
(1996) 08 KL CK 0046
In the High Court Of Kerala
Case No : W.A. No. 1186/95 B

Ammini Amma

APPELLANT

Vs

The Kerala Water Authority and Others

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Kerala Service Rules, 1959 — Rule 100, 101, 9

Kerala State and Subordinate Services Rules, 1958 — Rule 9

Citation : (1996) 08 KL CK 0046

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : J. George, for the Appellant; Babu Varghese and Krishnamoorthy, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, C.J.—The Appellant came up before this Court in a writ petition challenging the order of termination of her service, and claimed reinstatement and regularisation of her service. During the pendency of that Original Petition, representation pending with the first Respondent was also disallowed. Therefore, she challenged the same by filing Anr. writ petition and prayed for disposal of the representation in the light of the Supreme Court judgment, reported in Jacob v. Kerala Water Authority 1990 (2) KLT 673. Both the writ petitions were heard together and disposed of by a common judgment by the learned Single Judge on 29th July 1994. Direction was given to the first Respondent to consider both the representations-Exhibits P-6 and P-7 produced along with O.P. 6744/1994, which are marked in this case as Exhibits P-9 and P-10 in the light of the aforesaid decision of the Supreme Court. In compliance with the said direction, the representations were disposed of by Exhibit P-11, rejecting her claim. Challenging the said order of the first Respondent, the Appellant moved O.P. 1279/1995. The learned Single Judge by judgment dated 26th June 1995 dismissed the said Original Petition. Writ Petitioner challenges the above decision in this appeal.

2. The Appellant was appointed as Draftsman, Grade II, having secured graduation with first class in Civil Engineering. She was appointed provisionally with effect from 7th May 1986. She continued in her service regularly when she entered the maternity leave with effect from 10th December 1989. She claimed her maternity leave as per Rule 100 of Part I of the Kerala Service Rules. But then, during her maternity leave, her service was terminated by the Discharge Certificate, Exhibit P-2. A copy of the order-Exhibit P-3-demonstrates that the Public Service Commission advised candidates, and as per the order dated 17th January 1990 someone else was posted in place of the Appellant. By order dated 25th January 1990, as per Exhibit P-4, the third Respondent relieved her from the duties with effect from 25th January 1990. Thereafter representations after representations were rejected and the Appellant was not granted relief. The Appellant was, therefore, compelled to move this Court in the writ petition and ultimately she has now preferred this appeal against the judgment of the learned Single Judge.

3. At the very outset the question which arises for consideration is whether in view of the judgment rendered by the Supreme Court in Jacob's case 1990 (2) KLT 673 (supra) the Appellant could be refused reinstatement and regularisation. In somewhat peculiar circumstances, the Supreme Court had to deal with the question on the stand taken by the Kerala Water Authority. The Petitioners in a batch of matters in those cases were serving in different capacities, such as, cleaners, pump operators, draftsmen, drivers, etc. They claimed that they were appointed through the Employment Exchange between 1981 and 1988. They contended that they were compelled to approach the Supreme Court since their services were likely to be terminated as was done in the case of a few of their colleagues. They contended that till the issuance of the notification dated July 30, 1988 amending the concerned Public Service Commission Rule (as amended), there was no question of the Authority consulting the Commission and, therefore, appointments made prior to that date could not be terminated as irregular or unauthorised and could not be determined on that ground. They further contended that, as in a few cases the High Court of Kerala had failed to appreciate this true legal position and refused to grant relief to employees whose services were threatened, the Managing Director of the Authority issued instructions to his subordinates to terminate the services of similarly placed employees, thereby compelling those Petitioners to approach the Supreme Court, so that all such employees could be uniformly governed by the order of the Supreme Court.

4. In the said case, Sri Krishna Murthy Iyer appearing for the Kerala Water Authority had contended that the claims of the Petitioners could be divided into three categories, namely (1) those who had been employed by Public Health Engineering Department before the Kerala Water Authority was constituted, (2) those who got employed between 1st April 1984 and 1986, and (3) the persons appointed after 1986. On this, the Kerala Water Authority was given three months' time to examine the individual cases of those groups and take its

decision accordingly.

5. In paragraph 14 of the said judgment, the Supreme Court considered the cases of the second batch of workers, which comprised of those who were appointed between April 1, 1984 and August 4, 1986 by the Authority itself. The contention of the Authority based on Rule 9(a)(i) of the Rules, which it claimed to have adopted under Resolution No. 8 dated April 25, 1984, was also considered by the Supreme Court. The main thrust of the argument of the Authority was based on this rule and it was contended that the appointments were limited to 180 days only and since the said rules had a statutory flavour, the Authority was bound to act in accordance therewith. Their Lordships had the occasion to deal with this contention and Their Lordships of the Supreme Court arrived at the firm conclusion that these rules in their application to the staff members of the Authority appointed after April 1, 1984 had no statutory flavour of force. After detail discussion of the different contentions raised before the Supreme Court, the conclusion was summarised in paragraph 17 thereof and it was held:

(1) The Authority will with immediate effect regularise the services of all ex-P.H.E.D. employees as per its Resolution of 30th January, 1987 without waiting for State Government approval.

(2) The services of workers employed by the Authority between 1st April, 1984 and 4th August, 1986 will be regularised with immediate effect if they possess the requisite qualifications for the post prescribed on the date of appointment of the concerned worker.

(6) Those workers whose services have been terminated in violation of this Court's order in respect of which Contempt Petition No. 156 of 1990 is taken out shall be entitled to the benefit of this order as if they continue in service and the case of each worker will be governed by the Clause applicable to him depending on the category to which he belongs and if he is found eligible for regularisation he will be restored to service and assigned his proper place.

This order will regulate the services not only of the parties to the present petitions but also all Ors. similarly situated including those who may be parties to other proceedings pending in different Courts.

The learned Counsel appearing for the Appellant based his entire submission on the basis of the conclusion and finding recorded by the Supreme Court in Jacob's case 1990 (2) KLT 673 and contended that the Appellant in this case was provisionally appointed on 7th May 1986 and therefore, she belonged to those category of workers who had been employed by the Authority between 1st April, 1984 and 4th August, 1986, whose services were directed to be regularised with immediate effect, if she possessed the requisite qualification for the post prescribed on the date of appointment. There is no dispute that the Appellant had the requisite qualification on the date of her appointment. The fact is not further disputed that while she was continuously employed in service she applied for maternity leave on 10th December 1989. But then misery fell on her and

instead of granting maternity leave, she was terminated on the pretext that the Public Service Commission had by that time recommended for filling up the post by a regular appointee. The question therefore arises for consideration as to whether the Authority had reasonably or justifiably refused the maternity leave to the Appellant. Her contention is fortified by the provision contained in Rule 100 of Part I of the Kerala Service Rules, which may be noticed.

100. A Competent Authority may grant to a female officer maternity leave on full pay for a period of 90 days from the date of its commencement.

Note 1 states that the maternity leave is also admissible to temporary female officers under this rule and Note 4 states that maternity leave under this rule and Rule 101 shall be admissible to provisional female recruits continuing in service beyond one year provided they would have continued in service but for proceeding on such leave.

6. On the facts of this case, we have no doubt in our mind that on a proper reading of Rule 100 the Appellant deserved the benefit of such leave under Rule 100 and there was no legitimate reason for refusing the maternity leave to her. She was continuing in service regularly and she was in service when she had applied for the maternity leave. It was for the authorities concerned to have applied their mind to the provisions of Rule 100, which was denied to her without any reasonable ground.

7. The learned Counsel appearing for the Respondent has heavily relied on Exhibit P-11 in support of his contention, which is an order rejecting the request of the Appellant for reinstatement in the service. The stand taken in the said order-Exhibit P-11-was that the Division Bench of Kerala High Court had decided that the provisional appointment under Rule 9(a)(e) of the Kerala State and Subordinate Service Rules does not confer any right to continue in Service when a vacancy is filled up by a Public Service Commission hand. The employment hand who was thus provisionally appointed had no right to further continue in the service. Even if the same post became vacant later, the said employment hand had no right to get reinstatement on that post, only fresh provisional hands could be appointed to that post and, therefore, the Appellant had no right to get reinstatement in that vacancy. Relying on the decision of the Supreme Court in the Jacob's case 1990 (2) KLT 673 the Respondent contended that only those provisional hands, who were in service on the date of judgment, i.e. on 19th September 1990, were eligible to continue and to get regularisation and since the service of the Appellant was terminated much before the crucial date and she was not in service on the date of the judgment, she was not entitled for reinstatement. It was further contended that since she was not a party in the aforesaid case before the Supreme Court and her service was validly terminated, she was not entitled to get the benefit of the above judgment. This stand has been taken by the Water Authority even now on the ground that this is the consistent view taken by the Water Authority in all such cases and the claim of the Appellant cannot be dealt with differently.

8. On a proper reading of the judgment of the Supreme Court, we have no hesitation in repelling the contention raised on behalf of the Respondents. We have already reproduced the views of the Supreme Court in the earlier paragraphs of our judgment and on all fours, the contention of the Appellant is fortified by the findings recorded by the Supreme Court in the Jacob's case 1990 (2) KLT 673. No different view is possible to be taken in the case of the Appellant. We have already held that there was no justifiable and legitimate ground for denying her the maternity leave.

In this view, we are left with no option but to set aside the judgment under appeal and consequently direct the authorities concerned to reinstate the Appellant back to the service and grant all such consequential reliefs, including the regularisation of her service. We hope and trust, the action for reinstatement shall not be detained by the Authorities concerned any longer and be taken forthwith without any loss of time. The appeal is, accordingly, allowed. But, there shall be no order as to costs.