

T. Mohanan Vs. State of Kerala and Others

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Court : Kerala

Decided On : Aug-24-2011

Judge : T.R. Ramachandran Nair

Appeal No. : O.P. No. 3370 of 2002 (A)

Appellant : T. Mohanan

Respondent : State of Kerala and Others

Judgement :

1. The petitioner retired from service as Headmaster on 31-03-2004. He entered service on 07-06-1967 in the post of P.D Teacher. He was entitled for Selection Grade on 07-06-1992 on completion of 23 years of service.

2. Ext.P1 is the Government order dated 07-03-1991 whereby, with regard to Headmasters of Primary Schools and High Schools, certain norms were adopted for fixation of pay on notional basis in the Selection Grade. Para.2(1) of the same permitted persons like the petitioner to submit the option. Accordingly, the petitioner submitted option and the fixation was sanctioned. The date opted is 01-07-1992 in the selection grade. He was enjoying the benefit also. But, later, an audit objection was raised in the year 1999 as per Ext.P3, and against the same, he approached the Accountant General by Ext.P4 representation. The petitioner thereafter approached the Government also by filing Ext.P5 representation. At that point of time, he was faced with recovery proceedings also. The Government

finally rejected his claim as per Ext.P6. This is under challenge in this writ petition.

3. The learned counsel for the petitioner contended that the view taken in Ext.P3 by relying upon the clauses of G.O.(P).No.380/94/(13)/Fin, dated 09-06-1994 cannot be supported. It is pointed out that Ext.P1 order was passed by the Government with regard to the grant of benefits of Higher Grade in respect of Primary School Teachers who were promoted as Headmasters prior to 01-07-1988 and who would have been eligible for Selection Grade in that category but for their promotion as Headmasters. Herein, the petitioner was promoted as Headmaster on 01-04-1987. Therefore, he squarely comes within the purview of para.2(i) of Ext.P1. It is therefore, submitted that, the option submitted at that point of time was found to be correct and was acted upon. The Government Order issued in 1994 is in respect of the pay revision 1993 effected from 01-03-1992. At any stretch of imagination, the learned counsel for the petitioner submitted that, it cannot affect a fixation made as per 1988 pay revision since it was validly made as per Ext. P1 at that point of time.

4. The issue therefore, has to be resolved based on the relevant clauses of Exts.P1 and P7. Para.2(i) of Ext.P1 is extracted below:-

"Primary School Teachers who were promoted as Headmasters prior to 01-07-1988 and who would have been eligible for the Selection Grade for Primary School Teachers but for their promotion as Headmasters, will be permitted to have their pay fixed notionally in the Selection Grade first on 01-07-1988 or on the date on which they become eligible for the Selection Grade after 01-07-1988 on the basis of the pay in the revised scale which they would have drawn had they continued as Senior Grade Primary Teachers and, then, based on the pay so fixed in the Selection Grade, their pay in the revised scale of pay of Headmaster will be fixed under Rule 28A Part I Kerala Service Rules."

Therein, for applying the said paragraph, the following conditions are necessary:-

(a) promotion should be prior to 01-07-1988;

(b) the promotees would have been eligible for Selection Grade for Primary School Teachers but for their promotion as Headmasters;

(c) the pay will be fixed notionally in the Selection Grade first on 01-07-1988 or on the date on which they become eligible for the Selection Grade after 01-07-1988;

(d) such fixation will be on the basis of the pay in the revised scale which they would have drawn had they continued as Senior Grade Primary Teachers;

(e) and based on the pay so fixed in the Selection Grade, their pay in the revised scale of pay of Headmaster will be fixed under Rule 28A Part I Kerala Service Rules.

5. While analysing the claim of the petitioner, it can be seen that the petitioner satisfied all the conditions for the grant of the said benefit, viz., he was promoted as Headmaster prior to 01-07-1988; was eligible for Selection Grade for Primary School Teachers and; he was eligible for Selection Grade after 01-07-1988.

6. The relevant clause in G.O. (P) .No.380/94/(13)/ Fin, dated 09-06-1994, Ext:P7, is para.2(c) which provides as follows:

"Teachers (P.D) who were promoted as Headmasters prior to 01-03-1992 and who would have been eligible for the selection grade of P.D. Teacher but for their promotion as Headmasters will be permitted to have their pay fixed notionally in the Selection Grade first on 01-03-1992 or on the date on which they become eligible for the Selection Grade after 01-03-1992 on the basis of the pay in the revised scale which they would have drawn had they continued as Senior Grade Primary Teachers and, then, based on the pay so fixed in the Selection Grade, their pay in the revised scale of pay of Headmaster will be fixed under Rule 28A, Part I, Kerala Service Rules."

It will show that the same applies to P.D Teachers who were promoted as Headmasters prior to 01-03-1992. In such cases also, they would have been eligible for the selection grade of P.D. Teacher but for their promotion as Headmasters. They will be permitted to have their pay fixed notionally in the Selection Grade first on 01-03-1992 or on the date on which they become eligible

for the Selection Grade after 01-03-1992.

7. Evidently, the above will apply only to teachers who have obtained promotion after 01-07-1988 which is the date fixed in Ext.P1 and prior to 01-03-1992. Otherwise, the clauses in Exts.P1 and P7 will become meaningless. Both were issued after the Pay Revisions in 1988 and 1993 respectively. The wording is similar and the difference is in respect of the dates mentioned therein. The clause 2(c) in Ext.P7 is similar to the one provided in Ext. P1 i.e. clause 2 (i). There is no specification in Ext.P7 that it will apply to promotions made prior to 01-07-1988. When the pay revision is effected by the Government within a time gap of five years, usually the contingencies which have arisen after the effect of one pay revision and before the coming into effect of the next pay revision will be taken care of in the orders concerned. But, that cannot upset the pay fixations made pursuant to the earlier pay revision orders. Such orders cannot take away the benefit retrospectively. Apart from that, as rightly pointed out by the learned counsel for the petitioner, he was granted the benefit based on the clause in Ext.P1 and there is no dispute that para.2(i) squarely applied to his case also. Therefore, the fixation made as per clause 2 (i) of Ext.P1 was valid. In Ext.P3 audit objection, even though Ext.P7 Government Order is relied upon, the fact that he was promoted prior to 01-07-1988 has not been noticed. The relevant clause in Ext.P7 starts by saying "Teachers (P.D) who were promoted as Headmasters prior to 01-03-1992", that means those teachers who were promoted after 01-07-1988 and before 01-03-1992, otherwise, the said clause will have no real impact and will be self contradictory. In that view of the matter, the audit objection does not survive.

8. Learned counsel for the petitioner also relied upon the decision of the Apex Court **Chairman, Railway Board and Others Vs. C.R. Ranqadhamaiah and Others, (1997) 6 SCC 623** wherein in para. 20 it was held thus:-

"It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or

availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

9. It is, therefore, contended that if a benefit which is granted with regard to promotion or pay scale is sought to be reversed from an anterior date, the same will be violative of Articles 14 and 16 of the Constitution of India. The legal position is thus well settled that a vested right cannot be affected by any amendment of the Rule retrospectively. Herein, once the pay fixation has been made validly which was been enjoyed by the petitioner, it has become the right vested upon him. Therefore, at any rate, it cannot be Said that Ext.P7 will act retrospectively in respect of fixation made as per Ext.P2 which is based on Ext.P1 Government Order pursuant to pay revision of the year 1988.

10. For all the above reasons, the petitioner is entitled to succeed in the writ petition. The writ petition is allowed. Exts.P3 and P6 are quashed.

11. It is pointed out that the alleged excess pay has been recovered from the Death-cum-Retirement Gratuity sanctioned to the petitioner and, accordingly, Rs. 63,070/- has been recovered. Since it is held that the order Exts. P3 and P6 cannot be supported, the petitioner is entitled for the fixation as per Ext.P2. Accordingly, there will be a direction to refix the pension and other benefits treating Ext.P2 as valid and refund Rs.63,070/- to the petitioner within a period of three months from the date of receipt of a copy of this Judgment. No costs.

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