

Succheendran Vs. State of Kerala

Succheendran Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/726735

Court : Kerala

Decided On : May-31-2005

Reported in : 2005(3)KLT499

Judge : J.B. Koshy and; K.T. Sankaran, JJ.

Acts : Kerala Service Rules - Rule 23

Appeal No. : W.A. No. 2905 of 2002

Appellant : Succheendran

Respondent : State of Kerala

Advocate for Def. : M.R. Rajendran Nair, Adv. and ; Vaheeda Babu, Government Pleader

Advocate for Pet/Ap. : S.P. Aravindakshan Pillay, Adv.

Disposition : Petition allowed

Judgement :

J.B. Koshy, J.

1. Appellant/petitioner was appointed as Assistant Public Prosecutor Grade II on 1.8.1987. The main relief sought in the Original Petition was for a direction to appoint the petitioner as Assistant Public Prosecutor Grade II and as Assistant

Public Prosecutor Grade I with effect from the dates the third respondent was posted to those posts (19.10.1984 & 19.9.1989 respectively). It is an admitted case that while working out communal rotation, a mistake happened and at the place of third respondent, the petitioner ought to have been promoted. During the pendency of the Original Petition, the petitioner retired from service on 28.2.2002. By Ext.P10 dated 8.5.2002, he was allowed notional effect to his appointment as Assistant Public Prosecutor Grade II with effect from 19.10.1984 and as Assistant Public Prosecutor Grade I with effect from 19.9.1989. However, he was not given the backwages, but only notional benefits with retrospective date of appointment as well as retrospective date of promotion. The learned Single Judge while disposing of the Writ Petition held that he is entitled to consequential refixation of pay and revision of terminal benefits. But, his application for getting arrears of difference in salary was denied on the ground that he was not working in the respective post. That is challenged in the Writ Appeal. With regard to the appointment as Assistant Public Prosecutor Grade II, even though it was ordered in Ext.P10 that he was entitled to get the post with retrospective effect, since he has not worked in that post, he is only entitled to notional benefits from the due date of appointment and he will not be entitled to salary arrears. Then the question is with regard to the promoted post. Whether he is entitled to salary in the promoted post with effect from the due date. The learned Government Pleader submitted that he is not entitled to the salary from the due date of promotion in view of the decision of the Supreme Court in Soumini v. State Bank of Travancore, 2004 (1) KLT 1022 (SC). In that case, an employee was denied promotion in terms of the promotion policy as he did not secure a minimum eligibility mark in the interview. The learned Single Judge allowed the petition on the ground that such prescription of a minimum mark was not valid and ordered promotion. That was accepted by the Division Bench. But, the Supreme Court affirmed the prescription of a minimum mark in the interview, but taking into account the long pendency of appeal did not interfere in the decision, but only held that the employee will be entitled to only notional benefits of promotion with retrospective effect especially noting that he did not work in that promoted post.

2. Learned counsel for the petitioner relied on the decision of this Court in State of Kerala v. Bhaskaran Pillai, : 2003(1)KLT60 , in which it was held that the decision

in *Philomina v. State of Kerala*, 1984 KLT 59, was not good law. We are of the opinion that whether one will get backwages consequent to promotion depends upon the facts of each case. It is true that normally when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been illegally denied promotion earlier as held by the Supreme Court in *State of A. P. v. K.V.L Narasimha Rao*, : AIR 1999 SC2255 . Retrospective promotion and appointment retrospectively for notional purpose are different. In this connection, we also refer to the decision of the Apex Court in *Union of India v. K.V. Jankiraman*, : (1991)1ILLJ570SC . There are also various decisions of the Supreme Court where direction was only to give notional benefits without giving salary on the ground of 'no work no pay' (See *State of Haryana v. O.P. Gupta*, : [1996]1SCR468 , *Paluru Ramkrishnaiah v. Union of India*, , *Virender Kumar, G.M., N. Rlys. v. Avinash Chandra Chadha*, : [1990]2SCR769 . All depend upon the facts of each case. Here, the petitioner is not entitled to salary for the period of retrospective notional appointment on the ground of 'no work no pay'. Difference in salary for the retrospectively promoted post cannot be denied on the ground of 'no work no pay' because there is no difference in work of Assistant Public Prosecutor Grade II and Assistant Public Prosecutor Grade I. The petitioner was doing the same work. There is no question of 'no work' in the promoted post. The matter is covered by the Service Rules. Rule 23(c) of Part I of the Kerala Service Rules reads as follows:

'23. (c) Promotions which do not involve a change of duties shall have effect from the date of the vacancy which occasions the promotion'.

Therefore, there is a clear provision in the Service Rules that promotions which do not involve a change of duties should be given effect from the date on which the vacancy arose. Here there is no change of duties. It is only promotional aspect with a change of salary alone and for no fault of the petitioner, he was denied promotion at the particular date. Therefore, the petitioner will be entitled to the difference in salary in the promoted post for the period from 19.9.1989 till 1.1.7.1995 from which date he was retrospectively promoted. The arrears of the same should be paid to him within three months from the date of receipt of a copy of this judgment.

The Writ Appeal is allowed to the above extent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com