

Saiful Islam Vs. State of Kerala

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Court : Kerala

Decided On : Jun-20-2003

Reported in : 2003(3)KLT384

Judge : Kurian Joseph, J.

Acts : Kerala Services Rules, Rules - 28A and 30

Appeal No. : O.P. No. 2503 of 1996

Appellant : Saiful Islam

Respondent : State of Kerala

Advocate for Def. : P.K. Shakeela, Government Pleader

Advocate for Pet/Ap. : K.R.B. Kaimal, Adv.

Judgement :

Kurian Joseph, J.

1. Conflict between pay fixations under Rules 28A and 30 of Part-I KSR is the subject matter of the Writ Petition. Is there any restriction that Rule 28A fixation cannot be granted more than twice and if a third occasion arises it should be under Rule 30?

2. Petitioners entered service as Junior Agricultural Officers during 1963-64. In terms of the then existing orders, they secured a first higher grade on completion of 13 years of service in 1979. Thereafter in 1983 they were promoted as Assistant Directors. In both 1979 time bound higher grade promotion and 1983 Assistant Director promotion, the petitioners were granted benefit of fixation under Rule 28A Part-I of the Kerala Service Rules since both promotions involved change in time scale requiring application of Rule 28A. The 1988 pay revision which came into effect from 1.7.1988 provided for time bound second higher grade promotion on completion of 20 years of service. Petitioners were in the scale of pay of Rs. 1650-3175 at that time and they were given the scale of Rs. 2070-3550 as per Ext.P1. Their pay was fixed subsequently granting the benefit under Rule 28A Part I of the Kerala Service Rules since the said grade promotion also involved a change in the time scale. While fixing the pay in accordance with 1992 pay revision, the Accountant General raised a query regarding the Rule 28A fixation made in terms of 1988 pay revision.

3. It is the stand of the Government that since petitioners already had the benefit of two promotions involving Rule 28A fixation, one in 1979 and the other in 1983, fixation pursuant to the second higher grade with effect from 1.7.1988 should have been done only under Rule 30 Part I of the Kerala Service Rules. Exts.P3 to P7 are the consequential recovery.

4. Mr. K.R.B. Kaimal, learned counsel appearing for the petitioners submits that there is no restriction in KSR regarding the grant of benefit. It is further submitted that Rule 30 is attracted only when there is a revision of pay in the existing post and not when there is a change in the time scale.

5. Rule 28A and Rule 30 of Part I Kerala Service Rules read as follows:-

Rule 28A: Notwithstanding anything contained in these rules, where an officer holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying a higher time scale of pay, his initial pay in the higher time scale of pay shall be fixed at the stage next above the pay notionally arrived at in the lower time scale of pay by increasing the actual pay drawn by him in the lower time-scale by

one increment. A refixation of pay will be allowed whenever there is a change of pay in the lower time-scale.

'Rule 30. The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay; provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment in the old scale, or until he vacates his post or ceases to draw pay in that time scale. The option once exercised is final.'

6. It is the submission of the learned Government Pleader that the time bound higher grade promotions are granted by separate Government Orders/Clarifications issued from time to time and hence the provisions in Rule 28A of Part I of the Kerala Service Rules are not strictly applicable. But there is no stipulation in any pay revision order that while refixing the pay under the pay revision, the benefit under Rule 28A will not be granted. There is no dispute regarding entitlement of the 20 years grade. Having not prescribed any restrictions either in the rule or in the pay revision orders, there is no justification in issuing a subsequent clarification that while granting the benefit of time bound grade promotion the incumbent who had already enjoyed 2 or 3 of Rule 28A fixations in the meanwhile will not get the benefit of Rule 28A fixation, even if there is a change in the time scale. The only restriction is to the minimum of the time scale in the lower post. It is also significant to note that in the Government decision No. 1 under Rule 28A, it is specifically provided that the 'provisions of this rule will not apply to cases of revision of scales of pay referred to in Rule 30.'

7. Rule 30 is attracted only when there is a change in the existing scale of pay attached to a post, in which case the holder of the post is free to opt for the new pay or even postpone the new scale. But in the case of fixation under Rule 28A, it is done when there is change in the time scale of an employee. In other words, Rule 28A is to be applied when there is change in time scale of an employee whereas Rule 30 is to be applied only when there is change in the existing pay attached to the post.

8. In the counter affidavit in fact the position is accepted by the Government. It is stated thus:- It is true that there is no provision in Kerala Service Rules that 'Rule

28A can be applied only twice.' If that be so, the clarification by the Government that the petitioners will not be entitled to have the benefit under Rule 28A is without any basis. However, the impugned conduct is attempted to be defended in the counter affidavit as follows:-

'The provisions in Rule 28 A of Part I KSR are not strictly applicable in the case of time bound grade promotions which are governed by separate orders/clarifications of Government. Besides, in the case of grade promotion Government have clarified that an employee is eligible only for two promotions either cadre or grade promotions within a period of 20 years service and three promotions within a period of 25 years of service.'

9. But it has to be seen that there is no case for the respondents that the petitioners are not eligible to get the second higher grade promotion on completion of 20 years of service. The only contention is that they will not be eligible for fixation under Rule 28A Part I KSR while granting the second higher grade on completion of 20 years of service. As already admitted by the Government there is no such stipulation in any of the pay revision orders granting time bound higher grades or in any other order at the ' time of granting the benefit. Therefore, the clarification and the attempted recovery are arbitrary and illegal. The impugned orders are set aside. Respondents are directed to maintain the original fixation in the second higher grade granting the benefit of Rule 28A Part I of the Kerala Service Rules and grant consequential benefits including arrears of salary and pensionary benefits. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

The Original Petition is disposed of as above.

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