



GOVERNMENT OF KERALA

Abstract

Local Self Government – Calicut Development Authority (Defunct) –
Judgement dated 16/11/2022 in OP(KAT) 416/2017 filed by Sri.
Abdussalam E. before the Hon'ble High Court of Kerala - Complied –
Orders issued

LOCAL SELF GOVERNMENT (IA) DEPARTMENT

G.O.(Rt)No.1077/2023/LSGD Dated,Thiruvananthapuram, 20-05-
2023

- Read 1 G.O.(P)No.32/98/P&ARD dated 28/08/1998
- 2 G.O.(P)No.10/99/P&ARD dated 17/05/1999
- 3 G.O.(P)No.18/99/P&ARD dated 13/10/1999
4. G.O.(Ms)No.28/2001/LSGD dated 05.02.2001
5. G.O.(MS) 267/04/LSGD dated 13.08.2004
6. Judgement dated 22/01/2008 in WP(C) 2528/2008, filed by Sri.Abdussalam E., before the Hon'ble High Court of Kerala
7. G.O.(Rt) No.2079/2009/LSGD dated 13/08/2009
8. Judgement dated 05/01/2015 in WPC 27845/2008 by the Hon'ble High Court of Kerala
9. G.O.(P) No.54/2017/LSGD dated 10/03/2017
10. Order dated 04/07/2017 in TA 400/2014 filed by Sri.Abdussalam E., before the Hon'ble Kerala Administrative Tribunal
11. Judgement dated 16/11/2022 in OP(KAT) 416/2017 filed by Sri.Abdussalam E., before the Hon'ble High Court of Kerala

ORDER

Sri. Abdussalam E., who is currently working as Revenue Inspector, Thirur Municipality, entered into service as Assistant Grade II in

Defunct Calicut Development Authority (CDA), on a temporary basis in 1997 through employment Exchange vide paper read as (1) above. As part of reappointment of disabled provisional employees, who were in service from 1st January-31st December of 1997, during the Golden Jubilee Year of Independence, Sri. Abdussalam was retained in his post in Calicut Development Authority on 10.02.1999, on purely temporary basis, with a pay scale of 4000-6090, vide paper 2nd cited.

2) Later Sri. Abdussalam E and 8 other employees, submitted a proposal, to regularise them in CDA based on the provisions contained in 3rd paper read above. But due to the lack of sufficient posts, CDA could not accommodate all the differently abled employees who were given reappointment.

3) Government had decided to abolish all the vacant posts in the Development Authorities as per paper read as 4th above, as the establishment cost of the authorities are exorbitant and most of the authorities find it difficult to pay salary to the staff due to paucity of funds. Besides due to delegation of authority to the Local Self Govt Institutions by virtue of Kerala Panchayath Raj Act 1999, Kerala Municipality Act 1999 and on account of peoples planing program under Panchayathi Raj Act the volume of works and duties in the Development Authorities diminished and several posts were curtailed.

4) Owing to administrative inconvenience mentioned above, Calicut Development Authority could not accommodate all the differently abled employees who were given reappointment. Subsequently the Government issued an order on 13.08.2004 read as 5th paper read above, by providing employment to such employees under Municipal Common Service. Since there were no post of Assistant Grade II in Municipal Common Service, the willingness of such employees were to be obtained to accommodate them in the post of Lower Division Clerk as junior most. Accordingly the consent of the all such employees including Sri. Abdussalam E., obtained. Subsequently Sri. Abdussalam E. was appointed as LDC/bill collector in Thalassery Municipality as per the order No.B7/14050/03 dtd 16/09/2004 and he joined in the post on 20/11/2004 with a pay scale of 3050-5230.

5) Since his appointment in the Municipal Common Service was treated as a fresh appointment, Sri. Abdussalam E filed WP(C) 2528/2008 before the Hon'ble High Court of Kerala for protecting his previous service and pay in Calicut Development Authority in the post

of Assistant Grade-II. Based on the Judgement dated 22/01/2008 in WP(C) 2528/2008, the Director of Urban Affairs heard the petitioner directly and submitted the report to Government for taking necessary steps to preserve the salary of Sri. Abdussalam in the post of Assistant Grade-2 in the CDA. Accordingly the petition was examined and was rejected by Government vide paper 7th cited, on the ground that since his first appointment and reappointment in CDA in the post of Assistant Grade-II was only temporary and his service in CDA was not regularized and there was no provision in the KSR to protect his pay on account of the past service in CDA.

6) Aggrieved by the above mentioned Government order, Sri Abdussalam E., filed TA 400/2014 before Hon'ble Kerala Administrative Tribunal, for setting aside the paper 7th cited above and to regularise his service in the Calicut Development Authority with effect from 13.10.1999 with all service benefits and also to protect the pay drawn by him in the CDA as Assistant Grade II in the Municipal Common Service. But petition was disposed, as the above regularization was only against a post which was available in the Municipal Common Service(LD clerk) and the court stated any directions to the contrary would work out an injustice to other regular hands in the post of Lower Division Clerks in the Municipal Common Service.

7) Subsequently, Sri. Abdussalam E., filed OP(KAT) 416/2017 before the Hon'ble High Court of Kerala, against the judgement in TA 400/2014 and in the Judgement dated 16/11/2022, read as paper 11th cited above, the Hon'ble High Court directed the first respondent (State of Kerala, Represented by Secretary, LSGD) to consider and pass orders within 3 months from the date of receipt of copy of this order, after hearing the petitioner.

8) As per the above Judgement the petitioner was heard on 22/02/2023. He had put forward the facts and requested to add his temporary service in CDA in the total service and sanction pension accordingly. The appointment and re-appointment of Sri.Abdussalam E. as per G.O.(P)No.32/98/P&ARD dated 28.09.1998, in CDA were strictly provisional and also the protection of previous service and pay in CDA is not admissible as his prior service in CDA was not regularised. There is no provision in the KSRs to protect his pay on account of the provisional service in CDA. Govt had taken a compassionate view in the case of petitioner and others while

absorbing the temporary hands in the non-existent post of Assistant Grade - II pattern of dissolved Calicut Dev. Authority in the post of LDC .

9) In a similar case regarding the pay protection, as per Judgement dated 05/01/2015 in WPC 27845/2008, cited as 8th paper above, the Hon'ble High Court upheld that,

'The prior regular service of the appointees with higher time scale of pay cannot be protected except in cases of appointments are made in accordance with the Special rules.

The wisdom of Govt in fixing different norms and procedure for appointment cannot be questioned. The court cannot substitute the wisdom of the Govt for laying norms for recruitment. An appointee cannot insist that his appointment should carry the same pay, which he was drawing in the prior service. If an appointee has chosen a different service, it concludes that he has relinquished the pay, which was drawing in the prior service. The wisdom of choosing different service is in the field of choice of the employee concerned. The employee cannot now command that his pay should be protected."

10) On the aforementioned circumstances, Government is not in a position to consider the request of Sri.Abussalam E., to regularize his service rendered by him under the CDA in the post of Assistant Grade-II during the period from 10.02.1999 to 19.11.2004 and the clubbing of the said service with the Municipal common Service for the purpose of his retirement benefits. Accordingly, the directions of the Hon. High Court in its Judgement dated 16/11/2022 in OP(KAT)No.416/2017 are complied with.

(By order of the Governor)
LEENA N P
JOINT SECRETARY

To:
Secretary, Kozhikode Municipal Corporation
Sri. Abdussalam E., Revenue Inspector, Tirur Municipality, Tirur,
Malappuram
Advocate General, Ernakulam (with Covering Letter)
Finance Department (2391133/Dev-1/46/2023 dated 13/04/2023)
Principal Accountant General (A&E.), Kerala, Thiruvananthapuram

Accountant General (G&SSA/E&RSA), Kerala, Thiruvananthapuram
✓ Executive Director, Information Kerala Mission, Thiruvananthapuram
Stock File/Office Copy (IA4/15/2023-LSGD)

Forwarded /By order

Signed by

Vijitha M B

Section Officer
Date: 22-05-2023 10:27:13