



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Order dated 23.3.2022 in OA (EKM) No.479/2022 filed by Shri.Sugadhakumar M, Municipal Secretary - Complied with - Orders issued

LOCAL SELF GOVERNMENT (EU) DEPARTMENT

G.O.(Rt)No.1965/2022/LSGD Dated,Thiruvananthapuram, 12-08-2022

- Read 1. Representation of Shri.Sugadhakumar M, Municipal Secretary dated 26.07.2021 (Annexure A5)
2. Order of the Hon'ble Kerala Administrative Tribunal dated 23.3.2022 in OA (EKM) No.479/2022 filed by Shri.Sugadhakumar M, Municipal Secretary
3. Letter No.E2-5554/2022 dated 30.07.2022 from the Director of Urban Affairs Department.

ORDER

Sri.M.Sugadhakumar, working as Municipal Secretary, Manjeri Municipality, Malappuram, aggrieved by his inclusion in the National Pension Scheme and non-consideration of his claim for inclusion under the statutory Pension, filed O.A.(EKM)No. 479 of 2022 before the Hon'ble Kerala Administrative Tribunal. Secretary, LSGD and Principal Secretary, Finance Department are the 1st and 2nd respondents in this case.

2)The applicant was placed in the ranked list published by the Kerala Public Service Commission for the post with effect from 22.05.2012, pursuant to notification, dated 30.04.2009 and was appointed as Municipal Secretary Grade - III with effect from 09.05.2017. Due to the delay in the appointment of the applicant, he was brought under the Contributory Pension scheme. In the light of the judgment of the Hon'ble High Court of Delhi in W.P. (C)No.2810/2016 as upheld by the order of the Hon'ble Supreme Court, the applicant preferred Annexure A5 representation read as 1st above,before the first respondent (Secretary, LSGD) for inclusion in the statutory Pension Scheme.

3)The Hon'ble Kerala Administrative Tribunal disposed OA(EKM)

No.479/2022 as per Order dated 23/03/2022 read 2nd above, directing the first respondent to consider and pass appropriate orders on Annexure A5 representation without further delay and at any rate within a period of two months from the date of receipt of a copy of the order after affording an opportunity of hearing to the applicant.

4) Accordingly online hearing was allowed to the petitioner on 29.7.2022 . Senior Superintendent of the office of the Director of Urban Affairs also attended the hearing. During the hearing as mentioned in Annexure A5 representation read 1st above, Sri.M.Sugadhakumar requested Government to include him under the purview of Statutory Pension Scheme w.e.f 09.08.2017, in the light of the judgment of the Hon'ble High Court of Delhi in W.P. (C)No.2810/2016 as upheld by the order of the Hon'ble Supreme Court. As such he has also requested Government to return the monthly contributory pension deposited by him wef 09/08.2017 towards his PRAN 110192476016, with interest, as per the norms prevailing. Director of Urban Affairs as per letter read as 3rd above, reported that a decision at Government level may be taken in this regard in accordance with the prevailing rules.

5) Government have examined the matter in detail . As per G.O(P) No.20/2013/Fin. Dated 07.01.2013, the NPS is mandatory for all appointments made on or after 01.04.2013. It is the policy decision of the Government to implement NPS. A cut off date had to be fixed for its implementation and hence Government decided 01.04.2013 as the cut off date for the implementation of NPS. Moreover considering the soaring huge expenditure towards pension and in order to overcome the financial crisis, Government vide GO(P) No.56/2002/Fin. Dated 16.01.2002 had announced a contributory pension scheme to the new entrants in Government service as well as in Public Sector Undertakings wherein pension scheme is in existence. Further Government with a view to achieve fiscal consolidation in the state examined various proposals and has taken the final decision in principle to introduce new pension scheme with affect from 01.04.2013 which shall be applicable to all appointments made thereafter. Based on the decision Government had issued G.O (P) No. 441/2012/Fin. Dated, 08.08.2012. That is Government had announced the implementation of NPS as early as in 2002 itself. Hence the newly recruited employees are well aware of the intention of Government to implement a contributory pension scheme instead of Statutory Pension Scheme.

6) The petitioners' case is not identical to that mentioned in the issue which was considered by a Division Bench of the Honourable High Court of Delhi in WP(C) No.2810 of 2016. The petitioners in this case were Inspectors

in Border Security Force and were recruited by the Staff Selection Commission. Employees under Central Government are recruited by UPSC and SSC. UPSC conducts the exam for the Civil Services and Civil posts. SSC is mandated to conduct the exams for the Class III(Group C) non-technical and Class IV (Group D) positions. The recruitment for the posts under Central Government is conducted annually. The recruitment process involves various stages such as Prelims, Mains, Interview, Physical and Medical Examination. The recruitment is done to the vacancies existing at the time of notification only.

7) The mode of recruitment under the State Government is entirely different. The recruitment to the various posts under State Government is conducted by Kerala Public Service Commission. The stages involved in the recruitment for various posts is different i.e, recruitment to some posts includes written exam only whereas some other posts involves written exams, interview etc. Also, Kerala Public Service Commission issues notification to a post considering the existing vacancies as well as the anticipated vacancies. The ranked list corresponding to various posts is published for a period of three years. There is no particular time limit for conducting examination after issuing notification to a particular post. Even though the notification to two different posts are issued on the same date, it is not necessary to conduct the examination to these posts on same date. State Government officers are under full control of state authorities and work in accordance with the policies and instructions given by the state government. Thus there exists a perceivable disparity between the Central Government service and State Government service. Further Government of India has complied the judgment only to those who were included in that particular rank list only. Also Central government had made NPS mandatory for all recruits to the central government service from 01.01.2004 where as State government had made NPS mandatory for all appointments made on or after 01/04/2013.

8) Vide G.O(P)No.209/13/Fin dated 07.05.2013 and GO(P) No. 279/2014/Fin dated 14.07.2014, mobility was given to those employees who were appointed in service up to 31.03.2013 and was under the purview of statutory pension scheme prior to 01.04.2013 to retain in Part III KSRs pension scheme. The petitioner was appointed only after 01.04.2013 and at the time of joining service he was well aware of the pension scheme admissible to him. The petitioner cannot claim the benefit admissible to those who were in service prior to the date of joining of the petitioner. Considering the increase in number of petitions and applications regarding the inclusion of employees under K.S.R Part III on the basis of Notification date through which their respective process of selections commenced, Government issued G.O. (Rt) 5071/2020/Fin. Dated

03.09.2020 to include this matter in the list of subjects of consideration before the NPS Review Committee which constituted vide G.O.(P)172/2018/Fin. Dated 07.11.2018. The committee has submitted its report to the Government and Government is examining the report. A policy decision is necessary in this case and the decision has not yet taken.

4) In the above circumstances, Annexure A5 representation preferred by Sri.M.Sugadhakumar, Municipal Secretary before the Secretary, LSGD is hereby rejected. The directions of the Hon'ble Kerala Administrative Tribunal in the order read 2nd above is complied with accordingly.

(By order of the Governor)

JAISSY PAUL
UNDER SECRETARY

To:

Shri.Sugadhakumar M, Municipal Secretary (through the Director of Urban Affairs)

The Advocate General, Kerala, Eranakulam (with covering letter)

The Director of Urban Affairs, Thiruvananthapuram

The Principal Accountant General (A&E)/(Audit), Kerala, Thrissur

✓ The Director, Kerala State Audit Department, Thiruvananthapuram

The Executive Director, Information Kerala Mission, Thiruvananthapuram

Finance Department (vide UO 2036832/PEN-A4/15/2022-FIN dated 27.04.2022)

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Forwarded /By order

Signed by Sonu Jacob

Date: 16-08-2022 10:31:36

Section Officer