
(1996) 08 KL CK 0062
In the High Court Of Kerala
Case No : O.P. No. 8754 of 1994

Dr. A.M. Kunhi Koyamu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Citation : (1997) 2 KLJ 818

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : M. Balagovindan, for the Appellant; P.V. Asha), for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The petitioners in these cases are teachers in Medical colleges in the Speciality of Psychiatry. All of them challenge the select list prepared by the Departmental Promotion Committee (D.P.C) and published in the Gazette dated 19.10.93, Ext.P5 in O.P. 8754/94. By Ext.P5 (in O.P. No. 8754/94) the 4th respondent Dr. Praveenlal has been assigned a date 28.7.1983 for promotion to the post of Assistant Professor in the Department of Psychiatry. Objecting to it on the ground that he was not qualified as on that date, the petitioners represented before the D.P.C. The D.P.C. considered their objections and declined to review Ext.P5, as per Ext.P8 letter communicated by the Government, Exhibits P5 and P8 are under challenge in these original petitions. Contention of the petitioners is that the 4th respondent who is assigned the date 28.7.83 for promotion to the post of Assistant Professor was not qualified as on that date. Exhibit P1 is the government order prescribing teaching experience as a qualification for the teaching staff in Medical Colleges. Paragraph 4 thereof provides as follows:

Teaching experience gained simultaneously during the training for the first basic recognised post-graduate qualification will not count.

The petitioners submit that the 4th respondent underwent the first basic

recognised post-graduate qualification during the period from 12-12-80 to 16-2-83. Therefore, this period cannot be counted as teaching experience to promote him with effect from 28.7.83.

2. The 4th respondent commenced service on 16.1.80 as Tutor. He did not have post-graduate qualification at that time. He underwent Diploma Course during the period from 17.12.80 to 16.2.83. As per Ext.P5, he is assigned the date of promotion as Assistant Professor on 28.7.83, The petitioner had the teaching experience to his credit only during the period from 16.1.80 to 16.12.80 and from 17.2.83 to 27.7.83, when he was considered for promotion with reference to 28.7.83. The period between 17.12.80 to 16.2.83 cannot be counted as teaching experience to his credit as per paragraph 4 of Ext.P1 extracted above. In effect, he had only less than 1 1/2 years service when he was assigned a date of promotion by D.P.C. on 28.7.83. Three years teaching experience is the minimum qualification, admittedly, for promotion to the post of Assistant Professor. The 4th respondent did not have, as per the service details mentioned above, that minimum experience qualification. Therefore, his inclusion in Ext.P5 with date of promotion as 28.7.83 was illegal.

3. The petitioners represented against Ext.P5 and that representation resulted in Ext.P8. The stand taken in Ext.P8 by D.P.C. is that the 4th respondent "is senior to all the four objectionists", "if the contentions of the objectionists are upheld, then Dr. Praveenlal will have to be superseded", and "Dr. Praveenlal was recruited through Special Recruitment as Tutor and belonged to SC/ST reservation group". The D.P.C. also found that it is a fit case to attract the provisions of Rule 28(b)(i) (13) of the K.S. & S.S.R.

4. Merely because one incumbent is senior, he cannot be considered by the D.P.C. The D.P.C. can consider only those who are qualified for the promotion post. Therefore, the first ground urged in Ext.P8 to reject the representation of the petitioners, does not hold good. When the 4th respondent does not have the minimum necessary qualification provided as per the Government orders, there arise no question of supersession by D.P.C. Only qualified hands alone will be considered by the D.P.C. In the case of under-qualified or unqualified hands, they are not eligible for being considered for promotion by D.P.C. Supersession arises when a person is considered and overlooked. When the person is not eligible at all to be considered, there arises no question of overlooking and consequently, supersession. So, the second ground mentioned in Ext.P8 that if the objections of the petitioners were accepted, the 4th respondent would have been superseded, does not merit at all. Not only when a legal ground is raised before a D.P.C. they shall not be concerned who is superseded, if the objections are legally acceptable, It is true that the 4th respondent was recruited through special recruitment as he is a candidate belonging to Scheduled Caste community. A Scheduled Caste hand does not become eligible for promotion without the minimum necessary qualification. So, the 2nd respondent's finding in Ext.P8 to reject the petitioners' representations, also is untenable.

5. The D.P.C. finds that the 4th respondent being a Scheduled Caste hand comes within the purview of Rule 28(b)(i)(13) of the K.S. & S.S.R. The said rule provides for as follows:

Candidates belonging to Scheduled Castes and Scheduled Tribes shall not be superseded for appointment to Selection categories or grades by the application of too rigid a standard of suitability. The Departmental Promotion Committee may consider the case of such candidates sympathetically by relaxing the standard of suitability where possible, and only the claims of those whom the committee considers unsuitable even by the relaxed standards should be superseded for appointment to such selection categories or grades.

(emphasis supplied)

This is the procedure adopted by the D.P.C. when D.P.C. considers selection, for promotion. In other words, this is a criterion to be adopted by the D.P.C. while considering the qualified hands. When a qualified Scheduled Caste candidate is considered, the test of suitability to be applied in his case and in the case of non-Schedule Caste candidates shall be different. The above extracted rule enables the D.P.C. not to apply "too rigid a standard of suitability" and to consider sympathetically" by relaxing the standard of suitability". There arise no question of relaxation the minimum necessary qualifications for the post. Qualification is a must for being considered for promotion. A person not qualified cannot be considered for promotion. The D.P.C. while considering the objections of the petitioners, mistook the standard of qualification with the standard of suitability. Thus, on all counts the conclusion in Ext.P8 are perverse and bad.

6. The 4th respondent submits that in the light of Exts.P2 and P3, he has to be treated as qualified because he underwent the basic post graduate course during the period 17.12.80 to 16.2.83. He had acquired teaching experience during that period. When that period is counted, he will have more than three years teaching experience as on the date he is assigned in Ext.P5 select list. But, Ext.P3 was issued only on 18.2.85. That cannot be applied for selection to a vacancy which had arisen on 28.7.83. The 4th respondent submits that when the D.P.C. met on 16.6.93 and prepared Ext.P5 list, Ext.P3 has already been in force. True, it had been in force at that time. But, the guidance for the D.P.C. in such case is contained in Rule 28(b)(1A) of the General Rules in K.S. and S.S.R. That rule provides that "when a select list is prepared subsequent to the occurrence of a vacancy, no person who was not qualified for inclusion in the select list at the time of occurrence of the vacancy shall be included in the select list for appointment against that vacancy". In Ext.P5 select list, the petitioner is included against a vacancy that arose on 28.7.83. So, the qualifications of the 4th respondent as on that date has to be considered by the D.P.C. for his inclusion. As on that date Ext.P3 had not been issued at all. Therefore, the experience if at all gained by 4th respondent during the period 17.12.80 to 16.2.83 cannot be counted to his credit in terms of Ext.P1. Thus, the D.P.C. went wrong in assigning a vacancy which arose on 28.7.83 in favour of the 4th respondent.

7. Pointing out Ext.R4(f), the 4th respondent submits that the Tutor trainees could take classes for under-graduate students and he had that opportunity. But, this applies only to non-clinical departments and unpopular speciality of Anesthesia and Radio-diagnosis. The petitioner belongs to the speciality of Psychiatry not covered by Ext.R4(f). Not only that, Ext.R4(f) is for the purpose of considering the deputation benefits on a uniform basis to Scheduled Caste hands and non-Scheduled Caste hands. That does not modify Ext.P1 which provides that the teaching experience gained simultaneously during the training for the first basic recognised post graduate qualification will not be counted towards the teaching experience prescribed for promotion. The 4th respondent further relies on Ext.R4(g) order. That is dated 18.8.84, subsequent to the assignment of the vacancy to him and that also is with reference to the tutor's training scheme and deputation benefits and does not modify Ext.P1, enabling counting of experience during the training period for the purpose of promotion as Assistant Professor.

8. The contention raised in the counter affidavit of the 1st respondent is also not sufficient enough to substantiate Exts.P5 or Ext.P8. It is stated that "Dr. K. Praveenlal, the only remaining eligible candidate is assigned the above vacancy with effect from 28.7.1983". The eligibility is to be assessed first with reference to the minimum required qualification which includes the experience as well. When that is lacking, he cannot be taken as eligible candidate. The counter affidavit refers to the deputation of the 4th respondent for the period from 16.1.84 to 31.1.87. That does not have relevance to the question whether he was qualified on 28.7.83. Thereafter, Government refers to Exts. P1, P3 and P4 and also to Ext.R4(g) in para 7 of the counter affidavit. All except Ext.P1 are orders issued subsequent to 28.7.83. In terms of Ext.P1, the 4th respondent was not eligible to be considered by the D.P.C. for the vacancies arose on 28.7.83 as he did not have the prescribed experience at that time. It is concluded in that paragraph stating that Dr. Praveenlal (4th respondent in O.P. 8754/94) is senior to all the four objectionists, forgetting for a moment, that seniority alone is not the criterion for promotion to a selected post for which a different qualification and experience is provided to that for the post in the feeder category. The ground raised in the counter affidavit with reference to Rule 28(b)(i)(13) had already been dealt with in this judgment. In the above circumstances, Exts.P3, P4 and Exts.R4(f) and R4(g) orders cannot help the 4th respondent to sustain Ext.P5. Exhibits P3 and P4 are subsequent to the date assigned to him. Exhibit R4(f) does not modify Ext.P1. Applying the principle in Rule 28(b)(1A) of the general rules in Part II of the K.S. & S.S.R., the 4th respondent was not at all qualified for promotion to the vacancy of Assistant Professor that arose on 28.7.83. His inclusion in Ext.P5 is bad. The objections raised by the petitioners against Ext.P5 have not been properly considered and rejection of the objection by Ext.P8 is also bad. Accordingly, Exts.P5 and P8 in O.P. 8754/94 are quashed.

O.Ps. are allowed. There will be no order as to costs.