
(2006) 09 KL CK 0060
In the High Court Of Kerala
Case No : O.P. No. 4215 of 2003

Ajas A.S. and Another

APPELLANT

Vs

The Registrar, Cochin University and Others

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Citation : (2006) 3 KLJ 901 : (2006) 4 KLT 819

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : M.R. Rajendran Nair, R. Sreeraj, Sunilnath, Hariraj, P.A. Kumaran, Hareesh M. and Vineetha B, for the Appellant; S. Gopakumaran Nair, P. Chandrasekhar, P.C. Sasidharan, M.S. Ramananda Pai and A.A. Abdul Hassan, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—Petitioners challenge Exts. P1 (a) and P1 (b). They also challenge Ext. P7 seniority list. Petitioners were appointed as Assistant Grade II on 4-3-1999. Period of probation is prescribed as one year of duty within a continuous period of two years from the date on which they join duty. In order to being qualified as Assistant Grade I, the employee should pass Account Test Lower. Learned counsel for the petitioner does not dispute that for declaration of probation pass in MOP is essential. Petitioners came to be promoted along with others vide Ext. P5 dated 2-9-2000. It is seen that petitioners are promoted with effect from 21-7-2000. Complaint of the petitioners would appear to be that the regular vacancies occurred from 29-10-1999 to 6-7-2000. Going by the rule prescribing period of probation, it is two years. Therefore it is contended that they have time till 2001 with reference to proviso to Rule 28(a) of the K.S. & S.S.R. It is their case that party respondents excluding respondents 15 to 17 are juniors to the petitioners in the feeder category. Consequently when the vacancies occurred between October, 1999 and July 2000 it is the petitioners who ought to have been promoted. Learned counsel for the petitioners relied on

two decisions of this court, one reported in Devadasan Vs. K.S.E.B. and the unreported judgment in W.A. 880 of 1998. In Devadasan's case this court held as follows:

The period specified in the Special Rules for completion of probation is admittedly a continuous period of two years. In the case of the petitioner it is from 8-3-1996. If a promotion chance occurred only within that period, then alone the petitioner can aspire for application of the proviso to seek promotion notwithstanding non-completion of the period of probation. Petitioner should have completed the probation within a continuous period of two years from 8-3-1994. If any of his juniors had completed it earlier than him, and if that junior was being promoted, necessarily, the petitioner would have preference for promotion to him, notwithstanding his non-completion of probation in terms of the said proviso. Here, admittedly, the vacancies in the higher category of Assistant Executive Engineer to which his juniors had been promoted had arisen after 29-2-2000, i.e., beyond the period specified in the Special Rules for completion of probation. So far as the petitioner is concerned, that period ended on 8-3-1994. But he could not complete his probation within that period. He cannot blame others for it. Those are not the vacancies occurred, as provided for in the said proviso, "within the period specified in the Special Rules for completion of probation". To get the benefit, the vacancy ought to have occurred within the period of probation provided for in the Special Rules, and not within the period actually taken by one to complete the probation.

In W.A. 880 of 1998 the court held as follows:

The purpose of insertion/amendment has been detailed in the Explanatory Note, which is not part of the Notification but is intended to indicate its general purport and reads as follows:

There is at present no provision in the Kerala State and Subordinate Service Rules, 1958 to protect seniors against being superseded by juniors who completed probation earlier, when, owing to reasons beyond their control such as illness, delay in transit or delay to get relief from any service, the seniors are able to join duty only later than the juniors. It is now proposed to incorporate suitable provisions in the Rules with a view to affording protection to such seniors. This Notification is intended to achieve the above object.

When the object for which the proviso was inserted is taken into consideration, the inevitable conclusion was that the period prescribed for completion of probation has to be reckoned to be three continuous years as provided in Rule 10 of the Special Rules.

Exts. P1 (a) and P1 (b) are orders passed on the representation filed by the petitioners, which are identically worded. The reason given is identical, which is extracted hereunder.

You failed to acquire the obligatory Departmental Test qualifications for

promotions within the period of one year from the date of joining the University Service as Assistant Grade - II. Therefore, as per proviso to Rule 28(a) (i) KS & SSR you are not eligible for protection of seniority over your juniors who had fulfilled both the requirements of completion of one year on duty and the acquisition of obligatory departmental test qualification ahead of you.

2. The case of the party respondents would appear to be that while it is true that under the proviso a senior undergoing probation has a right to take a claim to the vacancies which occurred, provided they passed the test and are in possession of the requisite qualification, this is a case where the petitioners had not passed MOP admittedly, during the time vacancies occurred within the period of probation. It is not disputed that the passing of MOP is indispensable to the declaration of probation. According to the petitioners the purport of the proviso to Rule 28(a) is to grant an indulgence to the seniors for a period of two years to not only complete probation but also to pass the test. It is difficult to accept the contention as it is opposed to the clear terms of the proviso to Rule 28(a). The proviso to Rule 28(a) in essence is only the conferment of the limited benefit to a senior who is fully qualified and who has already passed the test necessary for declaration of probation at the time when the vacancies occurred rendering it unnecessary for such a person to complete his probation. It is true that petitioners were undergoing probation. It is admitted case that the petitioners had not passed MOP. Such being the situation, petitioners are not entitled to the benefit of the proviso to Rule 28(a) or the dictum of the decisions, which have been relied on by them. There is no merit in the writ petition and it is dismissed.