



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Judgment dated 02.09.2014 of the Hon'ble High Court in WA No. 2607/05 filed by Shri. B.S. Jayakumar, Superintending Engineer (Retired), Local Self Government Department against the judgment dated 13.06.2005 in OP 19992/96 - Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EU) DEPARTMENT

GO(Rt)No: 3165/15/LSGD.

Dated, Thiruvananthapuram, 26.10.2015.

- Read:**
- 1) Judgement dated 02.09.2014 of the Hon'ble High Court in WA No.2607/2015 filed by Shri.B.S. Jayakumar against judgment dated 13.06.2005 in OP No. 19992/96.
 - 2) Representation dated 15.10.2014 of Shri.B.S. Jayakumar Superintending Engineer (Retired), Local Self Government Department .
 - 3) Letter No.E22(Tech)/7738/13/CE/LSGD dated 03.12.2014 of the Chief Engineer, Local Self Government Department.
 - 4) Letter No.E4/12194/14 dated 22.07.2015 of the Director of Urban Affairs, Thiruvananthapuram.

ORDER

Shri. B.S. jayakumar, former Municipal Engineer, Neyyattinkara Municipality has filed WA No.2607/2005 before the Hon'ble High Court against the judgment dated 13.06.2005 in OP No. 19992/96. The Hon'ble High Court in the judgment has allowed the Writ Appeal permitting the petitioner to submit a fresh representation to the Ist respondent (Chief Secretary, Government of Kerala) and the same shall be considered by the

1st respondent in the light of the observations made by the Hon'ble High Court and appropriate orders passed with in a period of three months from the date of receipt of the said representation.

In the judgment, the Hon'ble High Court observed that;

"If the appointment of the 3rd respondent (Shri. T.V. Balan Nambiar) was provisional in the post of Assistant Executive Engineer, and he was promoted as Executive Engineer after the petitioner was regularized in service in the post of Assistant Executive Engineer, definitely, the petitioner can claim seniority in the post of Executive Engineer at least from the said date. The point that requires to be considered is the date on which the 3rd respondent was regularised in service. There is no material to come to such a finding other than Ext. P₃ (Order fixing the ratio of direct recruits and departmental hands in the post of Assistant Engineer (AE) and the regularization of the provisional promotion of those including the 3rd respondent). If the petitioner was regularized before regularising the 3rd respondent in the post of Assistant Executive Engineer, he is entitled for the benefits that would have accrued to him with effect from the date on which the 3rd respondent was promoted to the higher post. But since he has not worked in the higher post, his entitlement will be however limited to fixation of pay on that basis, but he will not be entitled to claim any arrears of pay or allowances on account of such refixation, till the date on which the order is passed."

The appellant filed representation dated 15.10.2014 which was received in Government on 18.10.2014. He was personally heard by Joint

Secretary, Local Self Government Department on 25.06.2015. The contention of the appellant is that in Ext. P₃ (Order fixing the ratio of direct recruits and departmental hands in the post of Assistant Engineer (AE) and the regularization of the provisional promotion of those including the 3rd respondent) he is senior to the 3rd respondent as his date of regular appointment is 10.06.1982 and that of the 3rd respondent is fixed as 01.01.1983. Thus the appellant is senior to the latter and, therefore, the promotion of the latter to the post of Executive Engineer without considering him is irregular and hence claims for promotion to the post of Executive Engineer at least with effect from the date on which junior was promoted.

On hearing the petitioner and examination of available records revealed the following facts:-

- a) Shri. Balan Nambiar was provisionally promoted to the post of AE while working as PW Overseer Grade-I in Municipal Common Service (MCS) vide G.O(Rt) No.2782/79/LA&SWD dated 18.08.1979 and joined duty on 23.08.1979.
- b) The appellant joined duty as AE under the quota of direct recruitment on 17.06.1982 as per G.O(MS No.104/82/LA&SWD dated 10.06.1982 and regularized with effect from 17.06.1982 vide G.O(Rt) No.4107/82/LA&SWD dated 27.12.1982.
- c) Consequent to this the provisional appointment was regularized as per the ratio mentioned in G.O.(MS)56/72/LA &SWD dated 19.02.1972 and orders issued vide Proceedings No.B3-5215/86 dated 22.04.1986 (Ext.P3) of the

Director of Municipal Administration. In the interse seniority list, the rank of the appellant is 1 and that of the 3rd respondent is 19. But even before the list is published, the 3rd respondent was again provisionally promoted to the post of AEE vide GO (Rt) No.72/82/LA &SWD dated 07.01.1982. In the Service Book of Shri. Balan Nambiar it is recorded that his completion of probation in the post of AE was declared vide Proceedings No.B3-25718/92 dated 06.03.1995 of the Director of Municipal Administration. But no supporting document is available.

The Director of Urban Affairs as per the letter read as 4th paper above has reported that the provisional promotion granted to Shri. Balan Nambiar in the cadre of Assistant Executive Engineer has not been regularised from the Urban Affairs Department.

Government have examined the matter in detail. In the judgment dated 02.09.2014 in W.A. No.2607/2005, the Hon'ble High Court observed that if the petitioner was regularized before regularizing the 3rd Respondent (Shri. T.V. Balan Nambiar) in the post of Assistant Executive Engineer, he is entitled for the benefits that would have acquired to him with effect from the date on which the 3rd Respondent was promoted to the higher post. The Hon'ble High Court has directed to pass appropriate orders in the light of the observations. No supporting document regarding the regularization of 3rd respondent in the post of Assistant Executive Engineer is available. The Director of Urban Affairs has reported that the provisional promotion in respect of Shri.Balan Nambiar in the cadre of Assistant Executive Engineer

has not seen regularized from Urban Affairs Department. Therefore, the claim of Shri. B.S. Jayakumar is hereby declined as in the representation read as 2nd paper above, the provisional promotion granted to Shri. T.V. Balan Nambiar has not been regularised in the post of Assistant Executive Engineer.

Judgment read as Ist paper above is complied with accordingly.

By Order of the Governor,

**RETNAMMA. V,
JOINT SECRETARY TO GOVERNMENT.**

To

The Director of Urban Affairs, Thiruvananthapuram.
The Chief Engineer, Local Self Government Department.
The Director, Local Fund Account, Thiruvananthapuram.
The Accountant General (A&E/Audit), Thrissur Branch.
The Advocate General, Kerala, Ernakulam. (with C/L)
Shri. B.S. Jayakumar, Superintending Engineer (Retd.),
Mangalya, TC 25/77(1), Near Housing Board Junction,
Thamapanoor, Thiruvananthapuram - 1.
✓ The Director, Information Kerala Mission, Thiruvananthapuram.
Personal & Administrative Reforms Department (vide U.O. No.
12810/B2/15/P&ARD dated 19.09.2015.)
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Section Officer