

Binu Vs. State of Kerala

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Court : Kerala

Decided On : Mar-24-2003

Reported in : 2003(2)KLT207

Judge : K.K. Denesan, J.

Acts : Kerala State of Subordinate Services Rules, 1958 - Rule 9; [Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#)

Appeal No. : O.P. No. 30377 of 2001

Appellant : Binu

Respondent : State of Kerala

Advocate for Def. : P. Nandakumar, Government Pleader

Advocate for Pet/Ap. : G.S. Raghunath and; Basant Balaji, Advs.

Disposition : Petition allowed

Judgement :

K.K. Denesan, J.

1. Petitioner was appointed temporarily as Clerk-Typist in the office of the Commissioner for Government Examinations in the Education Department and he

worked as such for the period from 9.1.1998 to 1.4.1998. During the above period he was paid remuneration by way of daily wages. He is a physically handicapped person.

2. Placing reliance on Ext.P3 G.O. dated 14.7.1998, petitioner claimed that he was eligible for appointment under the provisions of the [Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#). He made a further claim on the basis of Ext.P5 G.O. dated 17.5.1999 for reappointment and continuance in service.

3. In paragraph 3 of the aforesaid G.O., Government ordered that the benefit granted to the physically handicapped persons as per G.O. (P) No. 32/98/P&ARD; dated 28.9.1998 will be extended to the physically handicapped employees who were in service during the period from 1.1.1998 to 14.8.1998 also, subject to the same conditions. In G.O. dated 28.9.1998, orders were issued that the physically handicapped provisional (temporary) employees who were engaged in service during the period from 1.1.1997 to 31.12.1997 will be retained/re-appointed in service on a purely provisional basis subject to the conditions specified therein, pending final decision in consultation with the Kerala Public Service Commission.

4. Petitioner's claim has been rejected by the 1st respondent as per Ext.P9. The reason stated in Ext.P9 is that Ext.P5 is applicable only to such physically handicapped persons who were appointed through Employment Exchanges under Rule 9(a)(1) of K.S. & S.S.R. and since the petitioner's appointment was on daily wage basis, it would not come within the purview of Ext.P5. It appears that, the petitioner was subsequently appointed temporarily as clerk-typist by the 2nd respondent and was continuing in service thereafter. In the light of Ext.P9, the 2nd respondent passed Ext.P10 order terminating the services of the petitioner. The said orders are sought to be quashed.

5. Heard Shri. Basant Balaji, learned counsel for the petitioner and the learned Government Pleader for the respondents.

6. It is not disputed that the petitioner is a physically handicapped person. It is also not disputed that the petitioner was appointed temporarily through the Employment

Exchange for the period falling within the purview of Ext.P5. The only objection taken in Ext.P9 and also in the counter affidavit is that his appointment does not come within the purview of Rule 9(a)(i) of K.S. & S.S.R. because he was paid his remuneration on daily v/age basis. Rule 9(a)(i) reads as follows:

'9. Temporary appointments - (a)(i) Where it is necessary in the public interest, owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may appoint a person, otherwise than in accordance with the said rules, temporarily:'

7. The short question that arises for consideration in the facts and circumstances of this case, is whether temporary appointments made to fill up vacancies in the cadre of a service fall outside the purview of Rule 9(a)(i), merely for the reason that the mode of payment of remuneration is daily wages and not monthly salary. It is apparent from a reading of Rule 9(a)(i) that the said rule does not speak anything about the remuneration payable to the employee much less the mode of payment. Hence it has to be held that mode of payment is totally irrelevant for deciding whether the temporary appointment of the petitioner would come within the purview Rule 9(a)(i) of K.S. & S.S.R.

8. The matter can be looked at from another angle also. Unlike employment under private employers, appointments in Government service are made, in the exercise of specific power conferred by law made in that behalf on the appointing authorities. Appointments as well as the conditions of service of the Government servants thus appointed are concerned, the State Legislature has passed the Kerala Public Services Act, 1968 as envisaged in Article 309 of the Constitution. By virtue of the power conferred by that enactment, statutory provisions including the K.S. & S.S.R. have been brought into force. Hence, appointments to Government service, be they substantive or officiating or purely temporary, are governed by the aforesaid Rules which hold the field. No provision of law, other than Rule 9 or 9A or 9B of K.S. & S.S.R. has been brought to my notice empowering the authorities to appoint a person in Government service, otherwise

than in accordance with the Rules governing regular recruitment. It is nobody's case that the appointment of the petitioner was made under Rule 9A or 9B of K.S. & S.S.R.

9. Under the circumstances, I hold that the appointment of the petitioner for the period from 9.1.1998 to 1.4.1998 as clerk-typist comes within the purview of Rule 9(a)(i) of K.S. & S.S.R. and therefore he is entitled to get the benefit of re-appointment/regularisation in service in terms of Ext.P5 Government Order. It follows that Exts. P9 and P10 are liable to be quashed. Accordingly I quash those orders. There shall be a direction to the 2nd respondent to reappoint the petitioner forthwith as Clerk-Typist extending him the benefit of Ext.P5. Second respondent is directed to consider the claim of the petitioner for pay and allowances for the period from 27.3.2000 to 19.9.2001 in the post of Clerk-Typist. Since I have held that the petitioner is entitled to get re-appointment, I do not consider it necessary to examine the merits of his claim for appointment under the provisions of the [Persons with Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#). That claim is left open.

Original Petition is allowed as above.

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