

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 29766 of 2006 (R)

PETITIONER(S) :

K.RAJU
TRADE INSTRUCTOR (MECHANIST), DEPARTMENT OF
MECHANICAL ENGINEERING, NSS POLYTECHNIC, PANDALAM.

BY ADV. SRI.LIJU. M.P

RESPONDENT(S) :

1. PRL,.SECRETARY
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF TECHNICAL EDUCATION,
DIRECTORATE OF TECHNICAL EDUCATION
THIRUVANANTHAPURAM.

3. THE CHAIRMAN,
NSS POLITECHNIC, PANDALAM.

4. THE PRINCIPAL,
NSS POLYTECHNIC, PANDALAM.

R,R3 BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)

R,R3 BY ADV. SRI.P.GOPAL

R,R1 BY ADV. GOVERNMENT PLEADER ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kkj

WP(C).No. 29766 of 2006 (C)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE APPOINTMENT ORDER DTD 31/5/2001

EXT.P2: TRUE COPY OF THE ORDER OF DECLARATION OF PROBATION DTD
17/10/2003

EXT.P3: TRUE COPY OF THE PROMOTION ORDER DTD 7/9/01

EXT.P4: TRUE COPY OF THE JOINING REPORT DATED 2/11/01

EXT.P5: TRUE COPY OF THE ORDER DATED 15/5/2004

EXT.P6: TRUE COPY OF THE PROMOTION ORDER DATED 20/09/2004

EXT.P7: TRUE COPY OF THE ORDER DATED 17/3/2005

EXT.P8: TRUE COPY OF THE REPRESENTATION DATED 05.04.2005

EXT.P9: TRUE COPY OF THE LETTER NO.DP6/39552/2001/DTE (1) DTD
30.05.2006

EXT.P10: TRUE COPY OF THE ORDER NO.DP6/39549/01/DTE DATED
8.11.2005

EXT.P11: TRUE COPY OF THE ORDER NO.DP6/102295/2011 DTE DATED
04.06.2011

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

W.P.(C) No.29766 of 2006-R

Dated this the 21st day of January, 2015

J U D G M E N T

The petitioner was appointed as a Tradesman (Mechanist) as per Exhibit P1 order, at the N.S.S. Polytechnic, Panthalam. The petitioner's probation was declared as per Exhibit P2 proceedings on 01.06.2001. In the meanwhile, a vacancy of Trade Instructor (Mechanist) occurred in the same Polytechnic. The petitioner was promoted to the said post with effect from 12.09.2001 as per Exhibit P3. As per Exhibit P4, the petitioner joined duty as Trade Instructor (Mechanist) on 02.11.2001. However, his promotion was not approved by the second respondent. As per Exhibit P5, approval was rejected stating that the petitioner's probation had not been declared. Therefore, the 4th respondent was directed to forward a fresh proposal rectifying the said defect. Thereupon, by Exhibit P6, the petitioner was granted promotion with effect from

01.06.2003. Exhibit P6 is dated 20.09.2004. Pursuant to Exhibit P6, the petitioner joined duty on 11.10.2004. However, approval to the petitioner's promotion was rejected again. According to the second respondent, the petitioner's promotion would be approved only with effect from 11.10.2004.

2. The petitioner challenged the said proceedings in Exhibit P8 before the first respondent. However, by Exhibit P9, Exhibit P8 has been rejected.

3. According to the counsel for the petitioner, Sri Liju M.P., there was no impediment in granting promotion to the petitioner even before his probation was declared. The petitioner had been promoted initially as per Exhibit P3. He had joined duty in the promoted post on 02.11.2001. Thereafter, he has been working continuously in the said post discharging his duties and responsibilities without cause for any complaint, thereafter. Therefore, there is no justification for limiting his promotion from 11.10.2014.

Reliance is placed on Exhibits P10 and P11 orders issued in the case of other similarly placed persons to point out that, promotions had been approved with effect from date of declaration of promotion. The petitioner has not been granted the said benefit. Therefore, it is contended that, this writ petition is only to be allowed.

4. Advocate P.Gopal appears for respondents 3 and 4. A counter affidavit has also been filed. According to the counsel, promotions and conditions of service of the petitioner are governed by G.O.(MS) No.90/75/H.Edn dated 06.06.1975. As per Rule 3, direct Recruitment to the post of Trade Instructor (Mechanist) is not permitted, only promotion is possible. It was for the said reason that, the petitioner was promoted. There was no bar in promotion of the petitioner though his probation had not been declared in view of Section 28(a) of the Kerala State and Subordinate Service Rules ('KS&SSR' for short). The only rider is that, if the promotee does not satisfactorily complete his probation,

he would be reverted. It is therefore contended that, the promotion of the petitioner was in order and was only to be approved.

5. According to the learned Government Pleader who represents 1 and 2, the initial promotion of the petitioner was rejected for the reason that, the same was given before his probation had been declared. Later on, after declaration of his probation an order of promotion granted to the petitioner. Accordingly, he had joined duty on 11.10.2014. It was for the said reason that his promotion was approved only on the said date. According to the learned Government Pleader, the said proceedings are in order and do not require to be interfered with.

6. Though the petitioner contends that, his promotion should be approved with effect from 02.11.2001 on which date he had joined duty pursuant to Exhibit P3, the said contention cannot be countenanced at this length of time. This is for the reason that the petitioner had not

challenged the said proceedings at the appropriate time. The petitioner had in fact accepted the fresh promotion order granted, which is Exhibit P6. The said promotion has been granted with effect from 01.06.2003. Pursuant to the said order, the petitioner had also joined duty afresh on 11.10.2004. It was only when the proceedings were not approved that the petitioner has preferred Exhibit P8. In view of the above, the contention that the promotion of the petitioner should be granted with effect from 2.11.2001 cannot be accepted.

7. Admittedly, the petitioner's probation was declared on 01.06.2003. The petitioner had been promoted with effect from 12.09.2001 as per Exhibit P3. He had also joined duty on 02.11.2001 and had been discharging the responsibilities of the promoted post. The said situation admittedly continued without any break, thereafter. Therefore, on 01.06.2003, he was actually discharging the duties of a Trade Instructor (Mechanist). The above being

the factual situation, to limit the approval of his promotion from 11.10.2004 alone is not justified. It is worth noticing that Rule 28(a) of Kerala State Subordinate Service Rules does not contain any prohibition even to the grant of probation to a person whose probation has not been declared. The only rider is that, if the promotee does not satisfactorily complete his probation, he would be reverted. The petitioner had been granted promotion as per Exhibit P6 only with effect from 01.06.2003, the date on which the petitioner's probation had been declared. He was also officiating in the promoted post. Therefore, it is only appropriate that the approval granted to his promotion should relate to the said date. It is also worth noticing that as per Exhibits P10 and P11, such relief has been granted by the second respondent to other similarly situated promotees. There is no justification for denying the said benefit to the petitioner. In view of the above, the petitioner is entitled to succeed.

-:7:-

W.P.(C) No.29766 of 2006-R

This writ petition is therefore allowed. The second respondent is directed to approve the promotion granted to the petitioner as per Exhibit P5 as Trade Instructor (Mechanist) under the third respondent with effect from 01.06.2003. The petitioner shall also be entitled to all consequential benefits on the said basis.

Sd/-
K.SURENDRA MOHAN,
JUDGE

kkj