

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K. HARILAL

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WA.No. 219 of 2015 () IN WP(C).14581/2013

AGAINST THE JUDGMENT IN WP(C) 14581/2013 of HIGH COURT OF
KERALA DATED 08-01-2014.

APPELLANT(S)/3RD PETITIONER:

R.MOHAMMED HARIS, AGED 35 YEARS,
SON OF H.M.RAHMAN, JUNIOR ASSISTANT,
KERALA STATE ROAD TRANSPORT CORPORATION,
KOLLAM UNIT, KOLLAM DISTRICT,
RESIDING AT SHAFEEK MANZIL, MRA 187,
THIRUMULLAVARAM, KOLLAM-12.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S)/RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
TRANSPORT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. THE CHAIRMAN AND MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT P.O.,
THIRUVANANTHAPURAM - 695 023.

R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

R1 BY SENIOR GOVERNMENT PLEADER SRI. VIJU THOMAS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
25-2-2015, THE COURT ON 11-3-2015 DELIVERED THE
FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

W.A. No.219 of 2015

Dated this the 11th day of March, 2015

JUDGMENT

Harilal, J.

This writ appeal is filed against the judgment, by which, the learned single Judge dismissed W.P.(c) No.14581 of 2013. The appellant is the 3rd petitioner in the above writ petition. He is a degree holder working as Junior Assistant in the Kerala State Road Transport Corporation (KSRTC). Earlier, the designation of the above post was 'Lower Division Clerk' and SSLC was the requisite qualification for the same. The 2nd respondent by Ext.P1 order dated 5/4/2006 re-designated the post of Lower Division Clerk as 'Junior Assistant' and the requisite qualification for the same

was enhanced to degree from SSLC. The grievance of the appellant is that the scale of pay has not been enhanced so far, commensurate with the re-designation of the post and enhancement of requisite qualification for the acquisition of the same. That apart, the pay scale of the Junior Assistant in the KSRTC is very low, in comparison with the scale of pay of Junior Assistants in the other public sector organizations/Boards/Corporations etc. The selection of all Junior Assistants was from a common ranked list for Assistant Grade-II/Junior Assistant/Clerks in Boards/Corporations. The appellant happened to be advised to the Kerala State Road Transport Corporation; but others who were lower in rank and advised to various other Corporations/Boards, like KFC, KSFE, KSEB etc., are drawing higher pay than the appellant. Lastly, there are 18 categories of posts, in the Corporation, having the scale of pay identical to Junior Assistants and the appellant is also put along with those

employees under pay scale No.3. But, the minimum qualification required for acquisition of the posts under those 18 categories is SSLC, ITI, SSLC, technical expertness and experience etc., only. According to the appellant, it is quite unfortunate that by including Junior Assistants also in the pay scale No.3, they are also equated with other posts, for which required qualification is SSLC only. The non-upgradation of the pay scale commensurate with re-designation and enhancement of requisite qualification is arbitrary, unreasonable and discriminatory. Though the Board of Directors of KSRTC also, by Ext.P11, admitted the claim of the Junior Assistants, the 1st respondent declined the same by Ext.P12 order. The appellant prayed for issuing a writ certiorari or order to call for Ext.P12 and quash the same. So also prayed for issuing a writ of mandamus commanding and compelling the 2nd respondent to enhance the pay scale of Junior Assistants.

2. The 2nd respondent opposed the claim for upgradation of pay scale contending that the KSRTC is facing a very severe financial crisis and the scale of pay, allowance and other conditions of service of employees are based on conciliation, settlement and agreements culminated in Government Orders. So, a mid-term upgradation of pay scale of the Junior Assistants alone would cause labour unrest and discontent among the other similarly placed employees, large in numbers working under different categories. The latest wage structure and conditions of service of employees are governed by the agreement dated 22/5/2012, which is in force. So, the petitioner and similarly placed other employees are also bound by the said agreement. The pay structure of the KSRTC would not be equated or compared with other Corporations and Boards, since the service conditions of the KSRTC is governed by bilateral agreement recognized by the Trade Unions also. The

re-designation and enhancement of qualification are intended for improving quality of work only and there is no change in the nature of work, duty and responsibility attached with the above post.

3. After considering the rival contentions, the learned single Judge of this Court dismissed the writ petition mainly on the ground that the appellant cannot claim upgradation of pay scale, as a matter of right and no right could be accrued to the Junior Assistants to claim enhanced pay scale by virtue of re-designation of post and enhancement of requisite qualification for the acquisition of the post. In the absence of an enforceable right, a writ of mandamus directing to upgrade the pay scale, cannot be issued under Article 226 of the Constitution of India.

4. Heard the learned counsel for the appellant in extenso. The learned counsel advanced arguments assailing the findings in the impugned judgment and elaborating the grounds raised in the Memorandum of

Writ Appeal. The question to be considered is, can the appellant claim upgradation of pay scale, as a matter of right, consequent on the re-designation of the post and enhancement of requisite qualification for acquisition of the same?

5. Going by the pleadings, it is seen that the appellant raised the claim for upgradation of pay scale mainly on three grounds. Firstly, according to the petitioner, where there is a prescription of higher qualification and change of designation, the salary also has to be enhanced to make it commensurate with higher qualification and re-designation. But, here it is pertinent to note that the re-designation and enhancement of qualification were made to improve the quality of work only. The nature of duty and responsibility or volume of work has not been changed or enhanced consequent on the re-designation and enhancement of requisite qualification. Put it differently, the nature of duty and responsibilities

attached to Lower Division Clerks and Junior Assistants are one and the same. If that be so, we are of the opinion that the appellant is not entitled to claim upgradation of scale of pay, on the basis of the change in nomenclature of the post and requisite qualification for the acquisition of the same. Moreover, the appellant, who entered into service, relying on the existing scale of pay, cannot claim enhanced salary, as of right, in comparison with the present designation and qualification with that of the earlier, which had been struck off, before his entry into the service. There cannot be an automatic or consequential enhancement of salary when the nature of duty, responsibility and volume of work stand as such without any change.

6. Secondly, it is contended that the appellant was appointed from a common ranked list for Assistant Grade-II/Junior Assistant/Clerks in Boards, Corporations etc. The candidates who were lower in rank and got

appointments in other Boards and Corporations are getting higher salary than the Junior Assistants in the KSRTC. Thus, the appellant is getting a lesser pay on the reason that he happened to be allotted to KSRTC. But, as rightly held by the learned single Judge it was very much known to the appellant while responding to the Notification issued by the Public Service Commission that he would be appointed to various Corporations/Boards/Government Departments etc., and his pay would be varied in accordance with the salary structures of those institutions mentioned above as the employees under those institutions are being paid differently. It was also known to him that he would be appointed in accordance with the order of requisitions from various Corporations and Boards. More importantly, the appellant has no case alleging mala fides or arbitrariness or irregularity against the methodology of allotments to various institutions from the common list. In short, he joined in the service of

the KSRTC with the knowledge that Junior Assistants in the KSRTC are getting a salary lower than the Junior Assistants in other Corporations and Boards.

7. In the above view, we concur with the findings of the learned single Judge that having undergone selection process and got appointment on the basis of the Notification, knowing very well about the pay scale prevalent in KSRTC, the appellant and similarly placed others cannot seek enhancement of pay scale, as a matter of right, and no right had been accrued to the appellant to claim upgradation of salary consequent on re-designation of post and enhancement of requisite qualification.

8. Thirdly, it is contended that Junior Assistants having higher qualification, are equated with other mechanical staff and skilled workers under 17 categories, having a lesser qualification, by including all in a common scale of pay, under scale No.3 . But, in a comparison of the nature of work and

responsibility attached with Junior Assistants with that of the mechanical and skilled workers under 17 categories, we find that the nature of work and responsibility attached with each category are entirely different from that of Junior Assistants. Needless to say, different work requires different qualifications, skill, experience and expertise. In such a situation, qualifications are incomparable. Therefore, graduation cannot be taken as a common yardstick to measure the standard of qualifications of all employees under scale No.3. When nature of work and required qualifications are different, one category cannot be placed at a higher level than the other. Therefore, when the required qualifications are different and distinct, Junior Assistants cannot be heard to contend that they are having higher qualification than that of the mechanical and skilled workers. In this analysis, it cannot be held that Junior Assistants having degree are unequals entitled to get higher scale in comparison

with the mechanical and skilled workers under 17 categories of scale No.3.

9. In the above view, the contention that since the mechanical and other employees under 17 categories, having lesser qualifications, are also included in the same scales of pay, salary of the Junior Assistant has to be upgraded to the higher scale of pay, in adherence to the doctrine of equal pay for equal work, is unsustainable and liable to be rejected. The principle of equal pay for equal work is applicable where the employees holding the same rank, perform similar function and discharge similar duties and responsibilities, are treated differently.

10. Moreover, in our view, the doctrine of 'equal pay for equal work' can be applied to step up the low salary of an employee to equalise it with the high salary of the equally placed other employees of the same establishment. But here the Junior Assistants have no case that any other employee equally placed

as that of them in the KSRTC are drawing a higher salary than their salary. On the other hand, the grievance of the Junior Assistants is that they are placed along with the unequals under the common pay scale No.3 and those employees are also drawing the same salary as that of them. Even if that be so, the said doctrine cannot be applied to step up the salary of Junior Assistants on the reason that some other unequals placed under the same common scale of pay No.3 are also drawing the same salary as that of them.

11. That apart, it is contended by the respondents that the scale of pay of the employees of the KSRTC is governed by the bilateral long term agreements entered into between the Corporation and the recognized Trade Unions with the approval of the Government and such an agreement entered into between the employees and the Corporation in the year 2012, is still in force. This fact is not denied by the appellant. In such a situation, the further

contention that if the pay scale of the Junior Assistant alone is stepped up, it will cause labour unrest and discontent among the employees, under various categories of the KSRTC, cannot be brushed aside.

12. In the light of the above discussions, we agree with the findings of the learned single Judge that as a matter of right, the appellant and similarly placed Junior Assistants cannot claim upgradation of pay scale consequent on re-designation of the post and enhancement of qualification for the acquisition of the same. A writ of mandamus will not lie to create or establish a legal right; but to enforce one which has already been established. Needless to say, in the absence of an established right, this Court is not inclined to issue a writ of mandamus, order or direction to the respondents to upgrade pay scale of the appellant and similarly placed Junior Assistants.

13. We also make it clear that it is for the appellant and other similarly placed Junior Assistants

to pursue the matter before the KSRTC and the Government seeking re-consideration of the impugned decision. This judgment will not stand in the way of the appellant and similarly placed Junior Assistants pursuing the matter further before the KSRTC or the Government seeking re-consideration of the decision. This writ appeal is devoid of merits.

In the result, this writ appeal is dismissed.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge