

STATE OF KERALA AND ORS.

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v.

E.K. BHASKARAN PILLAI

APRIL 17, 2007

[A.K. MATHUR AND LOKESHWAR SINGH PANTA, JJ.]

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Service Law—Promotion—Retrospective promotion—Grant of monetary benefits associated therewith—Held, depends upon various facets—Differs from case to case—No hard and fast rule can be laid down—Court may or may not grant full benefits with retrospective effect—On facts, where Respondent was promoted with retrospective effect i.e. from 15.9.1961 and he filed a petition dated 15.6.1972, the Court was justified in granting benefit from the date of the petition and not from the date of promotion.

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As per the directions given by the Court, the case of Respondent was considered and it was found that persons junior to him were promoted and he was wrongly denied promotion. Respondent was promoted from retrospective effect i.e. 15.9.1961 but he was not paid the benefit of promotion in terms of arrears of salary. Single Judge of High Court did not give him the monetary benefit of promotional post from retrospective effect in terms of arrears of salary. In the review application, the benefit was given from the date he filed application before the Court i.e. 15.6.1972 and not with effect from 15.9.1961 as prayed by him. The order passed in review was upheld by the Division Bench.

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In the present appeal it was contended by the State that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post and therefore Respondent was not entitled to any benefit on the promotional post from 15.6.1972.

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Dismissing the appeal, the Court

HELD: 1.1. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of

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A delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also. [Para 4] [255-B-D]

1.2. However, so far as present case is concerned, as per directions given by the Court, Respondent's case was considered and it was found that persons junior to him were appointed and he was wrongly denied. Therefore, the Respondent was promoted from retrospective effect i.e. 15.9.1961 but he was not paid the benefit of promotion in terms of arrears of salary. Therefore, he approached the Court and Single Judge did not give him the monetary benefit of the promotional post from retrospective effect in terms of arrears of salary. In the review application, the benefit was given from the date he filed O.P. No. 585 of 1975 i.e. 15.6.1972. This arrears to be reasonable. The Respondent did not approach the Court for the back wages from 15.9.1961 but he filed a petition dated 15.6.1972 and the Court granted the benefit from the date of filing of the petition before the Court i.e. 15.6.1972. The incumbent in the meanwhile has retired on 31.7.1980. Therefore, looking to the facts and circumstances of the case, the view taken by the High Court appears to be justified and there is no ground to interfere in it. [Para 5] [255-E-G]

Paluru Ramkrishnaiah & Ors. v. Union of India & Anr., [1989] 2 SCC 541; *Virender Kumar, G.M., Northern Railways v. Avinash Chandra Chadha & Ors.*, [1990] 3 SCC 472; *State of Haryana & Ors. v. O.P. Gupta & Ors.*, [1996] 7 SCC 533; *A. K. Soumini v. State Bank of Travancore & Anr.*, [2003] 7 SCC 238; *Union of India & Anr. v. Tarsem Lal & Ors.*, [2006] 10 SCC 145; *Union of India & Ors. v. K. V. Jankiraman & Ors.* [1991] 4 SCC 109; *State of A.P. v. K.V.L. Narasimha Rao & Ors.*, [1999] 4 SCC 181; *Vasant Rao Roman v. Union of India & Ors.*, [1993] 2 SCC 324 and *State of U.P. & Anr. v. Vinod Kumar Srivastava*, [2006] 9 SCC 621, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7953 of 2004. A

From the Judgment and Order dated 28.11.2002 of the High Court of Kerala at Ernakulam in W.A. No. 1560 of 1998(A).

C.S. Ranjan and P.V. Dinesh for the Appellants

C.N. Sree Kumar for the Respondent. B

The Judgment of the Court was delivered by

A.K. MATHUR, J. 1. Heard learned counsel for the parties.

2. This appeal has been filed against the order dated 28.11.2002 passed by the Division Bench of Kerala High Court whereby the Division Bench of the High Court has granted limited relief to the writ-petitioner (respondent herein) by which he was given the benefit of arrears of salary on the date of his filing the application, i.e., 15.6.1972 and not with effect from 15.9.1961 as prayed by him. C
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3. The facts necessary for disposal of this appeal are that the writ-petitioner joined the service on 25.2.1957 and while working as First Grade Draftsman his juniors were promoted and the petitioner was not. He filed a representation dated 15.6.1972 calling upon the Government to give him all the benefits of promotion which were given to his juniors. His representation was not considered. Therefore, he filed O.P. No. 585 of 1975 and the High Court by order dated 12.8.1977 directed the Government to consider the representation of the petitioner with reference to any policy decision and on the merits of the representation made by the petitioner. The Government considered the representation of the petitioner sympathetically and directed that the petitioner be granted promotion with effect from 15.9.1961. By order dated 4.1.1979 the petitioner was actually promoted and he joined the promotional post on 11.5.1979 and retired from service on 31.7.1980. Thereafter, he made an application that he may be given all benefits of promotional post with effect from 15.9.1961. The monetary benefits were not given to the petitioner. Lots of correspondence transpired in between and ultimately Government by order, Ext.P5 directed that the petitioner would be entitled to monetary benefits only for the period i.e., 11.5.1979 till 31.7.1980 during which period he actually worked on the promotional post. It was also clarified that he would be entitled to all benefits from 15.9.1961 except the monetary benefits. The petitioner made further representation but without any result. Therefore, he again filed E
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A a writ petition and the learned Single Judge held that the petitioner was not entitled to get any monetary benefits from 15.9.1961 to 10.5.1979. But it was directed that pensionary benefits would be paid to the petitioner as if he had worked as Assistant Engineer from 15.9.1961 i.e., from the date he was promoted. Thereafter, a review petition was filed. The learned Single Judge by his order dated 3.12.1997 in R.P. No.331 of 1997 held that the petitioner was

B entitled to his salary for the period from 15.6.1972 till 11.5.1979. However, it was made clear that no interest would be paid. Then again, the petitioner filed a Writ Appeal which came to be registered as W.A. 1560 of 1998 for the monetary benefits from 15.9.1961. The State also preferred a Writ Appeal which came to be registered as W.A. 1451 of 1998. The State claimed that the

C review was not justified. Both the appeals were taken together. However, question of review order passed by the Court was not interfered with and the Writ Appeal filed by the State challenging the review order passed by the learned Single Judge was dismissed. However, the Division Bench examined the question of grant of monetary benefits to the petitioner on his retrospective promotion from 15.9.1961. The Division Bench referred to various decisions

D of this Court as well as the judgment of the Kerala High Court. After going through all case laws on the subject, the High Court directed that the petitioner would be entitled to higher pay on account of retrospective promotion with effect from 15.6.1972 when he filed O.P. 585 of 1975 but declined to grant any benefit from 15.9.1961. Ultimately the Court passed the order that the petitioner

E should be paid all the monetary benefits with effect from 15.6.1972 within 90 days failing which the petitioner was entitled to interest @ 9 per cent on the date on which such amount was due. Aggrieved against this order dated 28.11.2002, the State of Kerala preferred this Special Leave Petition.

4. Learned counsel for the State has submitted that grant of retrospective

F benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15.6.1972. In support thereof, the learned counsel invited our attention to the decisions of this Court in *Paluru Ramkrishnaiah & Ors. v. Union of India & Anr.*, [1989] 2 SCC 541, *Virender Kumar, G.M., Northern Railways v. Avinash Chandra Chadha & Ors.*, [1990] 3 SCC 472,

G *State of Haryana & Ors. v. O.P. Gupta & Ors.*, [1996] 7 SCC 533, *A.K. Soumini v. State Bank of Travancore & Anr.*, [2003] 7 SCC 238 and *Union of India & Anr. v. Tarsem Lal & Ors.*, [2006] 10 SCC 145. As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in *Union of India & Ors. v. K.V. Jankiraman & Ors.*, [1991] 4

H SCC 109, *State of A.P. v. K.V.L. Narasimha Rao & Ors.*, [1999] 4 SCC 181,

Vasant Rao Roman v. Union of India & Ors., [1993] Supp. 2 SCC 324 and *State of U.P. & Anr. v. Vinod Kumar Srivastava*, [2006] 9 SCC 621. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

5. However, so far as present case is concerned, as per directions given by the Court, petitioner's case was considered and it was found that persons junior to him were appointed and he was wrongly denied. Therefore, the petitioner was promoted from retrospective effect i.e. 15.9.1961 but he was not paid the benefit of promotion in terms of arrears of salary. Therefore, he approached the Court and learned Single Judge did not give him the monetary benefit of the promotional post from retrospective effect in terms of arrears of salary. In the review application, the benefit was given from the date he filed O.P. No. 585 of 1975 i.e. 15.6.1972. This appears to be reasonable. The petitioner did not approach the Court for the back wages from 15.9.1961 but he filed a petition dated 15.6.1972 and the Court granted the benefit from the date of filing of the petition before the Court i.e. 15.6.1972. The incumbent in the meanwhile has retired on 31.7.1980. Therefore, looking to the facts and circumstances of the case, the view taken by the High Court appears to be justified and there is no ground to interfere in it.

6. The appeal is accordingly dismissed with no order as to costs.

B.B.B.

Appeal is Dismissed. H