

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WA.No. 107 of 2010 () IN WP(C).17157/2007

AGAINST THE JUDGMENT IN WP(C) 17157/2007 of HIGH COURT OF KERALA
DATED 05-06-2009

APPELLANT(S)/RESPONDENTS IN THE WPC:

1. STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT, HEALTH & FAMILY WELFARE (S) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.

BY SR GOVERNMENT PLEADER SRI. SHAIKON P. MANGUZHA

RESPONDENT(S)/PETITIONER IN WPC:

DR. G. PARVATHY, ASSOCIATE PROFESSOR IN ANESTHESIA,
MEDICAL COLLEGE, ALLEPPY.

R BY ADV. SRI. N. NANDAKUMARA MENON (SR.)
R BY ADV. SRI. P. K. MANOJKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.107 of 2010

Dated this the 18th day of August, 2015

JUDGMENT

Antony Dominic, J.

1.This writ appeal is filed by the respondent in W.P (C).17157/07. The writ petition was filed by the respondent herein seeking to challenge Ext.P5 Government Order, G.O(Rt) No.939/07/H&FWD dated 17.3.2007, to the extent monetary benefits for the period from 27.10.2004 to 15.12.2005 were denied to her. By the judgment under appeal, learned single Judge held the denial of monetary benefits to be illegal and declared that the respondent shall be entitled for the payment of salary and other monetary benefits in the promoted post of Associate Professor. It is this judgment which is challenged before us.

2.We heard learned Government Pleader for the appellant and learned counsel appearing for the respondent.

3.By Ext.P5, the respondent was notionally promoted with effect from 27.10.2004 subject to the condition that back arrears will not be admissible. As we have already stated, the only issue that arises for

consideration is whether the learned Judge was justified in upholding the claim for monetary benefits for the period from 27.10.2004 till she was actually promoted to the post of Associate Professor on 15.12.2005.

4. Facts show that the Departmental promotion Committee was convened on 11.6.2004. At that time, the respondent was not considered for promotion for the reason that disciplinary action against her was pending. Disciplinary action was finalised by order dated 25.6.2004 and the respondent was promoted with effect from 16.12.2005. Going by the appellant's own case, after the DPC made its recommendation on 11.6.2004, the first vacancy arose on 1.5.2004. To that vacancy, the respondent was treated as ineligible. Subsequent vacancy arose on 27.10.2004. On that date also, the respondent was not considered for promotion and her junior was promoted to that post. It was thereafter that review DPC was held and based on the recommendations made, the respondent was promoted to the post of Associate Professor with effect from 15.12.2005. Going by the provisions of

the KS & SSR, even if disciplinary proceedings are pending, the case of a candidate should be considered. Despite this, in so far as the case of the respondent is concerned, the procedure prescribed in the KS & SSR was not adopted. If such procedure was adopted, when the vacancy arose on 27.10.2004, the respondent could have been promoted. This, therefore, means that the respondent was overlooked when the vacancy arose on 27.10.2004 for no fault of hers and therefore, she was entitled to be compensated for the delay in her promotion. It was this right which was recognised by the learned single Judge by declaring that the respondent would be entitled to monetary benefits for the period from 27.10.2004 when her junior was promoted, till 15.12.2005, when she was actually promoted. We do not see any illegality in this order.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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