

A KERALA TRANSPORT DEVELOPMENT FINANCE
CORPORATION LIMITED

v.

BASIL T K & ORS
(Civil Appeal No. 806 of 2022)

B JANUARY 31, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
SURYA KANT, JJ.]**

Service Law: Regularization in Service – Respondents were appointed as Assistant Managers in the service of appellant on contract for a period of one year in 2000 – They continued till 2006 – They were initially regularized in service on 23.02.2006 – In 2007, however, order of regularization was cancelled - Single Judge set aside the order by which the regularization of the respondents was cancelled and directed to reinstate respondents in service with retrospective effect – However, no arrears of salary were granted – Upon their regularization, respondents were promoted as Deputy Managers in 2014 – In 2016, Committee was constituted for the scrutiny of the seniority and promotion of regular employees in the managerial service of Appellant – Committee finalized the seniority list in 2017 – Respondents filed writ petition challenging it to the extent that they were held not entitled to count the period of service when they stood retrenched towards increments and promotion – High Court allowed writ petitions and directed to grant promotion to the respondents along with arrears of salary for the period when they were out of service and the period during which they were kept out of service to be treated as notional service in the post of Manager and Chief Manager – On appeal, held: There was no justification to exclude the period during which the respondents were not in service due to the illegal termination of employment which was subsequently set aside – The order by which regularization of respondents was cancelled was set aside by High Court with direction to reinstate them in service with retrospective effect from 12.09.2007 – This clearly implied that they were entitled to benefit of continuity of service – However, respondents shall not be entitled to arrears of salary for the period they were out of service – Kerala Transport Development Finance Corporation Rules – r.18.

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Disposing of the appeals, the Court

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HELD: The judgment of the Single Judge dated 9 October 2009, saves the respondents continuity of service. Therefore, there was no justification to exclude the period during which the respondents were not in service due to the illegal termination of employment, which was subsequently set aside, given that the High Court expressly saved the continuity of service. The contention that the respondents did not satisfy the one year residency rule in the post for the purpose of promotion is without merit. The only distinction between the respondents and 'AB' is that unlike the former, the latter was in service throughout. 'AB', though appointed in 2008 in the post of Assistant Manager was regularized retrospectively only in 2014. In spite of not fulfilling the one year residency criteria in each post (that is as Deputy Manager and Manager), he was still promoted taking into account his service as the Assistant Manager. However, this distinction between the parties diminishes in view of the direction of the Single Judge to grant continuity of service to the respondents. Therefore, there is no error in the impugned judgment. However, it only needs to be clarified that since the respondents as well as 'AB' hold the post of Manager from which the next promotion is to the post of Chief Manager, the promotional post of Chief Manager shall be filled up in accordance with the applicable Service Rules and regulations. [Para 23][1019-D-G]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 806 of 2022.

From the Judgment and Order dated 12.04.2019 of the High Court of Kerala at Ernakulam in W.A. No.1137 of 2019.

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With

Civil Appeal Nos. 808 and 807 of 2022.

V. Giri, Sr. Adv., Amith Krishnan, Krishna Dev Jagarlamudi, Sai Kaushal, Kuriakose Varghese, Ms. Pooja Dhar, V. Shyamohan, Ms. Astu Khandelwal, Roy Abraham, Ms. Reena Roy, Akhil Abraham, Aditya Koshy, Himinder Lal, Nishe Rajen Shonker, Ms. Anu K Joy, Alim Anvar, Advs. for the appearing parties.

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A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This batch of three appeals arises from the judgments of the
B Division Bench of the High Court of Kerala dated 12 April 2019 and 14
March 2019 in writ appeals from a judgment of a Single Judge dated 6
December 2018.

3. The Kerala Transport Development Finance Corporation
C Limited¹ and its Managing Director are the appellants in the first two
appeals. In the third appeal, the appellant, Aneesh Babu R², seeks to
challenge one of the directions of the Single Judge by which it was
directed that the seniority list is to be recast by placing Sherith A and
Basil T K³, who are Managers, above him in the seniority list.

4. The facts, insofar as they are material for a decision on the
D appeals, need to be noted, at this stage. In 2000, the respondents were
appointed as Assistant Managers in the services of KTDFCL on contract
for a period of one year, a position on which they continued until 2006.
The Service Rules framed by KTDFCL were approved by the State
Government on 22 February 2006. The Government issued GO (MS)
E No. 15/2006 on 22 February 2006 to regularize the services of one
hundred and six contractual employees of KTDFCL. On 23 February
2006, the services of the respondents were regularized. However, on
12 February 2007, the State Government issued GO (MS) 4/2007
F cancelling the order of regularization on the ground that the appointments
were not made through a standard recruitment procedure and
reservation as mandated by the Constitution for the members of the
Schedule Castes and Scheduled Tribes was not provided In proceedings
instituted under Article 226 of the Constitution. The High Court, by its
judgment dated 9 April 2007, quashed the G.O (MS) 4/2007 cancelling
the regularization since the order was without issuing notice or hearing
the petitioners. KTDFCL was granted liberty to proceed in the matter
G afresh. In pursuance of the direction of the Court, fresh notice was
issued to the respondents. The Government terminated the respondents'

¹ "KTDFCL"

² "Aneesh Babu"

³ "Respondents"

employment on 12 September 2007 on the grounds that:- (a) the posts against which the respondents were appointed were not available at the time of their appointment; A

(b) the service rules were in force at the time and therefore, the initial appointment of the respondents was irregular and the regularization was consequently illegal. By its judgement dated 11 October 2007, the High Court had observed that the six employees, including the respondents, stood on a different footing compared to the rest of the retrenched employees since they were appointed on a contractual basis through a selection process. Therefore, the High Court set aside the termination of the employment of the respondents and directed the Government to pass fresh orders after hearing the respondents. B C

5. In pursuance of the direction, a fresh notice was issued to the respondents. After hearing the respondents, the Government by its order dated 25 April 2008 issued the following order:

“Accordingly, they were heard by the Transport Secretary to the State Government on 16/1/2008. The matter of regularization or otherwise of the termination of those six persons’ service in the K.T.D.F.C was examined in detail. It was found that no deviation from the decision taken earlier in the Government order read as the 3rd paper above was necessary, the request for regularization in service of K.T.D.F.C, put forth by S/Shri Basil T.K Mohanan, P.K Sherith A, Radhakrishnan I.S, Smt. Sheeja C.V, and Smt. Jasmy S is rejected.” D E

Subsequently, the respondents filed another writ petition challenging the order of the Government and seeking a direction to reinstate them in service with consequential benefits with effect from 12 September 2007. By a judgment dated 9 October 2009, a Single Judge of the Kerala High Court set aside the order on following grounds:- (i) the order indicated no reason; (ii) in the earlier challenge it was submitted before the Court that the respondents were appointed against sanctioned posts; (iii) though the posts were not available when the respondents were initially appointed, posts were created before they were regularized; (iv) the service rules were framed before the respondents were regularized. The High Court directed the reinstatement of the respondents in service with retrospective effect from 12 September 2007. The direction of the High Court, which is contained in paragraph 22 of its judgment, is extracted below: F G

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- A “22. For these reasons, I cannot sustain Ext. P22 and therefore
Ext.P22 will stand quashed. Respondents are directed to reinstate
the petitioners in service immediately with retrospective effect
from 12/9/2007. In the circumstances of this case, it is ordered
that the petitioners will not be entitled to any **monetary benefits**
B **for the period till they are reinstated but, will be entitled to**
continuity of service.”

(emphasis supplied)

6. Following the above decision of the Single Judge, a writ appeal
was dismissed on 14 March 2012. On 28 April 2012, the State Government
issued GO (MS) No 23/2012 directing that the respondents be reinstated
C with retrospective effect from 12 September 2007 without any monetary
benefits but with continuity of service. Since the order of reinstatement
did not provide clarity on promotions, the respondents wrote to the State
Government highlighting their grievance. The Government issued a letter
dated 3 November 2012 directing that the period spent out of service
D may be ‘regularized as non-duty without forfeiture of past service.’ The
clarification is as follows:

- “The Hon’ble High Court have granted only the benefit of
continuity of service to the employees reinstated in the service of
KTDFC and has not allowed them any monetary benefits notionally
E or otherwise. In order to provide continuity in service, the period
spent out of service may be regularized as non-duty without
forefeiture of past service. Regarding the post of probation, the
rules as states in KTDFC Service Rules can be insisted.”

7. On 21 June 2013, the State Government clarified its earlier
communication dated 3 November 2012 to the effect that it would not
adversely affect the prospects of seniority or promotion. On 9 January
2014, increments in the salary payable to the respondents were authorized
without taking into account the period from 12 September 2007 to 2
May 2012. The respondents instituted writ proceedings contending that
they were entitled to reckon the above period for the grant of promotion
F and increments. During the pendency of the writ proceedings, the
respondents were promoted as Deputy Managers with effect from 24
G July 2014.

8. Consequent to a letter of the State Government dated 18 March
2016, a Committee was constituted for the scrutiny of the seniority and
H promotion of regular employees in the managerial service of KTDFCL.

The Committee opined that the respondents were eligible to be promoted as Deputy Managers from 24 February 2007; that, since the period spent out of service was to be treated as 'non-duty', the requirement of residency of one year in the post of Deputy Manager for promotion to the post of Manager will be completed only on 13 October 2012 and that they would be eligible for promotion as Managers as on 14 October 2012. On 7 February 2017, a seniority list of Assistant Managers and Deputy Managers as on 1 August 2016 was published in which the names of respondents stood at Serial Nos 1 and 2 respectively with their date of appointment being 23 February 2006, while the name of Aneesh Babu stood in Serial Nos 3, whose date of appointment was 13 October 2008.

9. On 24 March 2017, the Staff Promotion Committee resolved to promote the respondents as Managers, but referred the question as regards the eligibility dates for promotion to the State Government. The State Government by its order dated 5 July 2017, accepted the report of the Committee, without providing any retrospective monetary effect. A provisional Seniority list of Managers as on 11 July 2017 was published on 15 July 2017, in which Aneesh Babu was placed in S.No 1, while the respondents were placed in S.Nos 2 and 3. It was also stated that the respondents are entitled to promotion as Manager with effect from 14 October 2012. On the other hand, Aneesh Babu, who was appointed as Assistant Manager on contract basis on 27 September 2008 and was subsequently regularized through an order dated 12 December 2014, with effect from 13 October 2008 was held to be entitled to be promoted as Manager on 11 December 2010 and as Chief Manager on 26 November 2011. The respondents filed objections on the ground that the period when they stood retrenched must be counted as service completed for the purpose of promotion. On 11 December 2017, the Staff Promotion Committee finalized the seniority list.

10. The respondents instituted a writ petition before the High Court challenging the seniority list to the extent that the Expert Committee as well as the Government had come to the conclusion that they were not entitled to count the period of service from 12 September 2007 to 2 May 2012 towards increments and promotion. It was their contention that they are entitled to be promoted as Managers with effect from 24 February 2008 and as Chief Manager from 22 February 2009. KTDFCL raised the following contentions supporting the decision to place the respondents after the Aneesh Babu in the Seniority List:

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- A (i) If the retrenched period of more than four years was considered as actual service, then the respondents would have been permitted to rejoin on 2 May 2012 at the highest promotional post of Chief Manager since the residency period for promotion from Assistant Manager to Deputy manager, and Deputy Manager to Manager is one year each;
- B (ii) The High Court by its judgment dated 9 October 2009 directed the reinstatement of the respondents without monetary benefit. They were only entitled to continuity of service. The direction that they are entitled to continuity of service only means that there will not be any forfeiture of their previous service from 23 February 2006 to 12 September 2007;
- C (iii) Under the service rules, non-duty period cannot be counted for any service benefits, including probation and promotion;
- D (iv) Aneesh Babu was appointed as Assistant Manager on 13 October 2008 through direct recruitment after undergoing a three-tier selection process. Though the job notification was for regular appointment, he was appointed on contract basis consequent to the decision of the Government. Subsequently, the Government rectified its decision and regularized his appointment in 2014 with effect from 13 October 2008. The Expert Committee had noted that his appointment was erroneously classified on ‘contract basis’ at the time of appointment. This error was
- E rectified later. The service of Aneesh Babu in KTDFCL was considered for calculating the residency periods for the purpose of promotion;
- F (v) The respondents were originally promoted as Deputy Manager with effect from 24 July 2014. The one year residency period would only be completed on 24 July 2015. However, by holding that the respondents would be entitled to be promoted as Manager with effect from 14 October 2012, they were promoted without serving in the post of Deputy Manager even for a day since they served as Assistant Manager till 23 July 2014; and
- G (vi) The committee followed a uniform procedure of counting their service in KTDFCL for calculating residency period for the purpose of promotion. The only period that was not calculated with respect to the respondents was the period they spent out of service due to the retrenchment.
- H 11. On 6 December 2018, a Single Judge of the High Court allowed the petition and directed KTDFCL to grant promotion to the respondents,

treating the period during which they were kept out of service, as notional service in the post of Manager and Chief Manager. The Single Judge arrived at this conclusion on the grounds that: (i) the Government on 21 June 2013 had informed the respondents that the period during which they were kept out of service would not affect their prospect of promotion; (ii) the respondents were unable to perform their duties since they were unjustly terminated from service, which was subsequently rectified by the High Court; (iii) Aneesh Babu was granted promotion reckoning the service rendered by him in the post of Assistant Manager for promotion to Deputy Manager and Manager. However, according to the Service Rules, actual service in each of the posts is a requirement. If the benefit of promotion is denied to the respondents on that ground, it must be denied to Aneesh Babu as well on the ground of parity; and (iv) the High Court, while directing the respondents to be reinstated directed that continuity of service must be provided. A writ appeal filed against the judgment of the single Judge has been dismissed by the Division Bench on 14 March 2019.

12. When the Special Leave Petitions came up for hearing before this Court on 3 July 2019, the Court, while issuing notice, summarized the submissions which were urged on behalf of KTDFCL. The order dated 3 July 2019 records thus:

“Mr. V. Giri, learned Senior Counsel has submitted that in the order of the learned Single Judge dated 9 October 2009 (Annexure P1), it was specifically observed that the employees would be entitled to reinstatement with continuity of service without any monetary benefits for the period till they are reinstated. However, in the order of the learned Single Judge dated 6 December 2018 (which resulted in the impugned order of the Division Bench), there was a direction to the effect that the original petitioners will be entitled to the fixation of pay reckoning the period during which they were kept out of service, but they shall also be granted all benefits on the basis of fixation of pay. The Special Leave Petition has been instituted in view of this anomaly.

Issue notice, returnable in eight weeks.”

13. As stated earlier, the challenge by KTDFCL to the judgment of the Division Bench lies within a narrow compass. While advancing his submissions, Mr V Giri, senior counsel appearing on behalf of KTDFCL, adverted to the following directions issued by the Single Judge:

A “Therefore, there shall be a direction to the respondents to grant
promotion to the petitioners reckoning the period during which
they were kept out of service treating the same as notional service,
to the post of Manager and also Chief Manager. On the basis of
such promotion, Ext.P20 shall be revised assigning the petitioners
seniority above the 4th respondent. Petitioners will also be entitled
B to fixation of pay reckoning the period during which they were
kept out of service and they shall be granted all benefits on the
basis of such fixation of pay. This shall be done within a period of
‘three months’ from the date of receipt of a copy of the judgment.”

C 14. As a result of the above directions, the respondents have been
held to be entitled to the fixation of pay, reckoning the period during
which they were kept out of service. There is no dispute over this part.
However, besides the above direction, it has been directed that “they
shall be granted all benefits on the basis of such fixation of pay”. Mr V
Giri submitted that the latter part of the direction would be inconsistent
D with the earlier decision of the Single Judge dated 9 October 2009 in
terms of which the respondents were held entitled to reinstatement with
effect from 12 September 2007, but, without monetary benefits for the
period till they were reinstated.

E 15. So far as the above grievance of KTDFCL is concerned, Mr
Roy Abraham, counsel appearing on behalf of the respondents, has fairly
clarified that the respondents do not claim arrears of salary for the period
during which they were out of service, namely, from 12 September 2007
until the date of reinstatement.

F 16. Besides the concession which has been made on behalf of the
respondents, it is clearly evident from the earlier order of the Single
Judge dated 9 October 2009, that the respondents who were directed to
be reinstated were held not to be entitled to any monetary benefits for
the period till they were reinstated. According to the order, reinstatement
from 12 September 2007 entitles them to continuity of service. The
G direction in the judgment of the Single Judge dated 6 December 2018 to
the effect that respondents would be entitled to the fixation of pay by
reckoning the period of service during which they were kept out of service
is consistent with the earlier judgment. However, the further direction
that they shall be granted all benefits on the basis of such fixation of pay
needs to be clarified to the extent that they shall not be entitled to any
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payment of arrears of salary for the period during which they were out of service. A

17. The surviving issue in this batch of appeals, however, relates to the issue of seniority as between the respondents and Aneesh Babu, who has filed the third appeal. In this context, Mr V Giri appearing for KTDFCL submitted that he does not take or adopt any specific position as regards the seniority between the contesting parties. B

18. Mr Kuriakose Varghese, counsel appearing on behalf of Aneesh Babu, submitted that his client was appointed originally as an Assistant Manager following a due process of selection. The submission is that despite the fact that he was appointed following a due process of recruitment, he was initially appointed on a contractual basis on 13 October 2008, but the injustice to him was rectified and he was eventually regularized on 12 December 2014 with effect from the original date of appointment. C

19. On the other hand, it was submitted by Mr Kuriakose Varghese that the respondents were appointed purely on a contractual basis and it was as a result of the initial order of regularization dated 23 February 2006 that they came to be recruited as regular employees. Following the cancellation of that order on 12 February 2007, there was another round of proceedings which ultimately culminated in the order of the Single Judge dated 9 October 2009. In this context, it was sought to be urged that the consequence of the direction to grant continuity of service would mean that the services of the respondents would have to be treated as unbroken and uninterrupted. Counsel sought to make a distinction between continuity and continuous service, urging that the respondents had not fulfilled minimum residency requirements when they were promoted as Deputy Managers and Managers and since his client did so, he must rank higher in seniority in the post of Manager. D E F

20. Hence, it is urged that at the time when Aneesh Babu fulfilled the residency requirement of one year in each of the subsequent posts as Deputy Manager and Manager, he was the only eligible candidate for promotion to the post of Chief Manager. As a consequence, the subsequent reinstatement in service of the respondents should not allow them to steal a march in seniority over Aneesh Babu. Reliance has been placed on the Service Rules governing KTDFCL. That in essence is the submission of Mr Kuriakose Varghese. G H

A 21. At the outset, while considering the submissions, it needs to be noticed that the Kerala Transport Development Finance Corporation Rules⁴ contains a definition of the expression “Approved Probationer”. The provisions for promotion are contained in Rule 13. Rule 18 provides for the determination of seniority in the following terms:

B “18. Seniority

(a) Seniority of a person in a service, class, category or grade shall unless he has been reduced to a lower rank as punishment be determined by the date of order of his first appointment to such service, class category or grade.

C Provided that the seniority of persons appointed direct, otherwise than on advice of the Commission shall be in accordance with the ranked list of approved candidates.”

22. In the present case, the respondents who were initially regularized in service on 23 February 2006 were aggrieved by the
D cancellation of the order of regularization dated 12 February 2007. The judgment of the Single Judge dated 9 October 2009 set aside the order by which the regularization of the respondents was cancelled and there was a direction to reinstate them in service with retrospective effect from 12 September 2007. This clearly implies that they were entitled to
E the benefit of continuity of service. The cancellation of their regularization stood effaced. However, the Single Judge directed that they shall not be entitled to any monetary benefits for the period till they are reinstated. In other words, no arrears of salary were granted. The respondents have, upon their regularization, been promoted as Deputy Managers and Managers. The appointment of the respondents as Deputy Managers
F and Managers are not in question. There is no challenge to their promotions. The Single Judge of the High Court has come to the conclusion that since respondents stand reinstated with effect from 12 September 2007 and the order by which the regularization was cancelled has been quashed, necessary consequences under the law would have
G to follow. There can be no manner of doubt that Aneesh Babu who was appointed to the service on 13 October 2008 could have any legitimate grievance in regard to the position of the respondents following the order of reinstatement.

H ⁴ “Service Rules”

23. The Court has been informed that, as a matter of fact, all the three employees (the respondents and Aneesh Babu) are presently holding the post of Manager. The next promotion which is available is to the post of Chief Manager. The promotion to the post of Chief Manager would be governed by the Service Rules and Regulations. The judgment of the Single Judge granting the benefit of seniority to the respondents is a plain consequence of the earlier judgment dated 9 October 2009 and the provisions for seniority contained in Rule 18 of the Service Rules. Rule 18 of the Service Rules provides for seniority of a person in a service, class, category or grade on the basis of the date of the order of the first appointment to such service, class, category or grade. The respondents were appointed to the post of Assistant Manager in 2000, whereas, Aneesh Babu was appointed in 2008. Both the respondents and Aneesh Babu's service were regularized retrospectively from their initial date of appointment. The judgment of the Single Judge dated 9 October 2009, saves the respondents continuity of service. Therefore, there was no justification to exclude the period during which the respondents were not in service due to the illegal termination of employment, which was subsequently set aside, given that the High Court expressly saved the continuity of service. The contention that the respondents did not satisfy the one year residency rule in the post for the purpose of promotion is without merit. The only distinction between the respondents and Aneesh Babu is that unlike the former, the latter was in service throughout. Aneesh Babu, though appointed in 2008 in the post of Assistant Manager was regularized retrospectively only in 2014. In spite of not fulfilling the one year residency criteria in each post (that is as Deputy Manager and Manager), he was still promoted taking into account his service as the Assistant Manager. However, this distinction between the parties diminishes in view of the direction of the Single Judge to grant continuity of service to the respondents. Therefore, we find no error in the impugned judgment. However, it only needs to be clarified that since the respondents as well as Aneesh Babu hold the post of Manager from which the next promotion is to the post of Chief Manager, the promotional post of Chief Manager shall be filled up in accordance with the applicable Service Rules and regulations.

24. As regards the appeals by KTDFCL, we clarify that the judgment of the Single Judge dated 6 December 2018 shall stand modified to the extent that the respondents shall not be entitled to arrears of salary for the period between 2007 and 2012 when they were out of service.

A The rest of the directions of the Single Judge, as affirmed by the Division Bench, are maintained, subject to the clarification that the promotion to the post of Chief Manager shall take place in accordance with the Service Rules and Regulations.

25. The appeals shall stand disposed of in the above terms.

B 26. Pending application, if any, stands disposed of.

Devika Gujral
(Assisted by : Roopanshi Virang, LCRA)

Appeals disposed of.