

Bhaskaran Vs. State of Kerala

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Court : Kerala

Decided On : Jul-22-1981

Reported in : (1982)ILLJ43Ker

Judge : Khalid, J.

Appellant : Bhaskaran

Respondent : State of Kerala

Judgement :

Khalid, J.

1. The petitioner entered service as a Work Superintendent on 8-10-1953. By Ext. P-1 order dated 14-11-1953 he was directed to join for duty before the Supervisor, Thalappilly. On 16-3-1955 by Ext. P2 order he was provisionally appointed as Tracer, Planning Division, Alwaye. On 30-4-1956 he was promoted as Draftsman on a temporary basis and posted to the Special Sub-Division, Veterinary College Construction, Trichur. On 29-8-56 he was appointed as Overseer, Chittoor section by the Executive Engineer as per Ext. P 4. His provisional appointment on the work establishment was regularised by the Public Service Commission as per Ext. P 5, dated 13-6-1957. The 2nd respondent, Chief Engineer thereafter promoted the petitioner as per Ext. P6 order dated 5-11-1960 as acting Junior Engineer and assigned him rank No. 40. The requisite, qualification for a Junior Engineer is seen in G.O. Ms. No. 1390 dated 20-11-1958, which is Ext. P7. In Ext. P8 seniority list,

provisionally prepared as an 1-4-1977 of Junior Engineers the petitioner's date of appointment was shown as 20-12-1962 and his rank as 479. The petitioner's case is that this is an obvious mistake and that he should have been placed at 100. The petitioner submitted Ext. P9 representation against the assigning of this mistaken rank. That was rejected by Ext. P 10 reply. The point pressed against him is that is service would be counted only after he was regularised on 13-6-1957 as :per Ext. P5 and not before. Hence this petition, to quash Exts. P8 and P. 10

2. The stand taken by the respondents is, as indicated above, that the petitioners would be entitled to count his service only from 13-6-1957. It is stated in paragraph 4 as follows:

As per the provisional seniority list of Assistant Engineers (Diploma holders) published in Chief Engineers Office proceedings 61683/EIC/ Special Cell/77 dated 15-6-1977 (Prepared in accordance with the stipulation contained in GO Ms. 1390 dated 20-11-1958 Note 1 to Clause 3(b) (i.e.) separate seniority lists for graduates, diploma holders and certificate holders; the rank assigned to the petitioner is 461 and the date of appointment to the post is 20-12-1962. As per the Special Rules a certificate holder in the category of 1 Grade overseer/ Draftsman should have rendered a service under Government for a minimum period of 5 years of which not less than 2 years should be in the category of 1st Grade Draftsman/Overseer to become qualified for promotion as Junior Engineer/Assistant Engineer in the certificate quota. He has completed five years regular service in the regular establishment only on 12-6-1962. Moreover the provisional list has also not been finalised.

Based on the directions of High Court in O.P. No 4493/72 filed by Diploma Holders Association the appointments and promotions made to the category of Junior Engineer in the pre revision ratio of 5:3:2 was reviewed for the period from 2-12-1958 to 16-10-1965 and a list of Diploma Holding Assistant Engineers prepared as per proceedings No. 34071/ADI/75 dated 25-1-1977 and this is not a seniority list. This list was also taken into consideration in preparing the provisional seniority list.

3. On a consideration of the statutory and judicial aspects of the case, presented before me by the petitioner's counsel, I find this case has to succeed Exhibit, P7

gives the qualification for promotion as Junior Engineer. The necessary service mentioned is "must have rendered a service under Government for a minimum period of five years of which not less than two years should be in the category of I Grade overseer". If his service from 13-6-1957 alone is to be taken into account, the petitioner cannot succeed. If his entire service can be taken into account, he can succeed. It has to be borne in mind that the qualification prescribed does not even remotely indicate the nature of the service required. The only word used is 'service' which means that service of any kind would entitle the petitioner for being promoted, if he has the requisite service to his credit. That this is the case appears to be clear from Ext. P6 also by which he was provisionally promoted as Junior Engineer. In the remarks column of Ext. P-6 it is stated 'The Superintending Engineer will please verify his qualification and service particulars and effect the promotion order if all the conditions are satisfied as per G.O. Ms. No. 1390 dated 20-11-58', which is Ext. P7 in this case. There is no mention in this case as to the nature of the service that the petitioner should possess.

4. In the light of what is stated above, Ext. P. 10 appears to be an after thought. The statement in Ext. P. 10 that only persons regularly appointed on the advice of the Public Service Commission will be counted for promotion is a statement which does not have the sanction of law. Unless qualifying service is specifically denoted as either regular service or officiating service, the officer claiming promotion will be entitled to his service when the word used is only service. Assistance can be had for this proposition from the following observations of the Full Bench of this Court in the decision reported in Kunhikrishnan Nambiar v. State 1964 KLT. 704 F.B.

Substantive service means service as a permanent holder of an office, and in contradistinction, officiating service means service rendered as a non-permanent holder. Infact, all service which is not substantive is officiating and it seems clear that the words 'Whether officiating or substantive' are used in the Regulation to mean whether substantive or not. The word 'service' by itself without any qualification word ordinarily comprise all service and the words 'Whether officiating or substantive' are put to in brackets after the word 'Service' only in order to emphasise that all service, of whatever kind counts. The regulation divides service into two categories, officiating or substantive, and does not contemplate a third,

and what it says is that all service whether officiating or substantive counts. The purpose of the regulation is obviously that a candidate, in order to be eligible, must have a certain status and a certain experience. He must be a substantive member of a State Civil Service-that must be his status-and he must have eight years experience as a Deputy Collector. And for the purpose of that experience, it is sufficient that he should have performed the duties of the post-it does not matter whether or not he performs them in a substantive capacity. Therefor the petitioners are eligible for being considered to be included in the list to be prepared under Regulation 5.

The question that the petitioner has raised in this case is easily answered by the above observation of the Full Bench. The word used in this case is only service without any qualification.

5. A similar question fell for consideration before this Court in the decisions reported in *Gopalan Nair v. Regional Deputy Director of Public Instruction* (1980) K.L.T. 845 and in *Moosa v. A.E.O.* (1975) K.L.T. Short Notes 34, by Chandrasekhara Menon J, and in O.P. No. 3072 of 1980 and O.P. No. 1094 of 1980 by Kochu Thommen, J. In the earlier two cases, what fell for consideration was whether the service as a teacher during minority which was permissible tinder the law, obtaining in Malabar would be qualifying service for promotion. The learned Judge held in the affirmative. In the latter two cases the question considered was whether the three years' service necessary for promotion should be under the Kerala Government or whether the earlier service under the Madras Government could also be taken into account for computing the necessary three years This Court held in favour of combining the two periods.

6. The above authorities, with respect lay down the correct law. The word 'service' without any qualification means service of any kind. Such service has to be taken into account for purpose of qualification and only for that purpose.

7. The learned Government Pleader requested that the matter be sent back to the 2nd respondent for reconsideration since the question was not pointedly raised before him. In view of the authorities mentioned above, I feel that it will be an unnecessary exercise. I hold that the petitioner is entitled to succeed.

8. In the result I quash Exts. P8 and P10 and allow this writ petition. No costs.

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