

Sobha Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Jun-09-2004

Reported in : 2004(2)KLT755

Judge : Kurian Joseph, J.

Acts : Kerala State and Subordinate Service Rules, 1958 - Rule 28 and (4)

Appeal No. : W.P. (C) No. 17167 of 2003

Appellant : Sobha Kumar

Respondent : State of Kerala

Advocate for Def. : Thavamani, Government Pleader

Advocate for Pet/Ap. : N. Sugathan and; R. Seema, Advs.

Judgement :

Kurian Joseph, J.

1. Assessment of suitability under Rule 28 of the KS & SSR is generally on consideration of the Confidential Reports for the three preceding years. Does the Rules require that the Reports should be those prepared at the relevant period?

2. Ext.P9 order is under challenge. The said order is passed by the second respondent pursuant to Ext.P7 Judgment of this Court. Petitioner filed the Original

Petition leading to Ext.P7 aggrieved by her supersession in the select list of Lecturers fit for promotion to the category of Assistant Professors in the Department of Paediatrics under the Medical Education Service for the year 2001. Ext.P5 is the select list. Petitioner availed long leave from 8.4.1995 and thereafter joined duty on 10.4.2001. She filed Ext.P6 review petition. That was directed to be considered as per Ext.P7 Judgment. It was made clear in the Judgment as follows:

'The filling up of one vacancy reserved shall be subject to the final orders that may be passed in the review petition'.

3. The review petition was rejected by the Government as per Ext.P9. Learned Government Pleader referring to the counter affidavit submits that the DPC was justified in superseding the petitioner, since her Confidential Reports for the three years prior to her proceeding on long leave were not prepared during the relevant period, and that she has not completed one year as on the date of the DPC meeting. Shri.Sugathan, learned counsel appearing for the petitioner, referring to the statutory provision under Rule 28 of the KS & SSR as well as the decision reported in Vishnu Namboothiry v. State of Kerala, 2000 (3) KLT 627, submits that the stand taken by the second respondent is totally erroneous.

4. Rule 28(b)(i)(4)(a), to the extent relevant, reads as follows:

'28(b)(i)(4a): Where confidential reports for the three years mentioned in Sub-clause (4) are not available in respect of an Officer who has under suspension but has been reinstated or who was or is on long leave, the suitability of the Officer shall be assessed--

(i) in the case of an Officer who has been reinstated after suspension fully exonerating him of the charges or in the case of an Officer who was or is on long leave, on the basis of the confidential reports for a period of three years excluding the period during which the Officer was under suspension or on long leave, as the case may be preceding the date of the meeting and if the confidential reports for the said period are not available on the basis of the confidential report for the one year immediately after reinstatement or, as the case may be, immediately after rejoining duty after leave'.

5. It is this rule which was the subject matter in Vishnu Namboothiry's case wherein it has been held thus:

'According to Sub-clause (4a) of Rule 28(b)(i) of KS&SSR; where Confidential Reports for the three years mentioned in Sub-clause (4) are not available, the suitability of the Officer shall be assessed in the case of an Officer who was on long leave on the basis of confidential reports for a period of three years concluding the period during which the Officer was on long leave preceding the date of the meeting and if such reports for the said period are not available, on the basis of the Confidential Reports for the one year immediately after rejoining duty after leave. Therefore, the question of considering one year duty after rejoining duty is relevant only in case where the Confidential Reports for three years before the Officer went on long leave are not available.....'

6. Rule 28(b)(i)(4) provides for the method of assessment by the DPC. It is provided thus in the rule:

'..... The criterion for assessment of merit shall be the confidential reports of the Officers. The confidential reports of the Officers for atleast the preceding three years shall, be made available to the Committee for this purpose.....'.

7. A combined reading of Sub-rule (4) and Sub-rule (4a) would clearly show that what is required is only the Confidential Reports of the Officer concerned for a period of three years preceding the long leave. There is no insistence anywhere in the Rules that the Report should be prepared at the relevant period. If the Reports are not available since the incumbent did not take the required steps at the relevant time, there is some justification in not considering the case. In any case, only if it is not possible for an Officer to have three years Confidential Reports, there arises a question of consideration of one year period mentioned in Rule 4(a).

8. I set aside Ext.P9. There will be a direction to the second respondent to consider the issue afresh and take a decision on Ext.P6 in the light of the Confidential Reports of the petitioner for the period of three years preceding the long leave availed by the petitioner, namely for the years 1993, 1994 and 1995. Since this Court in Ext.P7 judgment has already safeguarded the interest of the

petitioner to the effect that the filling up of one vacancy will be subject to the final orders in the review petition, needless to say, while passing consequential orders, the person likely to be affected will also be given notice in the process. Appropriate orders on Ext.P6 for reviewing Ext.P5 select list as above will be passed within three months from the date of production of a copy of this judgment. The consequential orders required also will be passed within one month thereafter.

The Writ Petition is disposed of as above.

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