

Pushpajan, Full Time Menial Vs. State of Kerala

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Court : Kerala

Decided On : Nov-19-2010

Judge : K.T.Sankaran, J.

Appeal No. : W.P.(C).No.33674 OF 2010

Appellant : Pushpajan, Full Time Menial

Respondent : State of Kerala

Advocate for Pet/Ap. : SRI.KALEESWARAM RAJ, Adv.

Judgement :

K.T.SANKARAN, J.

W.P.(C).No.33674 OF 2010

Dated this the 19th day of November, 2010

1. The petitioner is working as Full Time Menial in A.K.S.G.H.S. Malappattam in Kannur District. His grievance is that he is denied the benefit of by transfer appointment as Laboratory Assistant in Government Higher Secondary School.

2. It is stated that as per the Special Rules, the method of appointment to the post of Laboratory Assistant in Government Higher Secondary Schools is prescribed. According to the Special Rules, the post of Lab Assistant comes under category No.4 of Rule 3. Rule 3 provides the method of appointment (1) by direct

recruitment and (2) by transfer from among qualified last grade employees in the schools, at the ratio 75:25. According to the petitioner, Full Time Menial is a last grade employee and accordingly, the 25% quota reserved for by transfer appointment as Laboratory Assistant should be available to Full Time Menial as well. It is pointed out by the petitioner that on earlier occasions, several Full Time Menials, placed in the same position as that of the petitioner, were appointed as Laboratory Assistants in Higher Secondary Schools. Ext.P1 proceedings of the Director of Higher Secondary Education dated 17.12.2004 is relied on in that context. It is stated that thereafter, the Director of Higher Secondary Education issued Exts.P2 and P3 orders, by which the Full Time Menials were excluded from the purview of appointment as Laboratory Assistants. Pointing out the grievance of the petitioner, he submitted Ext.P4 representation dated 27.9.2010 to the Director, Higher Secondary Education. Ext.P4 is pending disposal.

3. It is submitted by the learned counsel for the petitioner that the view taken by the Director of Higher Secondary Education, on a perusal of Exts.P2 and P3 orders, appears to be that Full Time Menials working in Government Schools do not satisfy the definition of "Qualified last grade employees in schools" in Rule 3 of the Kerala Higher Secondary Education Subordinate Service Rules. The counsel submits that this view is clearly wrong and Full Time Menial certainly is a last grade employee. The Director of Higher Secondary Education has to take a decision in the matter in view of the alleged conflicting stand in Exts.P1 to P3, so that, matters would be clear and there shall be no ambiguity creating confusion among the aspirants for being appointed as Laboratory Assistants.

4. The learned Government Pleader, on instructions, submitted that the seniority list for appointment as Laboratory Assistants is to be prepared by the General Education Department and the Director of Public Instruction is the authority to do so. It is therefore, submitted that the petitioner has to submit a representation to the Director of Public Instruction.

5. In reply, the learned counsel for the petitioner submitted that the appointing authority is the Director of Higher Secondary Education and therefore, Ext.P4 was submitted to the proper authority. The seniority list prepared by the General

Education Department becomes relevant only at the time of appointment. In short, the submission is that the question whether the Full Time Menial comes under the category of persons who could be appointed in the 25% quota for appointment as Laboratory Assistants is a matter for the decision of the Director of Higher Secondary Education and not of the General Education Department.

6. Taking into account the submissions made by the learned counsel for the petitioner as well as the learned Government Pleader, I am of the view that the Writ Petition can be disposed of directing the second respondent to consider and dispose of Ext.P4 representation.

Accordingly, the Writ Petition is disposed of as follows:

The Director of Higher Secondary Education shall consider and dispose of Ext.P4 representation dated 27.9.2010 submitted by the petitioner, as expeditiously as possible and, at any rate within a period of three months from the date of receipt of a copy of the judgment, after affording an opportunity of being heard to the petitioner. The Director of Higher Secondary Education would be entitled to make reference to the Director of Public Instruction or the Secretary to the Government, or both, before taking a final decision on Ext.P4. The petitioner shall produce a copy of the Writ Petition and certified copy of the judgment before the Director of Higher Secondary Education.

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