

State of Kerala Vs. Noojum

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Court : Kerala

Decided On : Aug-23-2005

Reported in : [2006(108)FLR782]; 2005(4)KLT542

Judge : K.A. Abdul Gafoor and; K. Hema, JJ.

Acts : Kerala State and Subordinate Service Rules, 1958 - Rules 3, 9 and 12(4)

Appeal No. : W.A. No. 1553 of 2004

Appellant : State of Kerala

Respondent : Noojum

Advocate for Def. : P.K. Ibrahim,; K.A. Angel Treena and; Remya, Advs.

Advocate for Pet/Ap. : Vaheeda Babu, Government Pleader

Disposition : Appeal allowed

Judgement :

K.A. Abdul Gafoor, J.

1. State is aggrieved by the direction contained in the impugned judgment to regularise the service of the respondent-writ petitioner, a physically handicapped person, rendering the benefit in terms of Rule 9(e) of the General Rules in Part-II of the Kerala State and Subordinate Service Rules ('K.S. & S.S.R' for short). It is

contended by the appellant-State that the respondent was appointed intermittently on different occasions during the period from 2.1.1989 to 25.2.1995 to meet the emergent requirement of Clerks in the examination wing of the Commissioner for Government Examinations, Thiruvananthapuram. This was not an appointment in terms of Rule 9(a)(i) of the said Rules. The benefit available to the physically handicapped persons in terms of Rule 9(e) will be available only to those appointed under Rule 9(a)(i) of the KS & SSR. The writ petitioner was appointed only on daily wages and not on monthly salary. In support of this contention, the decisions of this Court reported in 2000 (1) KLT SN Case No. 61, Page 54 - (State of Kerala v. Sasikala), 2000(3) KLT 120 - (Sasikumar v. Secretary to Government) and the judgment in W.A.No. 992 of 2003 are relied on. It is further submitted, placing reliance in the decision reported in 2001(2) KLT SN Case No. 32, Page 29 (Musthafa v. District Registrar) that daily wage appointment to meet immediate temporary requirement will not come within the purview of Rule 9(a)(i) of the Rules.

2. It is contended by the respondent that when admittedly the respondent-writ petitioner had been appointed for a long period from 2.1.1989 to 25.2.1995 though on intermittent basis, it could not be stated as one made otherwise than under Rule 9(a)(i). The power of appointment to meet temporary needs is conferred only by Rule 9(a)(i). Therefore, his appointment on temporary basis shall have to be taken as the one made under Rule 9(a)(i), submits the counsel. It is further submitted that Rule 9(a)(i) commences with a non obstante clause thereby making it clear that a temporary appointment envisaged in terms of Rule 9(e) need not be the appointment made under Rule 9(a)(i) even. The application of Rule 9(a)(i) is also taken away by the non obstante clause in Rule 9(e). Therefore, the learned single Judge was perfectly justified in directing regularisation of the respondent. It is further submitted that the mode of payment to a temporary appointee is not the criterion for regularisation in terms of Rule 9(e). It is submitted that Rule 9(a)(i) which permits temporary appointments does not speak about the mode of payment. Therefore, there is no reason to set aside the judgment, it is contended.

3. Of course, Rule 9(e) begins with a non-obstante clause making the provisions in 'the rules' inapplicable to draw the benefit under that sub-rule. Thus, 'the rules'

mentioned therein means the entire body of rules contained in KS & SSR, 1958. Rule 9 (a)(i) is the provision enabling the temporary appointments and such appointments ordinarily does not confer any benefit on the appointees except to receive the emoluments. Any regular appointment to a post borne on the service shall be from the list of approved candidates maintained by the Public Service Commission going by Rule 3 of the Rules. It is in order to avoid that bar for the regularisation of physically handicapped persons appointed under Rule 9(a)(i) that non-obstante clause is employed in Rule 9(e).

4. Even otherwise, in order to draw the benefit of regularisation in terms of Rule 9(e), there shall be a temporary appointment. That temporary appointment shall be one made in terms of the enabling provision contained in Rule 9(a)(i). In other words, without a temporary appointment under Rule 9(a)(i), one cannot draw the benefit of regularisation in terms of Rule 9(e). Appointment under Rule 9(a)(i) is a pre-requisite for regularisation in terms of Rule 9(e).

5. Can any engagement on temporary basis be an appointment under Rule 9(a)(i)? Rule 9(a)(i) makes it clear that the said provision shall be resorted to, (a) only in the public interest, (b) to meet an emergency (c) for filling up a vacancy borne on the cadre of a service (d) when regular appointment in accordance with rules will take time. Rule 9(a)(i) makes it clear that temporary appointment is resorted to 'a post borne on the cadre of a service.' 'Cadre', going by the definition of the term contained in Rule 12(4) Part I K.S.R. means 'the strength of a service or part of a service sanctioned as a separate unit.' The engagement of the respondent-writ petitioner was as a Clerk. Going by the spells of engagement as mentioned in the appeal memorandum, it is clear that such spells were for less than three months on every occasion. Appointment under Rule 9(a)(i) against a post of clerk borne on the cadre to meet an emergent requirement shall be for 179 days or until a regular hand joins duty whichever is earlier. The respondent-petitioner did not have a case that his services were dispensed with on 21.3.1989, 25.10.1989, 28.2.1990, 27.3.1991, 20.3.1992, 19.3.1993, 11.2.1994 or on 25.2.1995 owing to the joining duty of a regular hand appointed to the post. These terminations from service were before completing 179 days. Thus, it is clear that these engagements were not in terms of Rule 9(a)(i).

6. Annexure A1 order produced along with the memorandum of appeal enables the appointing authority 'to appoint staff charged to examination contingencies at the rates approved by Government.' It is also revealed from Ext.P3 relieving order produced along with the Original Petition that the engagement was on daily wages i.e. Rs. 33/- per day. Necessarily, it was in terms of Annexure A1 to meet the examination requirements. That means, the appointment was not against post borne on the cadre of Clerk. It was only a stopgap arrangement to meet the examination requirements due to contingencies and not to fill up on emergent basis, a vacancy in a regular post borne on the cadre of service. On that reason also, it cannot be termed as an appointment under Rule 9(a)(i).

7. When those engagements of the respondent-Writ Petitioner were not under Rule 9(a)(i), he cannot draw the benefit arising out of Rule 9(e). In such circumstances, we have no hesitation to set aside the judgment impugned. We also see from the judgment in W.A.No. 992 of 2003 that the judgment relied on by the learned single Judge in the impugned judgment had also been set aside.

Writ Appeal is, therefore, allowed. No costs.

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