

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG. CHIEF JUSTICE MR. ASHOK BHUSHAN
&

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WA.No. 1062 of 2011 () IN WP(C).14405/2005

AGAINST THE JUDGMENT IN WP(C) 14405/2005 of HIGH COURT OF KERALA DATED 29.1.2010

APPELLANT(S)/2ND PETITIONER:

T.M.MATHEW, UPPER DIVISION CLERK,
OFFICER OF THE ASSISTANT LABOUR OFFICER, IIND CIRCLE
KOTTAYAM, NOW WORKING IN THE CADRE OF
ASSISTANT LABOUR OFFICER, ON DEPUTATION AS LABOUR
WELFARE FUND INSPECTOR, KOTTAYAM.

BY ADVS. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.T.S.SHYAM PRASANTH

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, LABOUR AND REHABILITATION
DEPARTMENT, GOVT. SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE LABOUR COMMISSIONER, OFFICE THE
LABOUR COMMISSIONER, THIRUVANANTHAPURAM-695001.

R1-R2 BY SPL. GOVERNMENT PLEADER SRI. GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05-12-015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sou.

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.

W.A. No. 1062 of 2011

Dated this the 5th day of January, 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard learned counsel for the appellant and the learned Special Government Pleader.

2. This writ appeal has been filed against the judgment dated 29.1.2010 passed in writ petition No.14405 by which judgment, the writ petition filed by the petitioner has been dismissed. This writ appeal is prosecuted by the second petitioner only.

3. The brief facts giving rise to this writ appeal are :

The petitioner was working as an Upper Division Clerk in the Labour Department. The Upper Division Clerks were entitled to be promoted as Assistant Labour Officer Grade II in accordance with the Special Rules for Kerala Labour Subordinate Service, 1991. The Upper Division Clerks were also entitled for receiving promotions on Ministerial side to the post of Head Clerks and

Junior Superintendent. The petitioner gave an option dated 30.7.1996 to consider for promotion on the executive side. In the year 1998, the petitioner gave a letter seeking promotion on the ministerial side, to which a reply was sent in the year 1998 that the petitioner having opted for executive side and giving option on 30.7.1996, his request for option on ministerial side cannot be considered. The petitioner ultimately could be promoted as Assistant Labour Officer in the year 2007. The petitioner in the meantime has also received grade scale on the post of Head Clerk and Junior Superintendent.

4. The writ petition was filed by the petitioners seeking the following reliefs :

- "A. Call for the records relating to Ext.P1 to P8 and P10 from the respondents;
- B. Quash Ext.P10 by the issue of a writ of certiorari or other appropriate writ, direction or order;
- C. Issue a writ of mandamus commanding the respondents to pay the scale of pay applicable to Assistant Labour Office II on granting 1st time bound higher grade and the scale of pay of Asst. Labour Officer I on granting 2nd higher grade to the petitioner with benefits of arrears within a reasonable time."

5. Learned Single Judge by the impugned judgment held

that the petitioners having given an option for Assistant Labour Officer Grade II, they cannot claim grade pay as Assistant Labour Officer Grade II. Challenging the judgment of learned Single Judge, learned senior counsel Sri.Jaju Babu submitted that even though the appellant has opted for promotion as Assistant Labour Officer, there was no prohibition in considering them for grant of grade pay as Assistant Labour Officer. He further submits that the option does not prohibit consideration of regular promotion on the post of Head Clerk and Junior Superintendent. He submits that the appellant was not granted regular promotion as Head Clerk and Junior Superintendent and he was promoted as Assistant Labour Officer only after ten years when a vacancy arose. He submits that the first time bound grade pay of Assistant Labour Officer ought to have been granted.

6. We have considered the submissions of learned counsel for the appellant and perused the record. In the Special Rules, 1991, Rule 3 provides for method of appointment and qualification. The said rules deals with appointment on the post of Assistant Labour Officer Grade I and Assistant Labour Officer Grade II by transfer of qualified persons from senior most Upper

Division Clerk in the Labour Department who opted in writing for the post prior to the date of occurrence of vacancies. The petitioner who was working as Upper Division Clerk had given option prior to occurrence of vacancy to be appointed by transfer as Assistant Labour Officer. The appellant thus had opted for appointment on the executive side. The stand taken by the respondent in the affidavit was that the appellant having opted for executive side, he could not have been considered for regular appointment on ministerial side. He was granted Higher Grade of Head Clerk and Junior Superintendent as has been stated in paragraph 4 of the counter affidavit. It is submitted that the post of Assistant Labour Officer II was to be filled up by transfer. The vacancy had arisen on the post of Assistant Labour Officer Grade II only in the year 2006/2007 on which regular promotion was granted to the appellant as per the Special Rules 1991.

7. From the facts brought on record, it does appear that the benefit of ten years service in the first promoted post was granted as first higher grade. The juniors were given promotion to ministerial side on account of their option in that line. A counter affidavit on behalf of the first respondent, dated

4.3.2014 has been filed in which, paragraphs 9 and 10 the following has been stated :

"9. It is submitted that the Government are liberal kind and sympathetic to their employees by giving time bound higher grade promotion on attaining prescribed periods of service when normal promotion is not obtained with the above object time bound grade promotions are introduced for government employees. The appellant joined duty in service on 06.08.1985 and got first promotion on 13.10.1988 ie., within three years. Meanwhile the first grade promotion was awardable on completion to 10 years (now it is 8 years). He is eligible to get next time bound grade on completion of 23 years of service. But before that he got promotion on the cadre of Assistant Labour Officer Grade II as transfer of appointment, hence 'not eligible' as per law.

10. As long as the appellant is in feeder category of Assistant Labour Officer Grade -II, ie., U.D. Clerk he is eligible to get time bound grade promotion on completion of prescribed period of service. He is eligible to get next higher grade ie., on completion of 23 years is on 06.08.2008, but before that ie., on 19.09.2007 he was promoted to the cadre of Assistant Labour Officer Grade-II, hence not awarded."

8. The submissions of learned counsel for the appellant that he was entitled for grade promotion as Assistant Labour Officer Grade II does not commend us. The petitioner was promoted as UDC on 15.10.1988. The appointment he opted for was on executive side. The appointment of Assistant Labour Officer was by transfer. Thus those Upper Division Clerks who

opted executive side cannot be transferred on the said post. Admittedly the vacancy on the post of Assistant Labour Officer arose only after ten years and the appellant knowing fully well that definitely the post of Assistant Labour Officer Grade II will come into existence only after ten years, had applied for appointment by transfer as Assistant Labour Officer Grade II. The appointment of Assistant Labour Officer Grade II had not come into existence due to lack of vacancy for next ten years and actually after ten years regular promotion was granted to the petitioner.

9. In the above facts and circumstances, we see no reason to accept the claim for grant of any grade promotion in the post of Assistant Labour Officer Grade II, whereas from the counter affidavit, it is clear that he got the benefit of grade promotions in the post of Head Clerk and Junior Superintendent. The concept of grade promotion has been introduced to ensure that employees do not suffer by stagnation. In the facts of the present case, the appellant having given the benefit of grade promotion in the post of Head Clerk and Junior Superintendent, substantial justice was granted and claim of grade promotion as

Assistant Labour Officer Grade II has rightly been refused by the learned Single Judge. We do not find any error in the judgment of learned Single Judge, which warrants interference by this court by exercising appellate jurisdiction.

This appeal is dismissed.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE**

Sd/-
**A.M.SHAFFIQUE,
JUDGE.**

sou.

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