



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Establishment – O.A No.2273/13 filed by Shri. N E Sooraj, L D Typist, Municipal Office, Eloor, Udyogamandal P O, Ernakulam – Order dated. 08.08.2016 of the Hon. Kerala Administrative Tribunal- Complied with - Orders issued.

Local Self Government (E.U) Department

G.O.(Rt)No.2601/17/LSGD

Dated,Thiruvananthapuram.27.07.2017

Read:

1. Representation from Shri. N E Sooraj, L D Typist, Municipal Office, Eloor to the Director of the Urban Affairs, Thiruvananthapuram
2. Letter No. 9464/EU2/2013/LSGD dated 26.08.2013. (Annexure A1)
3. Order No. E6- 18357/12 dated 07.09.2013 of the Director of the Urban Affairs, Thiruvananthapuram.(Annexure A2)
4. Order dated. 08.08.2016 of the Hon. Kerala Administrative Tribunal in O.A No.2273/13 filed by Shri. N E Sooraj, L D Typist.

ORDER

Shri. N.E. Sooraj joined as L D Typist in Municipal Common Service with effect 11.10.2012. Prior to this service he has service in Archaeology Department and in Kerala Civil Judicial Service as Last Grade Servant. As per representation read as 1st paper above he requested to count the prior Government service for fixation of pay. Accordingly the Director of Urban Affairs, Thiruvananthapuram sought clarification in this regard from Government and as per letter read as 2nd paper above Government rejected his request to count the prior service for fixation of pay. As per order read as 3rd paper above the Director of Urban Affairs communicated this Government decision to the incumbent. Against this decision Shri. N.E. Sooraj filed OA 2273/2013 before the Kerala Administrative Tribunal. Government vide GO(MS) No. 44/2016/LSGD dated 01.03.2016 ((Annexure A17), allowed the claim of a similarly situated person (Shri. Nirish Kumar P.G) as a special case based on the judgment dated 22.05.2013 of the Hon.High Court in OP (KAT) 4373/2012(Annexure A14)

2. The Hon. Tribunal in the Order read as 4th paper above set aside the Annexure A1 and A2 and directed Government to reconsider the matter afresh in accordance with Annexure A14 judgment and Annexure A17 Order within 3 months from the date of receipt of a certified copy of the Order, after affording an opportunity of personal hearing to the applicant and considering the additional contentions that may be raised by the applicant at the time of personal hearing.

3. In accordance with the direction of the Hon. Kerala Administrative Tribunal, the Under Secretary, Local Self Government (EU) Department heard the applicant on 11.01.2017. In the hearing the incumbent submitted that he was appointed as Last Grade Servant in Archaeology Department under compassionate employment scheme and worked thereon from 13.10.1999 to 20.02.2003. Through inter department transfer he got appointment in Civil Judicial Department and joined there on 21.02.2003 and continued there up to 10.10.2012. While continuing in North Paravur Additional District Court as Process Server, he applied for L.D. Typist (Various Department) of Kerala PSC. As per Advice Letter No. EV (2) 1839/2008 dated 25.08.2012, the District Officer, Kerala PSC advised him to the post of Lower Division Typist in Municipal Common Service and the Director of Urban Affairs issued appointment Order No.E/4046/2011(EKM) dated 01.10.2012. He got relieved from the Civil Judicial Department on 10.10.2012 and joined in Municipal Common Service (Eloor Municipal Office) on 11.10.2012 as LD Typist. He complained that while he was working as Process Server in Civil Judicial Department, he was receiving a basic pay of Rs.12,880 in the scale of pay of Rs.8960-14260. But his pay in Municipal Common Service has been fixed as 9940. He added that he did not get Rule 28 A fixation or pay protection. Government also rejected those claims vide letter dated 26.08.2013. He submits that he is a similarly placed person as in the case of Shri. P.G. Nirish Kumar, Process Server, District Court, Kozhikode who has given pay and service protection vide GO(MS) No. 44/2016/LSGD dated 01.03.2016. He, therefore, requested to protect his earlier pay and services in Government service in Municipal Common Service.

4. Government examined the case in detail with the report of the Director of Urban Affairs and the relevant Government orders. Earlier there was a provision to get pay protection to an officer in Municipal Common Service who has earlier service in Government Service (vide GO (MS) No. 162/87/LSGD dated 13.07.1987 and GO(MS) No. 55/89/LSGD dated 07.06.1989). In the common judgment dated 05.11.2005 in WP(C) No.

18153/2005 & 18268/2005, the Hon. High Court of Kerala has held that the petitioners in those Writ Petitions were relieved from Government department on their volition and got appointment in another service. Unless there are statutory rules or Government Orders permitting such persons also to get the benefit of pay protection such persons cannot claim for pay protection. Based on the common judgment dated 05.11.2005 in WP(C) Nos. 18153/2005 & 18268/2005, Government cancelled the said Government orders as per GO (MS) No.211/2008/LSGD DATED 12.09.2006. There after Governmentt took a consistent stand that prior Government service or pay of an employee in Government Service who entered in Municipal Common Service on or after 12.09.2006 will not be protected.

5. The above judgment was pronounced during the year 2005. Up to the year 2005, Kerala PSC had conducted separate test for the appointments in Municipal Common Service. Thereafter PSC advises candidates to the Municipal Common Service and other Government Departments from a common rank list (Various Department rank list). Municipal Common Service is not a Government Service (Section 224(1) of Kerala Municipality Act, 1994). If a last grade servant having many years service in a Government Department applied for various departments test (LDC/L.D Typist) of Kerala PSC and gets qualified and included in that rank list and gets subsequent appointment in Municipal Common Service on the basis of the advice of the Kerala PSC, he will lose his entire Government service and starts service in Municipal common service as a beginner. If the same person gets appointment in any other Government Department from that PSC's Common rank list, his pay and service will be protected. In this case Shri. N.E. Sooraj in his representation dated 12.11.2012 requested the Kerala PSC to advise him to any Government Department as his entire 13 years service will be lost on posting in Municipal Common Service. But the PSC rejected that plea on the ground that in the notification itself it was pointed out that advice will be made to the Municipal Common Service also from the rank list.

6. Annexure A.17 Order (G.O(MS) No.44/2016/LSGD dated 01.03.2016) has been issued based on the Cabinet Decision to treat that case as a special case (Item No.8250 dated 10.02.2016). In that case, the Kerala PSC advised Government that extension of service benefits to an employee is the prerogative of the Appointing Authority or Government and as the Hon'ble Court did not issue any direction to the Public Service Commission, the Government may act as they think fit.

7. It is found that the Municipal Common Service and Government services are two different services with different conditions of service without any provision to reciprocal carry forward of service benefits earned in one service on appointment to another. Hence as per rules the prior service (Archaeology Department and Kerala Civil Judicial Department) in respect of the petitioner cannot be protected on appointment as LD Typist in Municipal Common Service.

8. In the circumstances, Government found that there is no need to accord sanction to protect the prior service (Service in Archaeology department and Kerala Civil Judicial Department), in respect of Shri. N.E. Sooraj, who has been appointed as L.D. Typist in Municipal Common Service, as a Special Case in relaxation of the G.O.(MS) No. 211/2006/LSGD dated 12.09.2006.

9. In the above circumstances the request of the petitioner in the representation read as 1st paper above and the additional contentions raised by the applicant at the time of hearing is rejected.

10. The direction contained in the Order read as 4th paper above of the Hon. Kerala Administrative Tribunal is complied with as noted above.

(By Order of the Governor)

S MOHANDAS

Additional Secretary

To

1. The Director of Urban Affairs, Thiruvananthapuram.
2. The Director, Kerala State Audit Department, Thiruvananthapuram.
3. The Advocate General, Kerala, Thiruvananthapuram(With C/L)
4. Shri. N E Sooraj, L D Typist, Municipal Office, Floor,
Udyogamandal P O, Ernakulam
5. The Executive Director, Information Kerala Mission,
Thiruvananthapuram.
6. The Principal Accountant General (Audit), Thiruvananthapuram.
7. Finance Department(Vide remarks No. Dev-1/12/2014/Fin dated
02.06.2017)
8. Personnel & Administrative Reforms Department(Vide remarks No.
128/B2/2017/P&ARD dated 29.06.2017)
9. Stock file/Office Copy.

Forwarded/By order



Section Officer

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