

(1995) 04 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 16587 of 1994

C.A. James, Carpenter Grade-I, Dry Dock, Cochin Port Trust and Another APPELLANT

Vs

Assistant Secretary, Cochin Port Trust and Others RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Citation : (1996) 73 FLR 1222 : (1996) 2 LLJ 839

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : Sugunapalan, for the Appellant; Antony Dominic and 3 and C.S. Rajan, for the Respondent

Judgement

K.G. Balakrishnan, J.—Petitioners are Class IV employees working in the Cochin Port Trust. Both the petitioners were initially appointed on casual basis on April 25, 1979. First petitioner was absorbed as carpenter with effect from February 10, 1981 and 2nd petitioner was absorbed in the same category with effect from September 5, 1981. Petitioners alleged that as per recruitment rules they are entitled to be promoted as L.D.Clerks and 20% of the existing vacancies are to be filled up by promoting the persons working in the lower category. Petitioners have passed S.S.L.C. and they are qualified to be promoted as L.D.Clerks. According to petitioners, seniority is to be counted from the date of initial appointment as casual labourer. Petitioners were asked to appear for an interview on August 12, 1993. There were seven vacancies and ten persons were called for interview. Later, the interview scheduled on August 12, 1993 was postponed and attempts are being made to promote the persons who are juniors to the petitioners in the category of Class IV. Petitioners allege that 12 persons were later given interview cards and petitioners have been excluded. Petitioners therefore pray that there shall be a writ of mandamus directing the respondents 1 and 2 to consider the petitioners for promotion as L.D.Clerks.

2. After the filing of the Original petition, petitioners amended the original

petition and have challenged Ext.P6 circular and they seek for a writ of certiorari to quash the same. A counter affidavit has been filed on behalf of respondents 1 and 2.

3. The petitioners are carpenters working in the Mechanical Department of Cochin Port Trust. They are seeking promotion to the post of L.D.Clerks which is a Class III Post, and going by the recruitment rules 20% of the posts of L.D.Clerks are to be filled up by promotion from among Class IV employees. The promotions are made after considering seniority of candidates concerned in the lower posts as well as the performance at an interview. Till 1993 the period within three years was stipulated as a pre-condition for regularisation of casual employees. At the discussions, it was assumed, erroneously, that this period of 720 days was ultimately reckoned for the purpose of calculating the seniority of the incumbent in the post. Therefore, a new circular was issued on November 10, 1994 whereby petitioners are not eligible for consideration for want of seniority. Subsequent to the filing of the original petition additional 3rd respondent was impleaded and he has also filed an affidavit supporting the contentions raised by the respondents 1 and 2.

4. I heard petitioners' counsel, Standing Counsel for respondents 1 and 2 and counsel for 3rd respondent. Petitioners were casual workers from June 25, 1979. They became regular Class IV employees only in 1981. According to these petitioners, their seniority in service should be counted with effect from the date of joining as a casual worker. The Cochin Port Trust issued a circular on March 11, 1993 which is produced as Ext.R1(a) by the 1st respondent. In Ext. R1(a) it is stated that such casual service also could be counted for the purpose of seniority. Later, they issued another circular dated November 10, 1994 whereby the earlier circular dated March 11, 1993 was cancelled. That is produced as Ext. R1(b). If Ext.R1 (a) is to prevail, the petitioners are entitled to be considered for promotion to the post of L.D.Clerks which is a Class III Post. If Ext.R1(b) is to prevail, petitioners are not entitled to be considered as they have no sufficient seniority. In the recruitment rules nothing is stated about casual service. It only says that promotion to the post of L.D.Clerks shall be on the basis of seniority in the feeder category.

5. Counsel for the petitioners Mr. Sugunapalan contended that the casual service also should be reckoned for the purpose of seniority and Ext. R1(a) circular was issued after much deliberations. But, it may be noticed that Ext.R1(a) circular was issued only as an administrative instruction. The recruitment rules say only "seniority". If "seniority" is to be understood, it shall not include in the casual service. For the purpose of regular employment, continuous casual service for a specified number of days may be a pre-condition. But, one will not become a regular member of the service unless he is fully absorbed to that service. Seniority could be counted only from the date of such absorption. Of Course, the employer can extend the other financial benefits to the employee treating the casual service as part of the service. This period of casual service could be

considered for the purpose of pension or gratuity. Such conferments of benefits will not affect the rights of other employees who are members of regular service. But, inter se seniority between regular employees could be taken only from the date of regularisation to the service.

6. If matters are viewed from that perspective, Ext. R1(a) circular issued on March 11, 1993 was not a proper exercise of power. It has rightly been cancelled by Ext. R1(b) circular. I am told that pursuant to interim direction issued by this court, interview was conducted and a list of selected candidates have been prepared. Petitioners' counsel drew my attention to the decision reported in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, In paragraph 44, it has been stated thus:

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. It was held that the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

Based on that it was contended that the casual service also should be treated as part of the service. I am unable to accept petitioners' contention based on the above decision. In the decision quoted above, appointment was made initially not on regular basis and later it was regularised. In the instant case, there was no appointment at all to the service and the petitioners were allowed to work on casual basis and they were not members of the service by a regular appointment.

7. In view of my foregoing discussion, appointment shall be based only on Ext.R1(b) circular dated November 10, 1994.

O.P. is disposed of as above. No costs.