



GOVERNMENT OF KERALA

Abstract

Local Self Government Department – Establishment – OA(EKM)451/2023 filed by Sri.Eldhose Mathew, Clerk, Taluk Supply Office Aluva – Order dated 17.03.2023 of the Hon. Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT(EU)DEPARTMENT

G.O.(Rt)No.1347/2023/LSGD Dated,Thiruvananthapuram, 30-06-2023

Read 1 Representation dated 07.02.2023 filed by Sri.Eldhose Mathew, Clerk, Taluk Supply Office, Aluva before the Government (Annexure A9).

2 Order dated 17.03.2023 of the Hon. Kerala Administrative Tribunal in OA(EKM)451/2023 filed by Sri.Eldhose Mathew, Clerk

3 Letter No. LSGD/PD/33322/2023-DEC3 from the Principal Director,LSGD,Thiruvananthapuram.

ORDER

As per representation read as 1st paper above, Sri.Eldhose Mathew, Clerk, Taluk Supply Office, Aluva requested to protect his pay in Municipal Common Service, considering his prior Government service as Night watchman, for the period from 09.09.2004 to 18.11.2011. He pointed out that he was appointed as Night Watchman in the Collegiate Education Dept on 09/09/2004 and while continuing as Night Watchman, he got by-transfer appointment as Attender in the pay scale of 4630-7000 in the Collegiate Education Dept. Then he was advised for appointment as Clerk in the Municipal Common Service by the KPSC and he joined duty as LD Clerk/ Bill Collector on 19/11/2011 at Kothamangalam Municipality. His basic Pay in the post of Attender in the Collegiate Education Dept as on the date of relieving on 18/11/2011 was Rs.10750/- in the scale of Rs. 8960-14260. On joining duty as Clerk/Bill Collector in the MCS, his pay was not protected at the rate he drew in the former Department. He was allowed the

minimum of the scale of pay of Rs.9940-16580 on joining duty as Clerk on 19/11/2011. Being aggrieved by the denial of protection of pay in the MCS reckoning prior Govt. service, he had submitted representation to the Government along with the representation of Smt. Girija. M.M who has also raised similar claim and Smt. Girija had got all benefits from the Govt while his request was denied by the Govt.

2. In connection with the above request, Sri.Eldhose Mathew filed OA(EKM)451/2023 before the Kerala Administrative Tribunal. The Hon. Tribunal in the Order read as 2nd paper above, directed the 1st Respondent, Government, to consider and pass orders on Annexure A9 representation within a period of three months from the date of receipt of a copy of the order, after affording an opportunity of hearing to the applicant.

3. In accordance with the direction of the Hon. Kerala Administrative Tribunal, Sri. Eldhose Mathew was heard by the Under Secretary to Government, Local Self Government Department on 18/05/2023. During the hearing, the applicant submitted that both he and Smt. Girija M.M together submitted applications to the Govt. through proper channel, seeking pay protection and other benefits. However, the request of Smt. Girija alone was considered favourably and orders passed by the Govt. and his request was denied even though their claims were similar. He also pointed out that the Hon'ble Court in judgment dated 22/05/2013 in OP (KAT) No.4373 of 2012 filed by Sri. Nirish Kumar.P.G, Process Server, District Court, Kozhikkode, held that the applicant in the OA will be entitled to all the benefits including protection of salary and other benefits and the Govt. vide GO (MS)No.44/2016/LSGD dated 01/03.2016 implemented the judgement by allowing pay protection and other benefits to the applicant in that OA. Hence, Sri. Eldhose Mathew has requested Govt. that his claim for pay protection and other benefits also has to be allowed favourably and orders has to be issued .

4. As per report read as 3rd paper above, Principal Director, LSGD informed that, Sri Eldhose Mathew who is presently working as Clerk in Aluva Taluk Supply Office, had started his Govt. service as Night Watchman in the scale of Pay Rs. 2610-3680 on Collegiate Education Dept. during the period of 09/09/2004 - 18/11/2011. Later he got by transfer appointment as attender on pay scale 4630-7000. While serving in Collegiate Education Dept. , he was advised as LDC/BC and had

appointed in Municipal Common service in the scale of pay Rs.9940-16580 Wef 19/11/2011. He served in this post till 23/08/2017. On continuing, he got PSC Advise as Clerk in Civil Supplies Dept. and was appointed in Aluva Taluk supply Office from 24/08/2017 till now.

5. It is reported that as per KSR Part- I ,Rule 28 A, an officer in a post when appointed to a higher post on the advise of KPSC or otherwise, is eligible to the benefits of refixation. And this rule is applicable only for promotion and for appointment from lower scale of pay to a higher scale of Pay. But as per reference GO(MS)162/87 dated 13/07/1987 and GO(MS)211/06 dated 12/09/2006, prior service inclusion and refixation of pay is applicable only for those who had entered in MCS till 11/09/2006. In his submission, Sri. Eldhose Mathew is pointing to Smt. Girija M.M who had submitted application along with him to the Govt. for reckoning her prior service. Smt. Girija had joined MCS in 13/02/2003 and so her submission is approved and Govt. had issued order (GO(Rt) No.3651/2017/LSGD dated 13/11/2017, favouring her. But unfortunately, Eldhose Mathew had joined in Municipal Common Service on 19/11/2011 and so he was not eligible for the benefits of refixation of scale as per the existing Govt. orders.

6. Government examined the case in detail with the report of the Principal Director, LSGD, and found that, Prior Service inclusion and refixation of pay is applicable only for those who had entered in MCS till 11/09/2006. Smt. Girija had joined MCS in 13/02/2003 and so her submission was approved and Government had issued order favouring her. But, Sri.Eldhose Mathew had joined in Municipal Common Service on 19/11/2011 and so he is not eligible for the benefits of refixation of scale as per the existing Govt. orders.

7. It is also found that the Municipal Common Service and Govt service does not fall in the “same service” under Public Service. The term ‘same service’ refers to any one of the several services constituted by the special rules applicable to such service issued under Kerala Public Services Act 1958. Since the Municipal Common service is constituted under the Municipalities Act, it does not fall in the “same service” under Public service. In neither of these Acts, there is provision to reciprocally carry forward service benefits of employees transferred from Government Service to Municipal Common Service and vice versa. The above stand has been upheld by Hon’ble High Court of Kerala in Judgement dated 05/11/2005 in WP© No.18153 of 2005. There is no provision in Kerala Service Rules to reckon the service rendered by an incumbent in Municipal Common Service along

with the Govt Service. If this case is allowed, it will lead to many litigation and demand from similarly placed persons which will lead to a huge financial commitment to Govt by way of revision of pay and allowances, with retrospective effect. It may also be noted that as per GO (Ms) No.162/87/LAD dated 13.07.1987, the prior Government Service used to be reckoned for pay protection in Municipal Common Service. This Government Order dated 13.07.1987 was cancelled by G.O (P) No.211/2006/LSGD dated 12.09.2006 on the basis of Hon'ble Court directions dated 05.11.2005 in WP © No.18153/2005, wherein the Hon'ble Court has specifically held that "Municipal Common Services is distinct from the services in Government Departments. The employee who accepts the new employment in a different service cannot say that he was transferred from the earlier service to the new service by an order passed by the former employer". In WP © No.27485/2008, Hon'ble High Court has ordered that it is in the realm of policy of the Government to laid down the recruitment rules. If the appointee has chosen a different service, it concludes that he has relinquished the pay, which he 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.

8. In the case of Sri.Nirish Kumar P.G, as pointed out by Sri.Eldhose Mathew in his representation, it is clear that Sri.Nirish Kumar was given pay protection on the basis of the judgement, as a special case. Moreover in the compliance order it is clearly mentioned that the service benefits cannot be allowed in normal case. As per GO (Ms) No.162/87/LSGD dated 13.07.87, pay protection was allowed to Government servants for their service rendered in MCS, which was cancelled by issuing GO (P) No.211/2006/LSGD dated 12.09.2006. Since the above GO has no retrospective effect and pay protection was allowed to those who got appointment to Govt. Service from MCS and vice versa till 2006. As such Smt.Girija M.M, who got appointment before 2006 (ie 13.02.2003) was allowed pay protection.

9. Considering the fact and circumstances of this case, Sri. Eldhose Mathew is not eligible for pay protection in Municipal Common Service, reckoning his prior Government service as night watchman, for the period from 09.09.2004 to 18.11.2011. In the circumstances, the request in the Annexure A9 representation submitted by Sri. Eldhose Mathew, Clerk is therefore hereby rejected.

10. The Order of the Hon'ble Kerala Administrative Tribunal read as 2nd paper above is complied with as above.

(By order of the Governor)
ANIL KUMAR G
ADDITIONAL SECRETARY

To:

The Principal Director,LSGD, Thiruvananthapuram.

The Director, Kerala State Audit Department, Thiruvananthapuram.

The Advocate General, Kerala, Ernakulam(With C/L).

Sri.Eldhose Mathew, Clerk, Taluk Supply Office, Aluva

The Executive Director, Information Kerala Mission,
Thiruvananthapuram. (For publishing this order in the Website).

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Forwarded /By order

Section Officer