

SMT. SASIKALA DEVI. P

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v.

THE STATE OF KERALA AND ANR.

(Civil Appeal No. 8716 of 2012)

APRIL 28, 2023

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[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

Service Law: Pay fixation – Inter-University transfer – Fixation of pay of the employee on the promotional post in the transferee University – Entitlement to benefits of promotion – Employee appointed as Assistant Grade-II in the University of Calicut and promoted as Assistant Grade-I – Employee transferred to MG University and was promoted there – Thereafter, employee applied for inter-university transfer to Kerala University and was placed as the junior-most Assistant in the entry cadre of Assistant Grade -II, the post to which she was appointed in the University of Calicut – Subsequently, the employee was promoted as Assistant Grade-I and pay fixed on promotional post – However, on audit the same was withdrawn – Writ petition there against allowed by the Single Judge, however, set aside by the Division Bench – On appeal, held: Employee had already got three promotions before they got themselves transferred to Kerala University – Salary drawn by them of the higher post was protected – It was more than what was due to Assistant Grade-I, the post on which they were promoted even after being placed as Assistant Grade-II at the bottom of the seniority – Grant of promotional benefits to the category of persons to which the employee belong would mean granting them double benefit – Firstly, they already got in the University they were working when they were promoted as Assistant Grade-I and secondly when they were promoted on the same post in transferee University – No reason to interfere with order of the High Court – No recovery to be made of any amount already paid to them – However, there can be re-fixation of pension as per the emoluments appellants were entitled to – Kerala Service Rules, 1959 – Kerala University First Statutes – Chapter 4, Statute No. 14A.

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State of Punjab and Others v. Rafiq Masih (White Washter) & Ors. (2015) 4 SCC 334 : [2014] 13 SCR 1343 – relied on.

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A	<u>Case Law Reference</u>	
(2015) 4 SCC 334	relied on	Para 12
	CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8716 of 2012.	
B	From the Judgment and Order dated 23.06.2010 of the High Court of Kerala at Ernakulam in WA No. 1904 of 2008.	
	With	
	Civil Appeal No. 8717 of 2012.	
C	A. Raghunath, Venkita Subramoniam T. R., Likhi Chand Bonsle, Rahat Bansal, Harsh Anand, V. K. Sidharthan, Advs. for the Appellants. Nishe Rajen Shonker, Mrs. Anu K Joy, Abraham C. Mathew, Alim Anvar, G Prakash, Mrs. Beena Prakash, Advs. for the Respondents.	
	The Judgment of the Court was delivered by	
D	RAJESH BINDAL, J.	
	1. This order will dispose of two appeals bearing Civil Appeal Nos. 8716 and 8717 of 2012.	
E	2. The judgment of the Division Bench of the High Court of Kerala passed in W.A. Nos. 1904 and 1975 of 2008 is under challenge before this Court. Vide aforesaid judgment, the Single Bench judgment of the High Court passed in O.P. No. 38578/2002 and W.P.(C) No. 15190/2006 dated 20.02.2008	
F	3. The facts are being noticed from Civil Appeal No. 8716 of 2012, as common questions of law are involved.	
G	4. The learned counsel for the appellant submitted that the appellant was appointed as Assistant Grade-II in the University of Calicut on 04.05.1988. She was promoted as Assistant Grade-I on 21.12.1989. Thereafter, she was transferred to M.G. University on 04.02.1992 in terms of applicable guidelines for inter-university transfers. On 26.02.1993, she was promoted as Senior Grade Assistant and thereafter, on 03.03.1999 as Selection Grade Assistant.	
H	5. On 04.11.1999, the appellant applied for inter-university transfer to Kerala University. As per the policy for inter-university transfer, the appellant was placed as the junior-most Assistant in the entry cadre of	

Assistant Grade-II, which was the post on which she was appointed in the year 1988 in the University of Calicut. On 29.09.2001, her name was included in the list of eligible Assistant Grade-II who were entitled to be promoted as Assistant Grade-I. On 22.05.2002, the appellant was promoted as Assistant Grade-I. Her pay was fixed on the promotional post. However, on an audit objection raised, the same was withdrawn. A writ petition was filed which was allowed by the Single Bench. However, in appeal filed by the State, the order was reversed by the Division Bench of the High Court, which is under challenge in the present appeal. In fact, there was no error in fixation of pay of the appellants as they were to be given benefits, which were being given to other employees on promotion. If not given to the appellants, it would amount to discrimination.

6. On the other hand, learned counsel for the respondents submitted that there was apparent error in fixation of pay of the appellants on the promotional post. Prior to their transfer in Kerala University, they had already got three promotions and their salary was fixed in terms of the applicable Rules. In inter-university transfer, they were placed at the bottom of the seniority list of Assistant Grade-II, however, their pay was protected. On promotion from Assistant Grade-II to Assistant Grade-I, they will not be entitled to upgradation of their salary for the reason that they were already getting salary of even a higher post namely Senior Grade Assistant. There is no error in the order passed by the Division Bench of the High Court.

7. Heard learned counsel for the parties and perused the paper books.

8. Writ Petition came to be filed as audit objection was raised regarding wrong refixation of the pay of the appellants. The issue involved in the appeals is regarding fixation of pay of the appellants on the promotional post in the transferee University. There is no dispute on the facts that in terms of the policy provided for inter-university transfers on reciprocal basis, an employee transferred to another University shall rank junior most in the entry grade of the category concerned. Even an example has also been given, namely, a Senior Grade Assistant or Assistant Grade-I, if transferred shall be appointed as junior-most Assistant Grade-II. The previous service is not to be counted towards seniority. The only protection given is regarding the pay drawn by such

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A employee. Such higher pay was to be treated as personal pay. The relevant Statute No.

14A of Chapter 4 of Kerala University First Statutes applicable for inter-university transfer is extracted below:

B *"14A. Posting of employees on transfer from other Universities: The Syndicate may, on request from the employees concerned, sanction, posting of employees on transfer from other Universities in the State subject to the following conditions:*

C *(1-2) x x x x x x x x x*
(3) A person transferred from another University shall take his rank below the junior-most in the entry grade of the category concerned. (eg. A Senior Grade Assistant or Assistant Grade I if transferred shall be appointed as Junior most Assistant Grade II).

D *(4-5) x x x x x x x x x*
(6) The person transferred shall be entitled to protection from drop of emoluments. His pay on such appointment shall be fixed at the minimum of the scale of pay he was drawing in the parent University, is less than minimum. In case he was drawing under the parent University pay above the minimum and equal to a stage in the scale of pay of the post in this University service, his pay will be fixed at that stage and if the pay he was drawing under his parent University is not a stage in the scale of pay of the post in this University service, it will be fixed at the next lower stage, the difference being treated as personal pay to be absorbed in future increases of pay."

(emphasis supplied)

G 9. The issue arose when the transferred employees were promoted in the transferee University. Their pay was fixed in terms of the normal rule granting higher pay on promotion. Audit objection was raised regarding wrong fixation of pay of the appellants. In the case in hand undisputed fact is that the appellants had already got three promotions before they got themselves transferred to Kerala University. The salary drawn by them of the higher post was protected. It was more than what

was due to Assistant Grade-I, the post on which they were promoted even after being placed as Assistant Grade-II at the bottom of the seniority. Any promotion of a transferred employee from Assistant Grade-II to Assistant Grade-I will not entitle her of any benefit of higher scale or even increment, which is applicable to the employees normally promoted for the reason that these special class of employees were already drawing salary of the higher post which in terms of the policy for inter-university transfer was protected, though they were placed at the bottom of the seniority at the entry level.

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10. The argument raised by the learned counsel for the appellants that there is no bar under Rule 28A of the Kerala Service Rules, 1959 for grant of such benefit is merely to be noticed and rejected as the entire scheme has to be read in totality. Grant of promotional benefits to the category of persons to which the appellants belong would mean granting them double benefit. Firstly, they already got in the University they were working when they were promoted as Assistant Grade-I and secondly when they were promoted on the same post in transferee University.

11. We do not find any error in the order passed by the Division Bench of the High Court.

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12. At the time of the hearing, it was submitted that all the appellants who were given the benefits have retired from service and recoveries were sought to be made from them though they were not at fault in grant of those benefits at the time of promotion. Considering the aforesaid fact and keeping in view the judgment of this Court in *State of Punjab and Others v. Rafiq Masih (White Washter) & Ors.*¹, we direct that no recovery of the amount already paid to them be effected. However, their pension can be refixed considering the emoluments to which the appellants were entitled at the time of their retirement in accordance with the rules.

13. The Appeals are disposed of accordingly.

Nidhi Jain
(Assisted by : Shraddha Singh, LCRA)

Appeals disposed of.

¹ (2015) 4 SCC 334