Althaf Vs. State of Kerala

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Court : Kerala

Decided On : Mar-27-2003

Reported in : 2003(2)KLT342

Judge : M. Ramachandran, J.

Acts : Kerala State and Subordinate Services Rules, 1958 - Rule 27

Appeal No. : O.P. No. 5009 of 1996 and 11183 of 1999

Appellant : Althaf

Respondent : State of Kerala

Advocate for Def. : Renu D.P., Government Pleader

Advocate for Pet/Ap. : P. Sankarankutty Nair and; T.V. Ajayakumar, Advs.

Disposition : Petition dismissed

Judgement :

M. Ramachandran, J.

1. Both these Original Petitions had been filed by the very same person, who is an officer in the Agricultural Income Tax and Sales Tax Department of the State. There is certain amount of overlapping, in that in O.P. No. 5009 of 1996 the relief prayed for was for assignment of seniority to him with effect from 25.8.1976, the

date of his appointment and for grant of consequential reliefs. The original seniority assigned to him had been changed on a subsequent development taking note of the objections of his colleagues in the department. O.P. No. 11183 of 1999 had been filed for quashing the seniority list that had come in the meanwhile and here also the basic relief prayed for was for assignment of seniority from the date of his appointment by the Government. We have to examine the actual date from which the petitioner can count his service.

2. I will refer to the facts stated in O.P. No. 5009 of 1996 for the purpose of dealing with the contentions.

3. Ext.P1 shows that the Government had appointed the petitioner on 25.8.1976 as Assistant Sales Tax Officer (ASTO) on compassionate grounds, under the Dying-in-harness Scheme. The Board of Revenue, by proceedings dated 5.10.1976 had given him a posting as Assistant Sales Tax Officer. Ext.Pl showed that he was to be accommodated against the quota earmarked for direct recruitment candidates. The petitioner had joined duty on 9.10.1976.

4. It so happened that 20 persons had been advised for appointment by the Public Service Commission as ASTOs on 30.8.1976. They had joined duty on different dates. Initially, though the petitioner was considered as senior to these candidates, by subsequent proceedings such privilege has been taken away and this in fact led to the prolonged legal battle.

5. The petitioner relies on Ext.P5 Government Letter No. 10598/D2/85/TD dated 13.9.1985 which advised him that for the purpose of seniority his date of appointment is 25.8.1976. The text of the letter is extracted herein below:

'I am directed to invite reference to the letter cited and to inform you that Government Order appointing a person under dying harness scheme is to be reckoned as the instrument for fixing seniority and seniority will be fixed as per General Rules 27(a) instead of General Rules 29(c).'

It was given as an answer to the query of Board of Revenue. On the above said basis, as could be seen from Ext.P5 seniority list, for the period from 1.4.1974 to

31.3.1987, the petitioner had been ranked as serial No. 129. The additional third respondent Sri. M. Sherif was the first candidate advised by the Public Service Commission on 30.8.1976. He had been shown as rank No. 130. Thereafter, when seniority list had been published for the period from 1.4.1974 to 31.3.1993 it was seen that the petitioner had lost his position. Requests had come from the officers after Ext.P5 for reassignment or their ranks, as according to them, the petitioner did not deserve a rank on the basis of his date of appointment order as claimed. His rank was shown as 172, but Shri. M. Sherif, referred to earlier, had been assigned rank No. 48 and other PSC recruits had been given a position above the petitioner. The petitioner points out that even in Ext.P6 his date of appointment had been shown as 25.8.1976 whereas the advice date of Sri. Sherif is shown as 30.8.1976. His submission is that consequent to this position, though he had been promoted as Sales Tax Officer and conferred with senior grade, he had been ordered to be reverted. The representations are seen rejected. Thus the question as to whether the petitioner is entitled to a position of seniority on the basis of Ext.Pl appointment order arises.

6. A counter affidavit has been filed by the Government in O.P. No. 11183 of 1999 and there is a request to adopt the averments with reference to the earlier O.P. filed. Though it runs to several pages, only one point is seen to be highlighted. The petitioner had represented about his fail in seniority, and the Government had by order dated 25.1.1999 (Ext.P9 in O.P. No. 11183/99) rejected the claims by referring to a decision of this Court in State of Kerala v. Sreekantan (1993 (1) KLT 107-FB).

7. The counter affidavit in fact refers to this position and repeatedly. It is pointed out that the final seniority list of Assistant Sales Tax Officers had been prepared in compliance of the judgment of this Court in CCC No. 117 of 1995 and the Original Petition leading to that application. It is submitted that because of the judgment the direct recruits were to be assigned seniority much before their date of advice, though the dying-in-harness appointees were outside the quota earmarked for direct recruitees. As per the decision in Sreekantan 's case, the promotees and dying-in-harness appointees had been grouped together and their seniority were fixed based on the date of order as perR.27 of the KeralaState and Subordinate

Services Rules, 1958. It had been pointed out that under Rules 27(a) of the KS & SSR though the petitioner was entitled to get seniority over the direct recruits who could have claimed adate of only 30.8.1976, since the quota rule was applied on the basis of the judgment of this Court, the direct recruits though advised on 30.8.1976 got earlier positioning: the positions that were available in the quota prescribed by the special rules, well before the date of advice.

8. Thus, reading through the counter affidavit one may gather a picture that the Government was of the view that the petitioner was entitled to get seniority on the basis of his appointment order and seniority over his rivals, but this became impossible in view of the directions issued by this Court in relevant connected Original Petitions. However, the counter affidavit has not dwelled critically on the justifiability of claim of the petitioner and the legality to Ext.P3.

9. It may be seen from Ext.P7 (in O.P. No. 11183/99) that there was no intention to interfere with the seniority of persons who are situated similar to the petitioner. Paragraph 13 of the above Government Order would lead to this inference. It is quoted herein below:

'13. The seniority of officers appointed underdying in harness scheme, special recruitment scheme, and under sports quota is determined reckoned the date of their appointment. There is no dispute about it. Such appointees were never parties to the dispute in these cases and therefore their position is never altered irrespective of whether places of officers under the other two categories are tilted. The position of this special category appointees will be static at the date of appointment to the post. Their right has not been denied while preparing the provisional seniority list which is also therefore found to be in accordance with the law.'

However, in fact this was the attitude of the Government as could be seen from Ext.P5 as well. It had been stated that 'in respect of special recruitments, seniority has been given with effect from the date of advice. So also, Dying-in-harness appointees and appointees under Sports Quota has been assigned seniority with effect from the date of the Government order as per which they are appointed as Asst. Sales Tax Officer in the Department'. But reliance placed on the Full Bench judgment, ultimately had given them a walk over. The decision of the Full Bench governs the parties now and no contra positions can be entertained.

10. But the matter should be viewed in a slightly different perspective, but that again may not be advantageous to the petitioner. Though the petitioner relies on Ext.Pl appointment order of the Government, it has to be seen whether the petitioner will be entitled to a declaration, as had been made by Ext.P5. He was a person who obtained appointment by special recruitment. The Government has expressed an opinion that he is entitled to reckon the date of the order as conferring him position of seniority. However, this is difficult to be digested. Ext.P5 makes reference to Rules 27 of the General Rules. The expression is '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 the order of his first appointment to such service, class, category of grade.' Analysing this clause, Government has expressed opinion that the petitioner has to be given the date of the order as the date of seniority. But we have to refer to certain other aspects as well. The foremost circumstance is that merely on the strength of Ext.Pl the petitioner could not have aspired to join duty, as it was a case of special recruitment. Posting order was mandatory for him to enter Government service.

11. It may also be relevant to note that rights could have been conferred on the petitioner by way of appointment only by the orders of the Revenue Board which is the appointing authority and it came to be passed only on 5.10.1976. Under Rules 5 of the Agricultural Income Tax and Sales Tax Subordinate Service Rules, it is stipulated that 'the Appointing Authority fin respect of ASTOs) shall be the Board of Revenue'. Therefore, Ext.P1 can be treated only as a basic order but the petitioner could have derived any rights for the purpose of service and seniority only from the follow up orders passed by the Appointing Authority. Admittedly, he had joined duty only subsequent to Ext.P2 and on 9.10.1976. To state that such a person would be entitled to count seniority when he was never near the post could be a misreading or at least misapplication of Rules 27, as had been done in Ext.P3. The expression 'appointed to a Service' has been defined in the General Rules, by Rules 2(1) as following:

'(1) A person is said to be 'appointed to a service' when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof:

Explanation - The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service.'

Therefore, the question is as to when he was appointed in service. That was far later than the date of Ext.P1. In this context, we may examine Rules 27(c) of the General Rules as well. The seniority of a person appointed on the recommendation of the Public Service Commission is to be determined by the date of the first effective advice made for his appointment. The Note to the rule provides that the date of effective advice in the Rule means the date of the letter of the Commission on the basis of which the candidate was appointed. Thus, in respect of Sri. Sherif and others, statutorily they are entitled to get the benefit of Rules 27(c) and their dates are to be reckoned as 30th of July, 1976 (even if we forget the impact of the Full Bench judgment referred to in the counter affidavit, for the time being).

12. If we closely examine Rules 27, it can be seen that there is no absolute prescription to treat the date of appointment as that for seniority. The expression used is that seniority is to be determined by the date of the order of his first appointment. It is different from laying down that the seniority is to be determined from the date of appointment. The expression 'determined by the date of the order' perhaps is used to take note of these and other contingencies and so as to reconcile with the definition of the term 'appointed to a service'. If the matter is so considered, the petitioner would have been able to claim the date of seniority only from 9.10.1976 and he has not lost any seniority. In any case, the adjudication was proper and not detrimental to his basic right. He was a candidate who got appointment by a special method in a special contingency. He found a place in the

cadre of ASTO along with persons who had been waiting for selection for years after being adjudged as qualified, by a process of selection by the Public Service Commission. In all probability, the selection process might have started much earlier, and their applications might have been made years before, and the actual selection completed well before 25.8.1976. There is as well poetic justice in holding that such persons will have a prior claim in the matter of seniority. An appointee like the petitioner can claim seniority only from the date he actually discharges duties for the first time, which in the present case, is well after 30.8.1976.

13. In view of the above, I do not find that the petitioner can have any grievancesin the matter. Both the Original Petitions are therefore dismissed. There will be no orderas to costs.