

Secretary Vs Sindu N

Court: High Court Of Kerala

Date of Decision: Jan. 24, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Kerala High Court Act, 1958 " Section 5(i)

Hon'ble Judges: Anil K.Narendran, J; Muralee Krishna S., J

Bench: Division Bench

Advocate: Vineetha B, Liju. M.P

Final Decision: Allowed

Judgement

Muralee Krishna S, J.

1. The appellants who are respondents 1 to 3 in W.P.(C)No. 23284 of 2017 on the file of this Court filed this Writ Appeal under Section 5(i) of the

Kerala High Court Act, 1958, challenging the judgment dated 10.05.2022 passed by the learned Single Judge in the writ petition, by which appellant

No.1 was directed to reconsider the request of the 1st respondent for the First Time Bound Higher Grade (TBHG) in the scale of promotion post, that

is, Steno-Typist Grade I.

2. The facts can be summarised as follows:

The 1st respondent was appointed as Steno-Typist Grade II at NSS Polytechnic College, Pandalam on 01.02.2008. By Ext.P1 order dated 15.04.2008,

the appointment of the 1st respondent was approved in the scale of pay of Rs.6080-9830 under the Direct Payment Scheme. She completed her

probation on 01.02.2010 and the pay scale drawn by her at that time was Rs.20,000-45800. She completed 8 years of service on 31.01.2016 and

became entitled to the First Time Bound Higher Grade with effect from 01.02.2016. By relying on Ext.P2 scheme of Time Bound Higher Grade

promotion attached to the Pay Revision Order 2016, the 1st respondent claimed that she is entitled to the First Time Bound Higher Grade in the scale

of promotion post, that is, Steno-Typist Grade I. Her application was rejected as per Ext.P3 order dated 26.09.2016 by appellant No.3 on the ground

that no such promotion post exists in aided Polytechnic Colleges. The 1st respondent then filed an appeal before the Government and as per Ext.P5

order dated 26.04.2017, the Government rejected the appeal on the same ground. Being aggrieved, the 1st respondent filed W.P.(C)No.23284 of 2017

before this Court under Article 226 of the Constitution of India, which resulted in the impugned judgment.

3. Heard the learned Senior Government Pleader and the learned counsel for the 1st respondent.

4. The learned Senior Government Pleader would argue that the issue involved in this writ appeal was considered by a Division Bench of this Court in

W.A. No.1469 of 2016 and as per the judgment dated 06.10.2016, the Division Bench confirmed the judgment dated 08.07.2016 passed by a learned

Single Judge of this Court in W.P.(C)No.22749 of 2014, holding that fixation in the scale of pay of the promotion post would be permissible only if the

promotion post is available in the establishment and in other cases, the employee can get the benefit of the next higher grade alone. The Division

Bench arrived at such a finding by interpreting clause (6) of Ext.P2 scheme. Though the appellant therein filed R.P. No.1031 of 2016 before the

Division Bench, as per the order dated 16.12.2016, the R.P. was dismissed. Then the appellant therein approached the Apex Court by filing SLP(C)

Nos.18962-65 of 2017 and was granted liberty to seek review of the judgment in the Writ Appeal. The appellant again filed another review petition

bearing R.P. No.439 of 2022, and as per order dated 30.06.2022, it was dismissed by another Division Bench of this Court. These judgments were not

brought to the notice of the learned Single Judge while disposing of W.P.(C)No.23284 of 2017 and hence it is liable to be reversed.

5. The learned counsel for the 1st respondent would argue that clause (6) of Ext.P2 scheme consists of two limbs. The first limb, deals with,

a situation, where, a regular promotion post including ratio promotion post is available in the establishment. In such a situation while

assigning higher grade, only qualified hands eligible for regular promotion will get the scale of pay of regular promotion posts. The second limb deals

with a situation where no such immediate regular promotion post under common category exists in a department. In such a situation, the scale of pay

of immediate regular promotion posts as shown in the schedule of posts under the common category as per special rules will be admissible as grade

scale. The 1st respondent falls in the second category and hence she is entitled to higher grade pay equal to regular promotion post by giving the

benefit of second limb. The Division Bench in W.A. No.1469 of 2016 did not consider the second limb of clause (6).

6. The fact that the 1st respondent joined in service in the cadre of Steno-Typist Grade II and on completion of 8 years of service, she was entitled to

First Time Bound Higher Grade is not disputed. It is also not in dispute that the regular promotion post of Steno-Typist Grade-I is unavailable in the

Polytechnic College, wherein the 1st respondent is employed. She is claiming First Time Bound Higher Grade in the scale of promotion post as Steno-

Typist Grade-I, relying on clause (6) of Ext.P2 scheme attached to the Pay Revision Order. It is relying on the very same clause, the appellants are

contending that the 1st respondent is not entitled to Time Bound Higher Grade in the scale of promotion posts, since no such post is available in

Polytechnic Colleges.

7. From the rival contentions raised by the parties, it is clear that the answer to the dispute can be found only by interpreting clause (6) of Ext.P2

scheme annexed to Pay Revision Order G.O(P)No.7/2016/Fin dated 20.01.2016. It is worth to extract clause (6) of the Scheme for easy appraisal of

the same.

“6. If there is a regular promotion post (including ratio promotion post) in respect of the categories of posts (entry) coming under pay range from Rs.16500-35700 to

Rs.32300-68700 and its scale of pay is higher than the Time Bound Higher Grade proposed above, then the qualified incumbent will be given the scale of pay of the

regular promotion post in the direct line of promotion as Time Bound Higher Grade scale. (While assigning higher grade, only qualified hands eligible for regular

promotion will get the scales of pay of regular promotion posts). In cases where there exist no such immediate regular promotion post under common category in a

department, the scale of pay of immediate regular promotion post as shown in the schedule of posts under common category as per Special Rules alone will be

admissible as grade scale (i.e in case where there are only Junior Superintendent post and no intermediary post of Head Clerk in a department, a UD Clerk will be

eligible for higher grade in the scale of pay of Head Clerk only). Unqualified hands will be allowed the next higher scale of pay above that of the scale of pay of the

post held at that time, in the standard scales of pay in Annexure I.”

8. In W.A. No.1469 of 2016 by interpreting the aforesaid clause, this Court took the view that the fixation in the scale of pay equal to the regular

promotion post would be permissible only if the promotion post is available in the establishment. Admittedly, the post occupied by the appellant therein

being the only post available, it was held by the Division Bench that the appellant could not have been extended the benefit of the scale of pay of the

promotion post but could have aspired for only the next higher grade. This finding of the Division Bench in the judgment dated 06.10.2016 was

reiterated by another Division Bench in the order dated 30.06.2022 passed in R.P. No.439 of 2022.

9. A reading of clause (6) in Ext.P2 would show that it contains two limbs. The first limb deals with a situation where there is a regular promotion post

and the second limb deals with a situation where there exists no such immediate regular promotion post under a common category in the department.

The second limb is made more clear by giving an illustrative example that “where there are only Junior Superintendent posts and no intermediary

post of head Clerk in a department, a UD clerk will be eligible for higher grade in the scale of pay of Head Clerk only”. The 1st respondent herein is

claiming the benefit of second limb of clause (6) of Ext.P2 scheme. She is at present working as Steno-Typist Grade II. The immediate regular

promotion post of Steno-Typist Grade II is admittedly Steno-Typist Grade I. The 1st respondent has no case that any promotion post above the

category of Steno-Typist Grade I is available in her establishment to give the benefit of the intermediary post to her, as illustrated in the example given

in the second limb of clause (6). Therefore, the 1st respondent cannot claim that she has to be given grade promotion in the scale of pay of Steno-

Typist Grade I. She is entitled to claim only the First Time Bound Higher Grade as shown in Table I of Ext.P2 scheme. The learned Single Judge

though considered both limbs of clause (6) of Ext.P2 scheme, failed to take note of the fact that the second limb of the said clause can be claimed in

her advantage by the 1st respondent, only in the case where there is a promotion post in her establishment without an intermediary post, as illustrated.

In such circumstances, the argument of the 1st respondent that the Division Bench in W.A.No.1469 of 2016 did not consider the second limb of clause

(6) of Ext.P2 scheme in its proper perspective is meritless. In Ext.P3 order of appellant No.3 and in Ext.P5 order of the Government, a correct

interpretation was given to clause (6) of Ext.P2 scheme. The learned Single Judge failed to appreciate clause (6) of Ext.P2 scheme in its right

perspective. In such circumstances, the impugned judgment of the learned Single Judge is liable to be set aside.

In the result, the writ appeal is allowed by setting aside the impugned judgment dated 10.05.2022 passed in W.P.(C)No.23284 of 2017 and the writ

petition stands dismissed.