

Rose Vs. State of Kerala

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Court : Kerala

Decided On : Nov-28-2003

Reported in : 2004(1)KLT934

Judge : M. Ramachandran, J.

Acts : Kerala Service Rules - Rule 3C

Appeal No. : O.P. No. 29458 of 2000

Appellant : Rose

Respondent : State of Kerala

Advocate for Def. : P. Nandakumar, Govt. Pleader

Advocate for Pet/Ap. : V. Giri, Adv.

Disposition : Petition dismissed

Judgement :

M. Ramachandran, J.

1. The petitioner is working as Headmistress of an aided Lower Primary School from 1.5.1993. Audit objections had come to be recorded about the fixation of her salary which she was drawing in the Headmaster's pay and notwithstanding her representations respondents were not inclined to let off the objections. The

Original Petition has come to be filed for a declaration that the benefits which had been initially sanctioned to her was liable to be retained without interference from the respondents and in any event the proposal for recovery of the excess pay, if any, drawn by her was illegal and not sustainable.

2. The petitioner has continuous service from 11.7.1967 as P.D. Teacher. After 13 years of service, she had been granted senior grade with effect from 11.7.1987. She had been granted selection grade on 11.7.1992. The dispute had arisen in the matter of appropriate reckoning of the pay in view of the circumstance that she had been promoted as Headmistress on 1.5.1993. The General Pay Revision from 1.3.1992 also had become a contributing factor. The proximity of these dates, namely that of conferment of Selection Grade, the date of pay revision and the promotion as Headmistress had apparently not been correctly comprehended which has resulted in the present situation.

3. As on 11.7.1992, the petitioner's pay was fixed at Rs. 1,990/-, which alone might be relevant for the time being. It was in the pre-revised scale of Rs. 1250-2230. Pay was later on refixed at Rs. 2150/- in the scale of Headmaster being Rs. 1330-2555. This was sanctioned effective from 1.5.1993. The scales stood revised to Rs. 1640-2900 with effect from 1.5.1993, the date of option, and the pay was fixed at Rs. 2360/-. This was purportedly following G.O.(P) 600/93/Fin. dated 25.9.1993.

4. On verification, the Assistant Educational Officer had found that this might not have been admissible. It was for the reason that the petitioner had been granted the selection grade on 11.7.1992 and since the promotion was within one year thereof it should not have been possible for the petitioner to get a fixation, as this development was impermissible to be taken notice of.

5. It had been contended by the respondents that teachers were entitled to opt the time bound higher grade on or after 1.3.1992. Acquisition of higher grade as admissible to teachers or promotion as Headmaster were in fact, equivalent to regular promotion. Therefore, after the pay revision of 1.3.1992 the petitioner's pay could have been fixed as on 11.7.1992 only, namely the date of selection grade or the date of option. Therefore, attempt of the petitioner to get her pay fixed in the Headmaster's scale as well, which came soon thereafter, and as on 1.5.1993 as

inadmissible.

6. The contention highlighted by the petitioner was that the fixation as had been done was perfectly in consonance with the relevant Government Orders. Reference is made to G.O. (P) 81/94(5)/Fin. dated 2.2.1994. Thereby the employees including teachers had been permitted to opt fixation of pay in the next immediate promotion post assumed on or after 1.3.1992. Her promotion was only on 1.5.1993 and the grant of selection grade could not have been equated to a promotion. It was only a time bound grade promotion and was not reckonable in view of the Government Order dated 2.2.1994.

7. A counter affidavit has been filed by the Government. It is shown that the reliance placed on G.O. (P) 81/94(5)/Fin. dated 2.2.1994 so as to seek an advantage was impermissible. It is contended that even though the said order provides that only next immediate promotion post assumed after 1.3.1992 could have been opted, if there were more than one promotion post, the earlier promotion alone was reckonable. This position, according to the Government, had been further clarified by G.O.(P)380/94(13)/Fin. dated 9.6.1994. The petitioner has made available this order as Ext.P11. Reference is made to G.O. (P) 81/94(5)/Fin. dated 2.2.1994 and in respect of teachers the relevant paragraph is as following:

'(a) The higher grades of teachers are time bound and they are more or less regular promotion posts as no other promotion posts other than Headmaster post exist in their case. Considering this, Government order that, in modification of the provisions in para 9 of the G.O., read as 3rd paper above, teachers - both P.O. and Graduate teachers (HS A) will be permitted to opt the time bound grade fell due/granted first on or after 1.3.1992, cancelling the option already exercised in respect of the post held immediately prior to 1.3.1992. Excess salary drawn consequent on fixation of pay in the revised scale of the lower time bound grade post, on the basis of the option already exercised, should be refunded in lump before accepting such re-options. In all these cases of re-options the guidelines issued in Circular No. 13/90/Fin. dated 22.6.1990 should be followed.'

Perhaps Clauses (b), (c), (d) and (e) of Ext.P11 may not be applicable to the case at hand. In so far as reference to order dated 2.2.1994 (Ext.P9 in the O.P.) is

made in Ext.P11 and the position is clarified that the petitioner was not justified in contending that the selection grade which was permissible to her on 11.7.1992 was to be ignored, no further fixation was to be extended to her consequent to the promotion as Headmistress. Obviously the petitioner has been granted a fixation and a second fixation is in excess of her entitlement and the audit objections as pointed out by Exts.P12 and P14, the Government Pleader points out, was valid and proper. A reading of the order, and the nature of the objections, according to me, suggests that the contention of the respondents about the error in fixation is true. The petitioner's claims appear to be ambitious, and unsustainable.

8. Learned counsel for the petitioner thereupon submits that even if there were errors in the fixation, since this could not have been attributable to any effort on her part, and as there was no malpractices or fraud involved, it may not be possible for the Government to insist that a refund and recovery was essential. The learned counsel cited authorities and the decisions reported in (1994) 1 SCC 431 (S.K. Saha v. Prem Prakash Agarwal), 2002 (3) KLT 803 (Jayasree v. State of Kerala) and (2003) 1 SCC 364 (P. Tulsi Das v. Govt. of A. P.) etc. It is pointed out that if the mistake was not attributable to any of the conduct of the persons concerned, the excess salary or benefits paid could not have been recoverable from the pay.

9. On the other hand, the learned Government Pleader brought to my attention a decision reported in 2003 (2) KLT SN P.41 - Case No. 52 - (Velayudhan Nair v. Secretary, Higher Education) and 1995 Suppl. (1) SCC 18 (Sahib Ram v. State of Haryana and Ors.). It had been urged that the decisions relied on by the petitioner came to be passed in circumstances where there was no specific provision incorporated in the statute for effecting recoveries, when there was instance of excess pay drawn by officers, by a mistake. The Kerala decision cited by the petitioner also, according to the learned counsel, did not advert to the statutory prescription which authorises the Government to make such adjustments and in appropriate cases for ordering recovery. He contends that Rule 3C of Part III of the Kerala Service Rules is the guideline to be followed. According to me, this submission is plainly acceptable. The requirement for inspection, audit etc., mandatorily to be followed, is to ensure that funds are expended, as authorised by

law. It is difficult to accept the contention of the petitioner, that such processes are only for a satisfaction, and in case of every excess payments, the Government is disabled from demanding this overpayments back. If an officer is denied any benefits, he has a right to insist for payments. Likewise, he owes a duty to pay back the excess received by him. The plea that amounts paid are appropriated, and one may find it difficult to pay it back, can only be a self serving argument, and not equitable.

10. The Government Pleader points out that Rule 3C supra provides that notwithstanding anything contained in the rules, recovery of excess payments made to an officer by a mistake could be made from his pension and any other amounts due to him after retirement. The argument is that when recoveries could be made even in a case where one had gone on retirement, the principle cannot be different as regards a serving employee. Consequent to adjustments, after rectification of errors, such excess payments are recoverable. That it came to him without his effort cannot be a safe yardstick. The irregular payment cannot also be considered as property legally earned by him. Intervention or connivance of the officer concerned, according to me, is immaterial.

11. Counsel for the petitioner further submits that an executive order cannot have any retrospective effect and even if Ext.P12 is applied, that should not affect the fixation already done as per the earlier orders. In the matter of pay fixation, after the pay revision on 1.1.1992 orders were being passed by the Government clarifying the position as and when doubts had been raised. The ultimate principle appears to be that the officer will be entitled to the benefits which are extended by the orders and not excess amounts than that was envisaged. In matters of revision of emoluments, beneficial interpretation has to operate, but that does not justify salvaging irregular disbursement.

12. The rectification, correction and audit have specific purpose to serve preservation of public funds and the submission that no review at all is possible, once a fixation is made does not appear to be graceful or sustainable in law.

The Original Petition is therefore dismissed.

