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10/10/17



GOVERNMENT OF KERALA

Abstract

Water Resources Department – Establishment – Order of the Hon'ble Kerala Administrative Tribunal in TA No.2111/12- Complied with - Orders issued.

WATER RESOURCES (A) DEPARTMENT

G.O.(Ms)No.80/2017/WRD

Dated, Thiruvananthapuram, 05/10/2017.

- Read:- 1)G.O(P)No.06/90/PW&T dated 20/01/1990.
2)G.O(Rt)No.439/2008/WRD dated 29/04/2008.
3)Order of the Hon'ble Kerala Administrative Tribunal in TA No.2111/2012 dated 01/11/2016.
4)Letter No.C5-22048/2008 dated 07/01/2017 of the Chief Engineer(I&A), Thiruvananthapuram.
5)Proceedings No.EE2/391/2007 dated 15/05/2008 of Chief Engineer, PWD Administration, Thiruvananthapuram.

ORDER

Sri.K.Ayyappan was initially engaged as an HR Worker from 01/01/1983 onwards. As per G.O(P)No.6/90/PW&T dated, 20/01/1990 those CLR Workers initially engaged on or before 19/05/1983 and having more than 500 days as on 01/04/1987 are eligible for regularisation as Worker Grade I/II and those who have not completed 500 days as on 01/04/1987 are eligible to be absorbed as SLR Worker. But, HR Workers were not covered under the purview of the said order. As the applicant was not included in the list of workers to be regularised in service pursuant to Government Order read as 1st paper above, he had moved the Hon'ble High Court and the Hon'ble Court in its judgment dated 09/04/2003 in OP No.12463 of 2003 had directed to consider him for absorption as SLR Worker. The applicant's representation was rejected by the Chief Engineer, PWD(Administration)) on the ground that the applicant was working on HR basis and not on CLR basis.

2) Aggrieved by the above order of Chief Engineer, Sri.K.Ayyappan has filed WP(C)26864/2006 before the Hon'ble High Court and subsequent to its judgment dated 09/07/2007, the case of Sri.K.Ayyappan was examined in detail since he was engaged before 19/05/1983 and had completed more than 500 days on HR basis. Accordingly, his service was regularised as Worker Grade II as per the Government Order read as 2nd paper above and was posted under the Minor Irrigation Division, Chengannur.

3) At the time of joining duty as Worker Grade II, he produced the extract of School Admission Register as per which his date of birth is 03/01/1952. As such he attained 55 years of age on 02/01/2007, which rendered him ineligible for appointment as Worker Grade II as the age of retirement of Worker Grade I/II is 55 years. But the petitioner requested the Chief Engineer, Public Works Department to permit him to join duty as SLR Worker, so that, he can continue in service up to the age of 58 years, as the date of retirement of SLR Worker is 58 years. Accordingly, he was absorbed as SLR Worker at his own volition and retired from service on 31/01/2010.

4) While in service he filed WP(C)23814/2008 before the Hon'ble High Court praying to regularise him as Worker Grade II retrospectively with effect from the date of regularisation of his juniors in the CLR List. Later it was transferred to Hon'ble Kerala Administrative Tribunal and renumbered as TA No.2111/12.

5) The Hon'ble Kerala Administrative Tribunal in the order read as 3rd paper above has directed to consider the date of joining of service of the applicant as Worker Grade II as on 09/04/2003 ie the date of the judgment in OP No.12463/2003 and thereby directed to treat that the petitioner joined service on 09/04/2003. The Tribunal has also declared that the applicant would be entitled to all consequential benefits thereon and this shall be reckoned and disbursed to the applicant.

6) Government have examined the matter in detail and are pleased to regularise Sri.K.Ayyappan, Worker Grade II with effect from 09/04/2003, ie the date of the judgment in OP No.12463/2003 with all consequential benefits.

7) The order of the Hon'ble Kerala Administrative Tribunal read as 3rd paper above is complied with accordingly.

(BY ORDER OF THE GOVERNOR)

TINKU BISWAL

Secretary to Government

To

The person concerned (Through Chief Engineer (I&A),Thiruvananthapuram)
The Chief Engineer (I&A),Thiruvananthapuram.
The Advocate General, Kerala, Ernakulam(with covering letter).
The Principal Accountant General (Audit) Kerala, Thiruvananthapuram.
The Accountant General(A&E), Kerala,Thiruvananthapuram/Thrissur.
The General Administration(SC)Department(Vide Item No.1475 dated 27/09/2017)
The Law Department(Vide U.O(R)No.12878/Suit II(3)/2017/Law dated 05/07/2017).
The Finance Department(Vide U.O(R)No.550152/Ind&PWB3/17/Fin. Dated 05/08/2017).
The Information Officer, Web & New Media Division, Information & Public Relations
Department.
Stock File/O.C.

Copy to:-PS to Minister, Water Resources Department

Forwarded/ By Order



Section Officer.

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രഹസ്യം

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കേരള സർക്കാർ
മന്ത്രിസഭായോഗത്തിന്റെ നടപടിക്കുറിപ്പുകൾ

തീയതി : 27-09-2017

ഫയൽ നം.1059945/എ2/2016/ജുവിവ.

ഇനം നം: 1475

വിഷയം : ജലവിഭവ വകുപ്പ് - ബഹു. കേരള അഡ്മിനിസ്ട്രേറ്റീവ് ട്രൈബ്യൂണലിന്റെ T.A. No.2111/12-ന്മേലുള്ള വിധി നടപ്പിലാക്കുന്നതിനായി ശ്രീ. കെ. അയ്യപ്പൻ, വർക്കർ ഗ്രേഡ് II-വിനെ 09.04.2003 തീയതി പ്രാബല്യത്തിൽ സ്ഥിരപ്പെടുത്തുന്നത്.

തീരുമാനം : കുറിപ്പിലെ നിർദ്ദേശം അംഗീകരിച്ചു.

(ഒപ്പ്)
പിണറായി വിജയൻ
മുഖ്യമന്ത്രി
(ശരിപ്പകർപ്പ്)

ഡോ. കെ.എം. എബ്രഹാം
ചീഫ് സെക്രട്ടറി

സെക്രട്ടറി, ജലവിഭവ വകുപ്പ്.

Handwritten notes: 28/9, 3/11/17

GOVERNMENT OF KERALA
(SHRI. PINARAYI VIJAYAN MINISTRY)
Note for the Council of Ministers

1. File No. 1059945/A2/2016/WRD
2. Department Water Resources (A) Department
3. Subject Proposal for regularisation of Sri.K.Ayyappan, Worker Grade II with effect from 09/04/2003 in order to comply with the orders of Hon'ble Kerala Administrative Tribunal in TA No.2111/12 - Reg:-
4. Date of Chief Minister's order for placing before the Council 20/08/17
5. (i) Does the case involve financial commitments/implications Yes
(ii) If the answer to the above is in the affirmative, whether Finance Dept. been consulted and their remarks incorporated in the Council Note. Yes
6. Are any other departments concerned with the case and if so, have they been consulted and their remarks incorporated in the Note for the Council Yes, Law Department
7. Name of Joint Secretary who submitted the Draft Note. Smt.Seenathu Beevi S.
8. Name of Secretary who approved the Draft Note. Smt.Tinku Biswal
9. Date of approval of the Draft note for the Council by the Secretary 18/09/2017
10. Name of Chief Secretary who approved the Draft Note. Dr.K.M.Abraham
11. Date of approval of the Draft Note for the Council by the Chief Secretary. 22/09/2017
12. Name of Minister who approved the Draft note. Sri.Mathew T.Thomas
13. Date of approval of the Draft Note for the Council by the Minister 25/09/2017
14. Date of Submission of Fair Copies 26/09/2017
15. Date of decision by the Council of Ministers.
16. Number and date of the G.O./letter communicating the decision.

NOTE FOR THE COUNCIL OF MINISTERS

The subject matter of this note is regarding the regularisation of Sri.K.Ayyappan, Worker Grade II with effect from 09/04/2003, ie; the date of judgment in OP No.12463 of 2003.

2) Sri.K.Ayyappan was initially engaged as an HR Worker from 01/01/1983 onwards. As per G.O(P)No.6/90/PW&T dated, 20/01/1990 those CLR Workers initially engaged on or before 19/05/1983 and having more than 500 days as on 01/04/1987 are eligible for regularisation as Worker Grade I/II and those who have not completed 500 days as on 01/04/1987 are eligible to be absorbed as SLR Worker. But, HR Workers were not covered under the purview of the said order. As the applicant was not included in the list of workers to be regularised in service pursuant to G.O(P)No.6/90/PW&T dated 20/01/1990, he had moved the Hon'ble High Court and the Hon'ble Court in its judgment dated 09/04/2003 in OP No.12463 of 2003 had directed to consider him for absorption as SLR Worker. The applicant's representation was rejected by the Chief Engineer, PWD(Administration)) on the ground that the applicant was working on HR basis and not on CLR basis.

3) In the mean time, in the judgment dated 02/01/2002 in OP No.19745/1997, the Hon'ble High Court of Kerala had observed that there is no practical difference between HR and CLR Workers and therefore the relief ordered in the aforesaid Government Order was extended to HR Workers also.

4) Subsequent to the judgment dated 09/07/2007 in WP(C) No.26864/2006, the case of Sri.K.Ayyappan was examined in detail since he was engaged before 19/05/1983 and had completed more than 500 days on HR basis. Accordingly, his service was regularised as Worker Grade II as per G.O(Rt) No.439/08/WRD dated 29/09/2008 and was posted under the Minor Irrigation Division, Chengannur.

5) At the time of joining duty as Worker Grade II, he produced the extract of School Admission Register as per which his date of birth is 03/01/1952. As such he attained 55 years of age on 02/01/2007, which rendered him ineligible for appointment as Worker Grade II as the age of retirement of Worker Grade I/II is 55 years. But the petitioner

requested the Chief Engineer, Public Works Department to permit him to join duty as SLR Worker, so that, he can continue in service up to the age of 58 years, as the date of retirement of SLR Worker is 58 years. Accordingly, he was absorbed as SLR Worker at his own volition and retired from service on 31/01/2010.

6) While in service he filed WP(C)23814/2008 before the Hon'ble High Court praying to regularise him as Worker Grade II retrospectively with effect from the date of regularisation of his juniors in the CLR List. Later it was transferred to Hon'ble Kerala Administrative Tribunal and renumbered as TA No.2111/12.

7) The Hon'ble Kerala Administrative Tribunal in the order dated 01/11/2016 has directed to consider the date of joining of service of the applicant as Worker Grade II as on 09/04/2003 ie the date of the judgment in OP No.12463/2003 and thereby directed to treat that the petitioner joined service on 09/04/2003. The Tribunal has also declared that the applicant would be entitled to all consequential benefits thereon and this shall be reckoned and disbursed to the applicant.

8) When the file was forwarded to Law Department for advice on the scope for appeal against the above order of Hon'ble Kerala Administrative Tribunal, that department remarked as follows:-

“CLR ലിസ്റ്റിൽപ്പെട്ട അപേക്ഷകന്റെ ജൂനിയറായവരെ റഗുലറൈസ് ചെയ്യ തീയതി മുതൽ, എങ്ങനെയായാലും 1990 മുതലേങ്കിലും പിൻക്കാല പ്രബല്യത്തോടെ Worker Grade II ആയി റഗുലറൈസ് ചെയ്ത് എല്ലാ ആനുകൂല്യങ്ങളും നൽകണമെന്നും മറ്റുമാണ് അപേക്ഷകൻ TA No.2111/2012(WP(C) NO.23814/2008)-ൽ അപേക്ഷിച്ചിരുന്നത്.

1 ഉം 3 ഉം എതിർകക്ഷകളുടെ എതിർ സത്യവാങ്മൂലത്തിൽ പറഞ്ഞിരുന്നത് അപേക്ഷകൻ HR Worker ആയിരുന്നതുകൊണ്ടാണ് 1990 ലെ സർക്കാർ ഉത്തരവ് പ്രകാരമുള്ള ലിസ്റ്റിൽ അപേക്ഷകനെ ഉൾപ്പെടുത്താൻ കഴിയാതിരുന്നതെന്നും WP(C) No.28864/2006 ലെ 09/07/2007 ലെ വിധിന്യായപ്രകാരം ഉത്തരവ് പുറപ്പെടുവിച്ച സമയം അപേക്ഷകന് 55 വയസ്സ് കഴിഞ്ഞിരുന്നുവെന്നുമാണ്.

ബഹു.ട്രൈബ്യൂണൽ, കേസിന്റെ മുഴുവൻ വസ്തുതകളും പരിശോധിക്കുകയും അപേക്ഷകൻ 2003 മുതൽ ദേഹാടതിയെ സമീപിച്ചിരുന്ന കാര്യം കണക്കിലെടുക്കുകയും ചെയ്യൂ.

OP 12463/2003 ലെ 09/04/2003 ലെ വിധിന്യായപ്രകാരം അപേക്ഷകനെ CLR ലിസ്റ്റിൽ ഉൾപ്പെടുത്തണമെന്ന അപേക്ഷ പരിഗണിക്കാൻ ബഹു.കോടതി നിർദ്ദേശിച്ചപ്പോൾ ആയത് നിരസിക്കുകയും WP(c) No.26864/2006 ലെ 09/07/2007 ലെ വിധിന്യായപ്രകാരം അപേക്ഷകനെ റഗുലറൈസ് ചെയ്യുന്നതിനുവേണ്ടി CLR Workers ന്റെ ലിസ്റ്റിൽപ്പെടുത്തിയെങ്കിലും അമിതമായ കാലതാമസം മൂലം അപേക്ഷകന് ആനുകൂല്യങ്ങളൊന്നും കിട്ടിയതുമില്ല. WP(C) No.26864/2006 ലെ 09/07/2007 ലെ വിധിന്യായത്തിൽ OP 19745/1997, WP(C) No.8630/2005 എന്നിവയിലെ വിധിന്യായങ്ങളിൽ HR സർവ്വീസ് CLR സർവ്വീസായി പരിഗണിച്ചതും അപ്രകാരം അനുവദിച്ചുകൊണ്ടുള്ള സർക്കാരിന്റെ അറിയിപ്പും ഉദ്ധരിച്ചിട്ടുണ്ട്.

1990 ലെ ലിസ്റ്റ് സംബന്ധിച്ച് അപേക്ഷകൻ ആദ്യം എതിർപ്പൊന്നും പ്രകടിപ്പിച്ചില്ലെന്നും ആദ്യമായി 2003 ലാണ് എതിർപ്പ് പ്രകടിപ്പിച്ചതെന്നുമുള്ള എതിർകക്ഷികളുടെ വാദം, അപേക്ഷകന്റെ അവകാശവാദം ആദ്യം നിരസിച്ച ഉത്തരവിലും Exts. P4, P5, P6 എന്നിവയിലും ഇല്ലായിരുന്നു എന്ന കാരണത്താൽ, കോടതി നിരസിച്ചു. അപേക്ഷകന് ആനുകൂല്യങ്ങൾ നൽകിയാൽ ഇതുപോലുള്ള കേസുകൾ ഉണ്ടാകുമെന്നതിന് അത്തരത്തിലുള്ള ഒരു കേസും നിലവിലുള്ളതായി ചൂണ്ടിക്കാണിക്കാൻ എതിർകക്ഷികൾക്ക് കഴിഞ്ഞില്ലെന്നു മാത്രമല്ല ഇതേപോലുള്ള HR Workers ഇതേ പരിഹാരം ആവശ്യപ്പെട്ടുകൊണ്ട് ബഹു.ഹൈക്കോടതിയുടേയോ ട്രൈബ്യൂണലിന്റേയോ മുമ്പാകെ ഇല്ലെന്നും ബഹു.ട്രൈബ്യൂണൽ അഭിപ്രായപ്പെട്ടു.

മേൽപറഞ്ഞ വസ്തുതകളുടെ അടിസ്ഥാനത്തിലാണ് ബഹു.ട്രൈബ്യൂണൽ നീതിപൂർവ്വകമായി OP No.12463/2003-ലെ വിധിന്യായത്തിന്റെ തീയതിയായ 09.04.2003 അപേക്ഷകൻ Worker Grade II ആയി join ചെയ്തതായി പരിഗണിക്കണമെന്ന് നിർദ്ദേശിക്കുകയും അതനുസരിച്ചുള്ള ആനുകൂല്യങ്ങൾ നൽകണമെന്നും TA No.2111/2012 ലെ 01/11/2016 ലെ ഉത്തരവിൽ ഉത്തരവായിട്ടുള്ളത്.

മേൽപറഞ്ഞ കാരണങ്ങളാൽ തന്നെ TA No.2111/2012 ലെ 01/11/2016 ലെ ഉത്തരവിനെതിരെ റിജയ്കരമായ അപ്പീലിന് സാധ്യതയില്ലെന്ന് ഭരണവകുപ്പിനെ അറിയിക്കാവുന്നതാണ്.”

9) When consulted, the Finance Department has remarked as follows:-

“Finance agrees to the proposal of AD at para (31) nf. This has the approval of Hon. M(Fin).”

10) In para 31 n.f. it was suggested that the applicant in TA 2111/2012 may be regularised as Worker Grade II with effect from 09/04/2003 ie, the date of the judgment in OP No.12463/2003 with all consequential benefits.

11) In the above circumstances, in order to comply with the orders of Hon'ble Kerala Administrative Tribunal, the applicant in TA 2111/2012 has to be regularised as Worker Grade II with effect from 09/04/2003 ie, the date of the judgment in OP No.12463/2003 with all consequential benefits.

12) When circulated the Hon'ble Chief Minister has ordered to place the matter before the Council of Ministers.

Point for Decision

Whether Sri.K.Ayyappan, the applicant in TA 2111/2012(WP(C) No.23814/2008), may be regularised as Worker Grade II with effect from 09/04/2003 ie; the date of the judgment in OP No.12463/2003 with all consequential benefits in order to comply with the orders of Hon'ble Kerala Administrative Tribunal in TA 2111/2012 ?