
(2002) 04 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No's. 11330 and 14396 of 1995

Ambikakutty

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 27

Citation : (2002) 04 KL CK 0046

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : M.V. Bose and U. Mahadev Kannanganat, in O.P. 11330/95 and T.R. Ramachandran Nair, in O.P. 14396/95, for the Appellant; M.K. Aboobacker, Government Pleader for Respondents 1, 2 and 3 and V.N. Achutha Kurup, for Respondent 5, for the Respondent

Judgement

J.B. Koshy, J.—The Petitioner in O.P. No. 11330/1995 was selected as Junior Clerk on the basis of written test and interview in 1981. Appointment order dated 12th October 1981 was issued directing the Petitioner to report for duty on or before 19th October 1981. She was the first rank holder in the test. She joined duty on 17th October 1981. Petitioner in O.P. No. 14396/1995 was also selected in the same interview and she was the second rank holder. She joined duty on 16th October 1981. Question of their inter se seniority is the dispute in these writ petitions. Since the Petitioner in O.P. No. 11330/95 was first rank holder she was considered as senior earlier by the Society but later the person who joined earlier that is the Petitioner in O.P. 14396/95 was considered as senior as he joined before one day from the first rank holder. Ext. P-3 is the final seniority list. This was questioned before the Committee. Managing Committee rejected the claim of the Petitioner in O.P. No. 11330/95 and held that the person who joined earlier will be senior notwithstanding the fact that he was not the first rank holder in the test and interview. Therefore, aggrieved party approached Joint Registrar u/s 69 of Kerala Co-operative Societies Act. Joint Registrar held that the person who got first rank should be the senior to the person who joined first. That view was

accepted by the Tribunal but set aside the decision of the Joint Registrar as Joint Registrar has no power u/s 69 of the Act to hold arbitration in seniority dispute. I also note that Full Bench of this Court in Balachandran v. Dy. Registrar 1978 KLT 249, held that seniority dispute is not a dispute which can be decided u/s 69 of the Act.

2. The first rank holder filed O.P. No. 11330/95 contending that under "Section 69, arbitrator can decide the seniority also and her claim should have been upheld by the tribunal. O.P. No. 14396/95 was filed by the second rank holder contending that so long as she joined service earlier and she is entitled" to get the seniority as decided by her employer society and therefore, the finding Of the tribunal in this application is not correct. It is also pointed out that the amendment of section-69 in 1997 as well as 2000 were not brought into force as the decision of Full Bench is still applicable and dispute regarding the promotions cannot be decided by the arbitrator u/s 69 of the Act.

3. I am not going on that question of jurisdiction of the arbitration as both parties Ranted a decision on merit. Therefore, I are considering the question of merit if self as both parties are before me. In "Kerala State and Subordinate Service Rules, Rule 27(c) reads as follows:

Notwithstanding anything contained in Clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list.

Therefore, irrespective of the date of joining duty, if the candidates advised to join duty joins within the time given in the notice, the date of advice and seniority in the older in which their names are given in the advice list will be considered for the put pose of seniority. But admittedly Kerala Service Rules -is not applicable for the Co-operative Societies at the relevant time when Petitioners joined duty and were appointed. In the absence of any such rules, the date of joining duty only can only be reckoned for the seniority. Therefore, the person who joined duty first will get seniority. There is no case for the Petitioner in O.P. 11330/95 that the appointment order was intentionally issued late by the authorities. But the appointment orders were despatched on the same date and the Petitioner in O.P. No. 14396/95 joined duty a day prior to the first rank holder. Therefore, the date of joining duty only can be looked into for the seniority purpose.

4. Supreme Court in A. Janardhana Vs. Union of India (UOI) and Others, , paragraph 28 it was held as follows:

It is a well recognised principle of service jurisprudence that any rule of seniority has to satisfy the test of equality of opportunity in public service as enshrined in

Article 16. It is an equally well recognised canon of service jurisprudence that in the absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiating or the length of service or the date of entering in service and continuous uninterrupted service thereafter would be valid and would satisfy the tests of Article 16.

The same view was expressed by the Supreme Court in *Ram Janam Singh v. State of U.P.* AIR 1994 S.C. 1922. Therefore, in the absence of specific rules, the person who joined first will get the seniority as he has more length of uninterrupted service in the same cadre when the seniority was calculated. In the above circumstances, O.P. No. 11330/95 is dismissed and O.P. No. 14396/1995 is allowed. Petitioner O.P. No. 14396/1995 who joined the service on 16th October 1991 is senior to Petitioner in O.P. No. 11330/95 who joined only on 17th October 1991.