



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

TUESDAY, THE 29TH DAY OF OCTOBER 2024 / 7TH KARTHIKA, 1946

OP(KAT) NO. 320 OF 2024

AGAINST THE ORDER DATED 10.08.2023 IN OA (EKM) NO.1453 OF
2022 OF KERALA ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM
(ADDITIONAL BENCH, ERNAKULAM)

PETITIONER/S:

- 1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY
TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, KERALA, PIN - 695001
- 2 (*DELETED) ADDITIONAL CHIEF SECRETARY
DEPARTMENT OF HIGHER EDUCATION (G), SECRETARIAT,
THIRUVANANTHAPURAM PIN 695001

(*) 2ND PETITIONER IS DELETED FROM THE PARTY ARRAY AS
PER ORDER DATED 01/10/2024 IN IA 1/2024 IN
OP(KAT) 320/2024
- 3 THE DIRECTOR OF TECHNICAL EDUCATION,
DIRECTORATE OF TECHNICAL EDUCATION, PADMAVILASAM ROAD,
THIRUVANANTHAPURAM, PIN - 695023

BY ADVS.

SENIOR GOVERNMENT PLEADER SMT.NISHA BOSE



OP (KAT) NO. 320 OF 2024

-:2:-

2024:KER:85251

RESPONDENT/S:

JAYAKRISHNARAJ G,
S/O. M.T GOPALAN, KATTATHAA, NJARAKKAL P.O, VYPIN,
ERNAKULAM, PIN - 682505

BY ADV A.ARUNA

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 29.10.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

“C.R.”

Dated this the 29th day of October, 2024

A.Muhamed Mustaque, J.

This case highlights the difficulties faced by an academician entangled in bureaucratic delays affecting his career progression. The professor, whose dedication lay in teaching, faced significant hurdles to receive due acknowledgement and promotion, which should have taken effect from 9/1/2003. While it is accepted that he deserved promotion as Professor in Electronics and Communication Engineering, bureaucratic processes led to only a notional promotion, which was finalised much later on 5/9/2019. After enduring this delay, the professor sought relief from the Tribunal, which ruled in his favour, affirming his right to the promotion with all accompanying financial benefits from the original date it was due. The State has now challenged this decision of the Tribunal before this Court, presumably on the grounds of financial implications or procedural objections.



2. The essence of the case points to a common issue in public employment, where bureaucratic red tape often delays rightful advancements, impacting individuals' careers and causing unnecessary legal battles. The professor's plight underscores the adverse effect of such administrative delays on educational professionals, diverting time and energy that could otherwise contribute to academic and professional advancement.

3. This case starkly illustrates another entrenched bureaucratic approach which often complicates the pursuit of justice, especially for individuals challenging the State. The sequence of events reveals how the professor's legitimate promotion entitlements were mired in delays due to bureaucratic indecision and repeated legal opinion.

4. The Tribunal passed its order on 10/8/2023. However, it took the State nearly a year — until 7/8/2024 — to file an original petition with this Court, challenging the Tribunal's decision. Despite initially receiving legal advice from the Advocate General against challenging the order, further delays occurred when the finance and



law departments raised concerns and repeatedly sought clarification. During this back-and-forth, the Tribunal even granted an extension for compliance, extending the deadline to 4/6/2024.

5. The delay persisted with repeated consultations involving multiple rounds with the Advocate General. Ultimately, a contempt petition was filed, prompting a notice issued on 8/8/2024. It was only after this contempt notice that the State decided to proceed with the Original Petition in this Court.

6. These extensive delays highlight the burdens faced by individuals when litigating against the State, which often leads to prolonged career and financial uncertainty. The absence of a streamlined litigation policy within the State apparatus not only places undue strain on individual litigants but also leads to judicial waste of time, forcing both the Court and the Tribunal to expend valuable time awaiting the State's eventual decision. This underscores the critical need for the State to adopt a more definitive and timely litigation policy to avoid unnecessary delays, financial liabilities, and the unwarranted drain of judicial time.



7. Annexure A1 select list was published by the Government as early as 17/8/2002 who are eligible for promotion to the cadre of professor in Electronics and Communication Engineering. The respondent was included in the select list. This list was prepared by the Departmental Promotion Committee which met on 20/7/2002. The Government, as early as 8/10/2001, accorded sanction for the creation of teaching posts. Despite there being vacancies, the respondent was not included in the list published for promotion on 19/3/2003. The respondent preferred an original petition before a Single Bench in O.P.No.7980/2003. The learned Single Judge directed the Government to consider the representation submitted by the petitioner. The Government rejected the representation on 17/11/2003. This decision was subjected to challenge before another Single Bench in W.P.(C). No.37122/2004. The learned Single Judge, by an interim order, dated 18/10/2005, directed the Government to consider the respondent's promotion on a provisional basis. The Government again rejected his claim as per its order dated 23/3/2006. W.P. (C).No.37122/2004 was transferred to the Tribunal. Tribunal



disposed the matter on 24/09/2018 and directed the Government to reconsider the matter afresh after taking note of the availability of the vacancies pointed out by the respondent. Thereafter, the Government by Annexure A10 found that the respondent was entitled for promotion as a Professor with effect from 09/01/2003 as there was a vacancy of the Professor prior to 24/01/2003. It is appropriate to refer to paragraphs 7 to 9 of the above Government Order.

7.It is also noted that the vacancies as on 23.01.2003 and the manner in which those vacancies were filled up are ascertained as ordered by the Hon'ble Kerala Administrative Tribunal and found that two vacancies of Professors existed as on 23.01.2003 while the first vacancy is still unfilled and second vacancy which was vacant for about two years and six months was filled up only on 01.07.2005. The third vacancy arisen on 30.03.2003 (Shri. Cherian Schariah was relieved from the Government Engineering College, Painavu on 30.03.2003) remained unfilled for about one year and two and half months was filled up only on 24.06.2004.

8. These vacancies were filled up based on the representation dated 02.04.2003 submitted by Sri.Jayakrishnaraj.G as ordered by the Hon'ble High Court of Kerala in OP.No.7980/2003.



9. The petitioner Shri. Jayakrishnaraj.G was qualified at the time of arising of vacancies as evident from the select list for the year 2002. In his case the amended special rules do not stand in the way as he was qualified and there was vacancy at the post of Professor prior to 24.01.2003, the date on which special rule came into force. At the same time it seen that promotions were allowed in other Department of Technical Education Department to the cadre of Professor who were similarly placed like the petitioner, vide G.O (Rt) No.498/2003/HEDN dated 31.01.2003 and GO(Rt) No.651/2003/HEDN dated 09.05.2003. Shri.Jayakrishnaraj.G, Associate Professor, Department of Electronics and Communication Engineering is prima facie eligible to be promoted to the cadre of Professor in the year 2003 itself in any one of the vacancies arisen during the period.

On the face of the order we find that the respondent was denied legitimate promotion which was due to him without any reason.

8. The learned Government Pleader assailing the above order submitted that as per Rule 23(c) of Part I Kerala Service Rules, no arrears of back pay and allowances are admissible in the matter of notional promotion. It is submitted that under Section 23(d), a Government servant can claim monetary benefit only for one year



prior to the date of order for promotion, that too in a case where promotion does not involve change of duties. We may not have any doubt as to the rules applicable in normal circumstances. No Government servant is entitled for pay without officiating in the post.

9. The question which will have to be addressed in this case is based on constitutional principles rather than statutory provisions. If a Government servant is arbitrarily denied due promotion, that would amount to acknowledging arbitrariness on the part of the Department or the Government as the case may be. One of the facets of Article 14 of the Constitution is equal treatment of all citizens under equal circumstances. Merely because the respondent happened to be a Government servant and is governed by statutory provisions, he cannot be denied constitutional protection as against arbitrariness. Annexure A10 Government order signifies that, without any reason the respondent has been denied promotion in the year 2003. The Tribunal or the Court in such a situation has to respond to the claim under Article 14 and not with reference to any statutory provision governing service conditions.



10. It is appropriate to refer to the judgment of the Apex Court in **Ramesh Kumar v. Union of India and Others [(2015) 14 SCC 335]** wherein at paragraphs 14 and 15, after placing reliance on **State of Kerala and Others v. E.K Bhaskaran Pillai [(2007) 6 SCC 524]**, it was held as follows:

14. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as the monetary benefits with regard to retrospective promotion are concerned that depends upon case to case. In *State of Kerala v. E.K. Bhaskaran Pillai [(2007) 6 SCC 524 : (2007) 2 SCC (L&S) 487]* , this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case-to-case basis and in para 4, it was held as under: (SCC p. 527)

“4. ... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the



matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

15. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 1-1-2000 with the ante-dated seniority from 1-8-1997 and maintaining his seniority along with his



batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

11. Following **Ramesh Kumar's** case (supra), a Division Bench of this Court in O.P.(KAT).No.427/2019 in paragraph 11 held as follows:

11. Even though, as per Rule 23(a) of Part I KSR, an officer shall begin to draw the pay and allowances attached to the tenure of a post, only with effect from the date he assumes the duties of that post, Rule 23(c), prior to its amendment, provided that promotions which do not involve change of duties should be given effect from the date on which the vacancy arose. In Exhibit P10 the Government have found that the applicant was entitled for promotion with effect from 1.5.1998. The delay in effecting the promotion being not attributable to the applicant in any manner and on the contrary, being attributable to the administrative delay, the applicant cannot be denied the benefits legitimately due to him. The Honourable Apex Court in Ramesh Kumar, held that the principle of 'no work no pay' cannot be applied as a rule of thumb and would depend on the facts and circumstances of each case. It was also held that the principle of 'no work no pay' would not apply when the employer was at fault in not considering the case of the incumbent for promotion and not allowing him to work in a post carrying a higher grade.



Therefore, it is evident that the statutory provisions governing monetary benefits attached to promotion have no application in a matter like this. If the Government or any other department is lethargic in considering the legitimate claim of a Government servant, that must face adverse consequences carrying restitutorial benefits. This monetary benefit was a legitimate claim that was denied arbitrarily on account of bureaucratic delay. Thus, we uphold the impugned order and dismiss the original petition.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P.M.MANOJ

JUDGE

APPENDIX OF OP(KAT) 320/2024

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE SELECT LIST G.O(MS)
100/2002/HEDN DATED 17.08.2022
- Annexure A2 TRUE COPY OF THE ORDER G.O(MS)
NO.128/2001/HEDN DATED 08.10.2001
- Annexure A3 TRUE COPY OF THE ORDER GO(MS)
NO.42/2003/H.EDN DATED 09.01.2003
- Annexure A3(a) TRUE COPY OF THE G.O(MS) NO.20/2003/H.EDN
DATED 19-03-2003
- Annexure A4 TRUE COPY OF THE ORDER NO.10918/G1/2003/G.EDN
DATED 19.05.2003 ISSUED BY 1ST RESPONDENT
- Annexure A5 TRUE COPY OF LETTER NO.17548/G1/03/H.EDN
DATED 17.11.2003 ISSUED BY 1ST RESPONDENT
- Annexure A6 TRUE COPY OF INTERIM ORDER DATED 18.10.2005
IN IA 15082/2005 IN WP(C) 37122/2004 PASSED
BY THE HON'BLE HIGH COURT OF KERALA
- Annexure A7 TRUE COPY OF LETTER NO. 35067/2005/H.EDN
DATED 23.03.2006 ISSUED BY THE ADDITIONAL
CHIEF SECRETARY & PRINCIPAL SECRETARY TO THE
GOVERNMENT.
- Annexure A8 TRUE COPY OF THE FINAL ORDER DATED 24.09.2018
OF THIS HON'BLE TRIBUNAL IN TA 4073/2012
- Annexure A9 TRUE COPY OF THE REPRESENTATION DATED
11.10.2018 FILED BY THE APPLICANT BEFORE THE
1ST RESPONDENT.
- Annexure A10 TRUE COPY OF THE ORDER G.ORT)
NO.1635/2019/G.EDN DATED 06.09.2019
- Annexure A11 TRUE COPY OF THE REPRESENTATION DATED
04.12.2019 PREFERRED BY THE APPLICANT BEOFRE
THE 1ST RESPONDENT



- Annexure A12 TRUE COPY OF THE ORDER GO(RT)
NO.216/2019/H.EDN DATED 12.02.2019
- Annexure A13 TRUE COPY OF THE ORDER DATED 14.10.2020 IN OA
1607/2020
- Annexure A14 TRUE COPY OF THE LETTER NO.HEDN
-G1/460/20180HEDN DATED 14.06.2022 ISSUED BY
THE 2ND RESPONDENT
- Annexure A15 TRUE COPY OF THE RELEVANT PAGES OF THE HAND
BOOK ISSUED BY DEPARTMENT OF TECHNICAL
EDUCATION KERALA STATE
- Annexure A16 TRUE COPY OF THE RELEVANT PAGES OF THE AICTE
REGULATIONS ON PAY SCALES, SERVICE CONDITIONS
AND MINIMUM QUALIFICATIONS FOR THE
APPOINTMENT OF TEACHERS AND OTHER ACADEMIC
STAFF SUCH AS LIBRARY, PHYSICAL EDUCATION AND
TRAINING & PLACEMENT PERSONNEL IN TECHNICAL
INSTITUTIONS AND MEASURES FOR THE MAINTENANCE
OF STANDARDS IN TECHNICAL EDUCATION - (DEGREE)
REGULATION, PUBLISHED IN THE EXTRA ORDINARY
GAZETTE OF INDIA DATED 01.03.2019, VOLUME
NO.82.
- Exhibit P1 TRUE COPY OF THE O.A NO. 1453/2022 ALONG WITH
ANNEXURES
- Exhibit P2 TRUE COPY OF THE REPLY STATEMENT FILED BY THE
3RD RESPONDENT DATED 21.11.2022.
- Exhibit P3 TRUE COPY OF REJOINDER FILED BY THE
RESPONDENT/APPLICANT
- Exhibit P4 TRUE COPY OF FINAL ORDER DATED 10-08-2023 IN
O.A 1453/2022
- RESPONDENT EXHIBITS
- Exhibit R1 (a) True copy of the MA (EKM) 280/2024 seeking
extension of time filed by the petitioners in
the OP (KAT) in OA (EKM) No. 1453 of 2022
- Exhibit R1 (b) True copy of the MA (EKM) 281/2024 seeking
condonation of delay filed by the petitioners



in the OP (KAT) in OA (EKM) No. 1453 of 2022

- Exhibit R1 (c) True copy of the order dated 22.02.2024 in MA (EKM) Nos. 280/2024 and 281/2024 in OA (EKM) No. 1453/2022 passed by the Hon'ble Kerala Administrative Tribunal
- Exhibit R1 (d) True copy of the unnumbered MA (EKM) No... of 2024 in CP (EKM) 22/2024, an MA for dispensing with personal appearance served on the counsel for this respondent
- Exhibit R1 (e) True copy of the case status downloaded from the official website of the Kerala Administrative Tribunal on 09.08.2024 at 10.06 AM with respect to CP (EKM) 22/2024