benefit of back arrears. This

is evidenced by Ext. P.1. Ext. P1 shows that the Government restored the rank and seniority of the petitioner in the cadre of District Supply Officer just above Sri. Abdul Kalam and below Sri. Varghese Varkey. It is made clear that the petitioner would be given the benefit of notional promotion in the cadre of District Supply Officer with effect from October 28, 1983, the date on which his immediate junior assumed charge in that cadre, without the benefit of back arrears. Respondents issued Ext. P8 order on the representation made by the petitioner stating their inability to grant the back arrears for the notional promotions granted to him in the various non-gazetted and gazetted cadres on the ground that he did not actually work in those posts from these notional dates.

2. Contention of the petitioner is that he being the senior to Sr. Abdul Kalam who was promoted as the District Supply Officer on October 28, 1983 should not have been denied of the back wages especially when the Government accepted the mistake and granted promotion to him in the cadre of District Supply Officer with effect from October 28, 1983. It is asserted by the petitioner that the denial of promotion to him for a long period was not on 1 account of any fault attributable to him but occurred due to the sole reason of the respondents' willful failure to issue appropriate promotion orders to various grades including that of the District Supply Officer and also on 1 account of the failure to make fixation of correct seniority in the respective grades at the appropriate time.

3. Proceedings of the Board of Revenue 2 (Civil Supplies) dated November 3, 1975 (Ext. P2) shows that sanction was accorded for the restoration of the rank of the petitioner above Sri. Abdul Kalam. Relying on Ext. P2 learned counsel for the petitioner submitted that as early as November 3, 1975 the respondents were aware of the fact that the petitioner was senior to Sri. Abdul Kalam and they failed to give him promotion at the appropriate time and therefore they cannot deny him the benefit of back arrears of salary.

4. The question that arises for consideration is whether in the above circumstances back arrears of salary or other emoluments can be denied to a Government servant whose promotion was delayed for no fault of his. Ext. P2 reveals that the petitioner was senior to Sri. Abdul Kalam. In Ext, P1 respondents

without any demur held that the petitioner is entitled to get notional promotion in the cadre of District Supply Officer with effect from October 28, 1983. It is further stated in Ext. P-1 that if the petitioner had been given due rank and seniority in the various grades at the appropriate time, he < would have also been promoted to the cadre of District Supply Officer ahead of his junior Sri. Abdul Kalam in 1983 itself. That being the position, there is no justification for denying the petitioner of the benefit of back arrears of salary and other emoluments. In a case where promotion to a Government servant is delayed for no reason attributable to him and when it is given to him later with retrospective effect from the date on which it was due, his claim that he is entitled to restoration of the benefits which were denied to him cannot be rejected. There is no justification for the Government to do so as it is only just and proper that Government should restore to him what was denied without any rhyme or reason.

5. The essential principle to be borne in mind is that a Government Officer cannot be penalised for no fault attributed to him. It is against all legal principles and fair play for any Government to take the stand that a mistake committed by the Government should remain eternally detrimental to the interests of the Government servant. It is indeed difficult to hold that a Government servant has forfeited his claim for arrears of salary when he did not get his due promotion for no fault attributable to him. In *Narayana Menon v. State of Kerala* (1978 KLT 29) this Court held that a Government servant does not forfeit his claim for arrears of salary when he did not get his due promotion by a mistake of the Government. The above decision was approved by a Division Bench of this Court in *Rajappan Nair v. State of Kerala* (1984 KLT 141). This Court held that it is only proper that the Government should restore to the officer all that was lost by way of salary or other emoluments.

6. As the promotion of the petitioner was denied for no fault of his, the respondents were not justified in holding that he is not entitled to the benefit of back arrears of salary. Ext. P-I order is quashed to the extent it denied the benefit of back wages to the petitioner. For the same reason Ext. P1 is also quashed. It is hereby held that the petitioner is entitled to claim arrears of salary from October 28, 1983 in the cadre of District Supply Officer and in other grades with effect from the due date of

his promotion to such grades. The respondents are directed to pass orders of payment of the arrears of salary due to the petitioner within six months after receipt of this judgment. The Original Petition stands allowed. No costs.

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