

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 4296 of 2006 (R)

PETITIONER(S):

1. P.A.NANDAKUMAR, AMIN, DISTRICT COURT,
THRISSUR.
2. K.R.JAYASREE, AMIN, DISTRICT COURT,
THRISSUR.
3. PRINCE RAMAKRISHNAN, AMIN, DISTRICT
COURT, THRISSUR.
4. T.K.ARAVINDAKSHAN, AMIN, MUNSIFF COURT,
KODUNGALLUR.
5. K.K.PEETHAMBARAN, AMIN,
MUNSSIFF COURT, KODUNGALLUR.

BY ADV. SRI.JIJO PAUL

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. HIGH COURT OF KERALA, REPRESENTED BY
THE REGISTRAR, ERNAKULAM, KOCHI 31.
3. THE DISTRICT JUDGE, THRISSUR.

R, BY ADV. GOVERNMENT PLEADER
R2 BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
R2 BY ADV. SMT.K.RADHAMANI AMMA
R2 BY ADV. SRI.ANTONY MUKKATH
R2 -R 5 BY ADV. SRI.K.B.GANGESH
R2 BY ADV. SRI.V.A.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,
ALONG WITH WP(C) No.32561/2010, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : COPY OF THE G.O(P) No.600/1993/Fin. DATED 25.9.21993 ISSUED BY THE GOVERNMENT OF KEALA.

EXT.P2 : COPY OF THE MEMO RECEIVED BY THE 3RD PETITIONER DATED 11.8.2005 FROM THE SHERISTADAR OF THE 3RD RESPONDENT.

EXT.P3 : COPY OF THE REPRESENTATION DT.24.8.2005 FILED BY THE 3RD PETITIONER TO THE 2ND RESPONDENT.

EXT.P4 :COPY OF THE MEMO DATED 5.9.2005 BY THE 3RD RESPONDENT, REJECTING THE APPLICATIONS FILED BY THE PETITIONERS.

EXT.P5 :COPY OF THE OFFICIAL MEMORANDUM NO.C4A38840/1996 DATED 28.11.1996 BY THE 2ND RESPONDENT.

EXT.P6 :COPY OF THE MEMO ISSUED TO PETITIONERS 4 AND 5 DATED 28.8.2005 FROM THE MUNSIFF COURT, KODUNGALLUR

EXT.P7 :COPY OF THE ORDER NO.C2-45/2003 DATED, 20.5.2003 OF THE DISTRICT JUDGE, THRISSUR.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

soil.

A.MUHAMED MUSTAQUE, J.
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W.P(C).Nos.4296 of 2006 and 32561 of 2010
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Dated this the 22nd day of January, 2015

JUDGMENT

These Writ Petitions pertain to common issues. Petitioners were working as Last Grade Servants in the Kerala Judicial Ministerial Subordinate Service. Thereupon, they were appointed as Attenders by transfer. On their appointment as Attenders, they are given one advance increment in the light of Ext.P1 Government Order as provided in para 24 of G.O(P).No.600/1993/Fin. dated 25.09.1993. In Ext.P1, clause 24 stipulates as follows:

“Where promotion posts happen to have the scale of pay of feeder category posts, one advance increment will be granted to the incumbents appointed by promotion in posts carrying the scale of pay of feeder category posts”.

2. Treating petitioners appointment as Attender as promotion from the Last Grade Servants, petitioners were paid one advance increment. Petitioners were enjoying the benefit. In the meanwhile, it was noticed in audit that payment of advance increment to the petitioners were by mistake. Accordingly, proceedings were initiated to recover the amount paid to the petitioners from them. It is challenging these orders, Writ Petitions are filed.

3. Heard learned counsel for the petitioners, learned Standing Counsel for the High Court Sri.V.A.Mohamed and learned Government Pleader.

4. Learned counsel for the petitioners points out that their service conditions are governed by the Kerala Judicial Ministerial Subordinate Service Rules, 1975. It is clear that their promotion to the post of Attenders is from Class-IV to Class-III category. Only those who acquired the required qualification and pass in the test conducted by the Kerala Public Service Commission is eligible for promotion to the post of Attenders which falls in Class II of Kerala State and Subordinate Service Rules, 1958. It is further submitted that they all appeared for the Attenders test conducted by the Public Service Commission and on being qualified in the Attenders test, they were considered for appointment as Attenders. Therefore, it is submitted that it is in fact an appointment by promotion and not an appointment by transfer.

5. On the other hand, learned Standing Counsel for the High Court would submit that petitioners have been appointed by transfer from the category of Last Grade Servants. Therefore, it

cannot be treated as appointment by promotion and they are not entitled for the benefit of promotion as provided in Ext.P1. Though there is difference in nature of work, enhancement of responsibility on a transfer from Class IV service to Class III service, the appointees are not entitled for the benefit of promotion as the rules say otherwise. Therefore, petitioners are liable to refund the advance increment as they are not entitled for the benefits for a promotion.

6. Promotion is defined in Rule 2, Part I of Kerala State and Subordinate Services Rules, 1958 as follows:

“Promotion means the appointment of a member of any category or grade of a service or a class of service to a higher category or grade of such service or class”.

7. It has to be noted that petitioners have been appointed as Last Grade Servants. Thus, para 24 of Ext.P1 is not applicable in the case of petitioners as they were not promoted as Attenders from the post of Process Server but appointed by transfer. Promotion is only from a grade of service to a higher category as contemplated under the Kerala State and Subordinate Services Rules. Since appointment is from Last

Grade Servants to the Judicial Ministerial Subordinate Service, it cannot be said that merely because there is difference in functions and discharge of duty, appointees can treat it as promotion. Therefore, I am of the view that there is no merit in the challenge made by the petitioners. The appointment of petitioners can only be treated as appointment by transfer.

8. The next question arises whether amount can be recovered from the petitioners. Learned Standing Counsel stated in the counter that payment of advance increment to the petitioners was by mistake. Petitioners are admittedly enjoying the benefit for the last several years. There is no case that petitioners have committed any fraud or any other act to take undue advantage of the rule. Though learned Standing Counsel for the High Court and learned Government Pleader submits that petitioners are not entitled for advance increment, considering the nature of employment of the petitioners, I am of the view, a lenient view has to be taken without treating this as a precedent. The Honourable Supreme Court in **State of Punjab Vs. Rafiq Masih (White Washer) (2015(1) KLT 429)** held that certain categories of recovery is impermissible in law which includes

recovery from employees belonging to Class III and Class IV and also when recovery is iniquitous or harsh or arbitrary. Therefore, no recovery shall be effected from the salary of petitioners. However, pay shall be fixed in accordance with law without effecting any recovery from future salary.

The Writ Petition is disposed of. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

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