
(1970) 03 KL CK 0011
In the High Court Of Kerala

C.P. Joseph, Junior Superintendent, Office of R.D.D. of Public
Instruction and Another

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 03-03-1970

Acts Referred:

States Reorganisation Act, 1956 — Section 115

Citation : (1970) 2 LLJ 456

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—The petitioners, two in number, are working as junior Superintendents in the Department of Education of the State Government. They have brought this writ petition challenging the validity of a Government Order G.O. (MS) 79/PD/Public (Integration) Department dated 6.3.1969 whereby the Government of Kerala have purported to amend the provisions of an order dated 27.11.1954 passed by the erstwhile Travancore-Cochin Government. A copy of this impugned Government Order has been produced and marked as Ext. P-2. The petitioners contend that Ext. P-2 is violative of the provisions of Section 115(7) of the States Re-organisation Act, since, according to them, its effect is to alter to their prejudice the terms and conditions of service by which they were governed in the erstwhile Travancore-Cochin State as on the date immediately prior to the re-organisation of States and this modification to their detriment has been effected without obtaining the prior consent of the Central Government. It is also contended that as a result of Ext. P-2 the petitioners and several other persons similarly situated stand to lose their seniority in the category of Upper Division Clerks and even the benefits of promotions already granted to them to the category of Junior Superintendents and since this order has been passed without affording any opportunity to them to make their representations against such action, the order is plainly violative of the principles of natural justice. The petitioners have also raised a contention that Ext P-2 is inconsistent with Rule 27(b) of the Kerala State and Subordinate Service Rules and is void for this

reason also.

2. In order to appreciate the contentions raised by the petitioner a few facts have to be stated. The clerical staff in the Education Department in the erstwhile Travancore-Cochin State were on two different grades, namely, the lower grade of Rs. 30?45 and" the higher grade of Rs. 45?75. Appointment to the higher grade was by promotion from the lower grade and for this the passing of a departmental test was insisted on as a necessary qualification. By G.P.D. Dis. 5351/54/EHL dated 28.6.1954 the Travancore-Cochin Government sanctioned the re-organisation and integration of the clerical staff of the Education Department. It was ordered by the above proceeding that in order to avoid hardship to the senior clerks who did not possess the departmental test qualifications and had, therefore, been previously denied promotion to the higher grade of Rs. 45?75, they will also be provisionally promoted to the higher grade giving them the opportunity to get themselves qualified by passing the test at the next two chances on the specific understanding that if they failed to qualify within that period they will be replaced by junior persons who possess the qualification. Subsequently, by order No. S1-2-3005/54/CS dated 27.11.1954 a unification was effected of the aforementioned two grades and they were merged into a single scale of Rs. 30?75 with the direction that only those clerks who have passed the obligatory departmental test would be allowed to pass the stage of Rs. 45 in the unified scale. After the concessional period allowed by the Government Proceeding dated 28.6.1954 to senior clerks for getting themselves qualified by passing the departmental test expired, the Government of Travancore-Cochin by G.P.D. Dis. 4987/56/ED dated 26.7.1956 directed that such of those clerks who had been promoted without test qualification on the strength of the G.P. dated 28.6.1954 and who did not acquire such qualification within the period of two chances allowed by that order should be assigned lower ranks in the seniority list. This was the state of things which obtained on the date on which the re-organisation of States took place and the Kerala State was formed.

3. Thereafter, pursuant to the direction contained in the above Government Proceeding dated 26.7.1956 the Director of Public Instruction prepared a revised seniority list of all permanent clerks of the Education Department of the Travancore-Cochin Government as on 7.6.1954 and the same was approved by the Government of Kerala and it was published in the Kerala Gazette dated 22nd January. 1957.

4. The petitioners before me are persons who had passed the test within time and accordingly in the seniority list published by Government in G.P. ED. (A2) 9638/56/ED dated 12.1.1957 which was published in the Gazette as above mentioned the petitioner was assigned rank No. 119 and the 2nd petitioner rank No. 135 among the permanent clerks on Rs. 45?75. Some of the clerks who had failed to pass the tests within the time allowed by the G.P. dated 28.6.1954, unsuccessfully made representations to Government protesting against the revised ranking and one of them by name Sri K.K. Krishnan filed a writ petition

before this Court as O.P. No. 19 of 1958 seeking the issuance of a writ directing the State Government to restore his original Tank and seniority. That writ petition was dismissed by a learned single Judge of this Court and this decision was confirmed by a Division Bench in A S. No. 763 of 1958 as per judgment dated 3.8.1960 evidenced by Ext. P-1.

5. Many years thereafter, the Government have now passed the impugned order Ext. P-2 on 6.3.1969 purporting to amend the order passed by the Travancore-Cochin Government dated 27.11.1954 by directing that all those persons who pass the departmental tests within three years from the dates on which they were superseded by their juniors in the matter of promotion to the grade of Rs. 45?75, will be allowed the right to regain seniority irrespective of the fact that they were not promoted to the grade of Rs. 45?75. The reason stated by the Government for taking this action is that on a consideration of the representations made to them Government are now satisfied that the order passed by the Travancore Cochin Government on 27.11.1954 has resulted in the denial to a few officers in each department of the right to regain their seniority in respect of promotions made during the short period receiving the unification of the two grades of Rs. 30?45 and Rs. 45?75.

6. It is not necessary for me to consider whether the ground stated by the Government for passing the impugned order can be sustained on the merits. It has however to be observed that it is rather surprising that the alleged anomaly referred to by the Government should have been noticed by them only after the lapse of 15 years despite the fact that several representations had been made before the erstwhile Travancore-Cochin Government and also before the Kerala Government (immediately following the publication of the revised seniority list) by the superseded officers claiming the restoration of their seniority. These representations had been considered and rejected by the Government. In any event, one should have expected that all aspects of the matter would have been examined by the Government at least in connection with the defence of O.P. No. 19 of 1958 and the writ appeal arising therefrom where one of the superseded senior clerks had challenged the disturbance of his original seniority by the re-ranking effected pursuant to the G.P. dated 26.7.1956.

7. It is contended on behalf of the petitioners that the principles laid by the erstwhile Travancore-Cochin Government in the Government Proceedings dated 28.6.1954. 27.11.1954 and 26.7.1955 constituted conditions of service governing their seniority and rank in the category of clerks in the unified pay scale of Rs. 30?75 and that no modification of these principles could validly be made by the Government of Kerala without obtaining the previous approval of the Central Government under the proviso to Section 115(7) of the States Re-organisation Act. There is no case for the State Government that such previous approval had been obtained before passing the Government Order, evidenced by Ext. P2 dated 6.3.1969. A similar question came up for consideration before a Division Bench of this Court in Writ Appeals Nos. 136 and 149 of 1965. There, certain principles

which had been formulated by the erstwhile Travancore-Cochin Government for regulating inter se seniority of technical personnel of the Public Works Department were subsequently modified by the Government of Kerala after 1.11.1956 and as a result of the change so effected in the principles for determining seniority the writ petitioners suffered loss of rank in the seniority list. The Division Bench upheld their contention that the modification of the principles which had originally been formulated by the erstwhile Travancore-Cochin Government for determining the seniority of the officers constituted a variation of their conditions of service to their disadvantage within the meaning of the proviso to Section 115(7) of the States Re-organisation Act and such action could not be validly taken by the Kerala Government except after obtaining the prior approval of the Central Government. The above dictum fully governs the present case and in the light thereof it has to be held that the impugned G.O. (Ext. P-2) is invalid and inoperative by reason of the contravention of the proviso to Section 115(7) of the States Re-organisation Act.

8. The petitioners are also well founded in their contention that the impugned order is violative of the principles of natural justice. There can be no doubt that as a direct result of Ext. P-2 the petitioners will suffer serious prejudice by losing the ranks and seniority that had been assigned to them under the seniority list published in the Kerala Gazette dated 22nd January, 1957 in implementation of the directives issued by the Government of Travancore-Cochin in their proceedings dated 26.7.1956. Hence, the order, Ext. P-2, certainly visits the petitioners with adverse civil consequences. That in such circumstances it is obligatory on the part of the Government to afford an opportunity to officers, like the petitioners, who will be prejudicially affected by the action proposed is placed beyond doubt by the decision of the Supreme Court reported in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, . Exhibit P-2 is, therefore, liable to be quashed on this ground also.

9. The petitioners have also urged that there is no rational basis underlying the fixation in Ext. P-2 of the revised period of three years from the date of supersession as the time within which the test qualification ought to have been acquired by the clerical staff on the unified grade of Rs. 30?75. In support of this argument reliance was placed by the petitioners' counsel on the observations of the Supreme Court in *S.K. Ghosh and Anr. v. Union of India and Ors.* (1969) 1 S.C.W.R. 386. There is prima facie substantial force in this contention but I do not consider it necessary to pronounce finally on it since I have come to the conclusion that Ext. P-2 is liable to be quashed on the two grounds already adverted to above. For the same reason it is also unnecessary to deal with the last argument of the petitioners, namely, that Ext. P-2 is violative of the provisions contained in Rule 27(b) of the Kerala State and Subordinate service Rules and I express no opinion on that point.

10. In the result Ext. P-2 will stand quashed and the writ petition is allowed to that extent.

11. The parties will bear their respective costs.