

(1987) 01 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 6944 of 1986

A. Velayudhan

APPELLANT

Vs

The Director of Collegiate Education and Others

RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Citation : (1987) KLJ 140

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.M. Cheriyan and Asok M. Cheriyan, for the Appellant; M. Pathrose Mathai and V.N. Achutha Kurup, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan J.

1. A nice question arises for decision in this original petition. It is regarding the departmental test qualifications required by a member of the scheduled caste to get promotion from the cadre of lower division clerk to that of upper division. In other words the question is, can a scheduled caste candidate borne on the cadre of lower division clerk in a private college, claim promotion to the upper division cadre without passing the departmental test on the basis of the exemption granted by the government under Rule 13A of the Kerala State & Subordinate Services Rules?. Statute 66 of Part IV of the Kerala University First Statutes, 1979, reads as follows:

Filling up of vacancies:- Subject to the rules in force in similar Government Institutions regarding qualifications and method or appointment, the vacancies in the higher grades shall be filled up by promotion from the next lower categories, if qualified persons are available, according to seniority in the case of non-selection posts, and according to merit and seniority in the case of selection posts and if there are no candidates available for promotion to the higher grades, the posts shall be filled up by direct recruitment by inviting applications and

selection by the management in the manner laid down in these statutes.

By the said provision, rules applicable to members of the staff of government institutions regarding qualification and method of appointment, will *mutatis mutandis* apply to the staff in institutions under private management. If a scheduled caste member in a government institution can claim promotion to the higher grade on account of the exemptions under Rule 13A of the Kerala State & Subordinate Services Rules same benefits must enure to scheduled caste members of the staff in the private colleges as well.

2. The argument advanced by the learned counsel appearing for the additional 4th respondent and by the learned Government Pleader is that Statute 66 deals with qualifications and method of appointment and not to exemption from qualification. Exemptions granted to members of the scheduled castes under Rule 13A of the K. S. & S. S. R. are exemptions from qualification and those exemptions will not apply to members of the scheduled castes in the private colleges. I find it difficult to accept this argument. The qualifications for promotion from the lower division clerk to the upper division takes in exemption from qualifications as well. If a member of the scheduled caste is exempted from passing the test qualification under Rule 13A, that will have to be taken as his qualification for promotion to the upper division cadre. Viewed in this manner, the exemption that is given to the members of the scheduled castes and scheduled tribes in the matter of test qualification will apply to persons similarly situated in the staff of private colleges as well.

3. The petitioner is admittedly a member of the scheduled caste. Three posts of upper division clerks were created in the college run by the third respondent. Two Lower division clerks, one senior to the petitioner and one junior to him, had acquired the necessary test qualifications and they were promoted. Subsequently by Ext. P3 order, the petitioner who had not passed the departmental tests was promoted as upper division clerk with effect from the date of occurrence of vacancy viz, 16-9-1985. When that promotion was reported to the first respondent for approval, the first respondent, after taking instructions from the State Government, declined to approve the same. By that time the additional 4th respondent acquired the test qualifications. The additional 4th respondent put forward a claim for promotion on the basis of his test qualification. The contest between these rival claimants has to be resolved in this petition. The vacancy of upper division clerk arose on 16-9-1985. On that day the petitioner was fully qualified to be promoted because he being a member of the scheduled caste, was not required to pass the departmental test. He is senior to the additional 4th respondent in the cadre of lower division clerk. By Ext. P3 order, the third respondent promoted the petitioner to that post. The first respondent declined to approve his appointment as seen from Ext. P6 communication dated 1-9-1986. Ext. P6 is in violation of Statute 66 of the Kerala University First Statutes. It has therefore to be quashed and I do so.

The original petition is allowed in the above terms I make no order as to costs.