

Moideen Koya Vs. Sajeev

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Court : Kerala

Decided On : Aug-23-2006

Reported in : 2006(4)KLT305

Judge : K.A. Abdul Gafoor and; K.P. Balachandran, JJ.

Acts : Kerala State and Subordinate Services Rules, 1958 - Rule 9; General Rules - Rule 31(1)

Appeal No. : W.A. No. 1545 of 2006

Appellant : Moideen Koya

Respondent : Sajeev

Advocate for Def. : M.V. Thampan,; Murali Purushothaman,; Jaju Babu and;

Advocate for Pet/Ap. : M.C. Sen, Sr. Adv. and; A.V.M. Salahudin, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. The appellant/respondent No. 9 who was admittedly appointed on temporary basis as Assistant Engineer on 5.2.1996 has to face imminent reversion to his substantive post because of the impugned judgment. Therefore this appeal.

2. He was a Second Grade Overseer. He is a graduate in Engineering. Regular appointment to the post of Assistant Engineer is governed by the Special Rules. It provides a ratio of 5:1:4; five direct recruits through Public Service Commission from open market; one direct recruit from engineering graduates in service in the category of Second Grade Overseers at the point of time when he was appointed so and at present from First Grade Overseer alone; and four by promotion of First Grade Overseer in the ratio of 3:1 between Diploma holders and Certificate holders.

3. When there were no qualified hands, the petitioner working as a Second Grade Overseer was appointed on temporary basis invoking Rule 9(a) as Assistant Engineer. Later than that, the writ petitioners were also promoted on temporary basis invoking Rule 31(1)(a) of the General Rules including to the vacancies that are earmarked for direct recruitment. Still later, Public Service Commission prepared the rank list and candidates had been advised for direct recruitment. Necessarily, to accommodate those advised candidates, few persons have to face reversion. The department has chosen the writ petitioners to be reverted. They were at the time of promotion were working as First Grade Overseers. Their reversion was retaining the appellant who was promoted as Assistant Engineer from a still lower category of Second Grade Overseer. Their reversion retaining the appellant was, therefore, challenged in Writ Petition No. 32718/03. The learned Single Judge found that there was substance in the challenge, as the appellant, a far junior hand was being retained in the higher category of Assistant Engineer.

4. The contention of the appellant was that he had been appointed in the slot specifically allotted to graduates in service and not for the open market recruitment or promotees either from Diploma holders or from Certificate holders. Therefore, he can retain his temporary appointment, he contended.

5. Learned Single Judge placing reliance on the proviso to Rule 9(a)(i), which permitted such temporary appointment, found that while making temporary appointment, necessarily, an admitted senior shall be first appointed. Therefore, retaining a junior, seniors could not have been reverted. It was also found by the learned Single Judge that to accommodate senior hands like the writ petitioners,

the incumbents like the appellant holding substantively the post of Second Grade Overseers and appointed on temporary basis as Assistant Engineer can be reverted. The appellant is aggrieved by this finding.

6. The contention again urged by the appellant before us is that he was occupying the quota of 10% allotted to the graduates in service.

7. The quota fixed for graduates in service is for direct recruitment on regular basis. No quota rule is provided for temporary appointment permitted as per Rule 9(a)(i) which itself is an appointment otherwise than in accordance with the Rules in the exigencies of situation. When temporary appointments stipulated and permitted under Rule 9(a)(i) is otherwise than in accordance with the Rules, it cannot be contended that the provision of quota provided in Special Rules shall be followed for this purpose.

8. The relevant proviso to Rule 9(a)(i) is as follows:

Provided that before a person is appointed under this clause, persons who are admittedly senior to him shall also be appointed even if they are absent from duty, whether on leave (other than leave without allowances for taking up other employment) or on foreign service or on deputation or for any other valid persons (except due to suspension) and allowed to continue as such subject to the condition that persons so appointed shall not be eligible for the higher time scale of pay by virtue of such appointments unless otherwise specifically ordered by the Government.

9. Based on this, before reverting a senior incumbent, the junior incumbent shall have to face reversion first. The junior incumbent appointed under Rule 9(a)(i) has to face reversion first.

10. Admittedly by the appellant, he is far junior to the writ petitioners. Necessarily, when the Writ Petitioners are seniors they cannot be reverted keeping the appellant an admittedly junior hand in the category of Assistant Engineer.

11. Writ Appeal, therefore, fails and is dismissed accordingly.

