
(1986) 07 KL CK 0036
In the High Court Of Kerala

E.C. Saraswathy Ammal

APPELLANT

Vs

Director of Public Instruction

RESPONDENT

Date of Decision : 16-07-1986

Acts Referred:

Citation : (1987) 1 LLJ 442

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Judgement

U.L. Bhat, J.—Petitioner seeks writ of certiorari quashing principle No. 6 contained in Ext. PI proceedings and Ext P4 order based on that principle. A copy of the O.P. is served on the learned Liason Officer and I have heard both sides.

2. Petitioner's claim can be summarised as follows:

Petitioner was recruited through the Public Service Commission as High School Assistant and advised for appointment in Palghat District as per advice memo, dated: 9th February 1960. She joined duty in a High School in Perintha-Imanna which was part of the then Palghat Revenue District. In 1960 she sought transfer to Calicut District and as per order dated 2nd June 1960 she was so transferred and posted in a High School in Calicut District. In 1978 she requested for transfer to her original District viz., Palghat District and this was allowed as per order dated 2nd August 1978. From 1959 till recently District was treated as unit as far as High School Assistants were concerned. Since the two transfers were on request, petitioner had, in accordance with Government Orders relating to request transfers, agreed to work as junior most in the respective District to which she was transferred. Petitioner was promoted as Headmistress as per order dated 27th September 1984. Government decided to abolish the unit system and to treat the State as the unit and proceeded to settle seniority list of High School Assistants for the entire State with effect from 6th January 1959 to 1st January 1966. Provisional list was published as per order dated 19th September 1984, giving the petitioner rank No. 122, counting seniority from 9th February 1960. It was on this basis that she was promoted as Headmistress. She

was issued Ext. P2 notice dated 18th September 1986 stating that a mistake was committed in assigning her rank No. 122 and date 9th February 1960 in the seniority list, that she has forfeited her seniority by the two inter-district transfers and seniority could be counted only from August 1978 when she received her last inter-district transfer. She was asked to show cause why the mistake should not be rectified. She submitted Ext. P3 reply which has been rejected under Ext. P4. Thus, she has lost her seniority and is likely to be reverted as H.S.A.

3. Ext. P1 is the proceedings dated 16th September 1984 of the Director of Public Instruction in connection with the preparation of seniority list treating the State as unit. The Director has laid down guidelines for preparing this seniority list. Principle No. 6 deals with officers who were transferred from one District to another. It reads:

6. As per existing orders, the inter-district transfer of persons recruited district wise will result in forfeiture of their past service for seniority. Therefore, in their case, the seniority will be fixed with reference to the date of joining duty in the new District.

4. At the time of petitioner's appointment and the two subsequent transfers from one District to another, admitted, appointment was District-wise and the unit for the purpose of seniority was the revenue District. It is also admitted that inter-district transfers on request were governed by Government Orders and as per those orders a person seeking inter-district transfer must agree to forfeit her seniority. In paragraph 4 of the original petition, it is admitted that petitioner agreed to work as juniormost in the new District. This is in conformity with the first proviso to Rule 27(a) of K.S. & S.S.R. which reads thus:

Provided that the seniority of persons on mutual or inter unit or inter departmental transfer from one unit to another within the same department or from one department to another, as the case may be, on requests from such persons shall be determined with reference to the dates of their joining duty in the new unit or department....

Going by the above circumstances, there is no doubt that the petitioner can now reckon for the purpose of seniority only the date of her joining duty in the Palghat unit after her second transfer. The only contention urged by learned Counsel for the petitioner is based on Rule 27(c) of the K.S. & S.S.R. which according to him applies to the case. Learned Counsel would contend that Rule 27(a) would not govern the case.

5. Rule 27 of the K.S. & S.S.R. deals with seniority. Clause (a) states that seniority of a person in a service, class, category or grade shall, unless has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category, or grade. Clause (a) has two provisos, first of which has been extracted above. This proviso states that seniority of persons who have been given inter-district transfer on request shall

be determined with reference to the dates of their joining duty in the new District.

6. Main part of Clause (c) of Rule 27 states that notwithstanding anything contained in Clauses (a) and (b) above, 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.

7. Clause (c) undoubtedly acts as a sort of a proviso to Clause (a). Under Clause (a) date of first appointment determines seniority. Under Clause (c), in the case of appointment on the advice of Public Service Commission, date of first effective advice by the Commission for appointment determines seniority. In other words, in the generality of cases, a person recruited through the Public Service Commission is entitled to say that her seniority shall be determined by the date of first effective advice and not the date of first appointment. But this is so only so long as there is no intervention by subsequent events. Where there is intervention of subsequent events, we have to examine the effect of such subsequent events on the question of seniority. One such subsequent event is inter-district transfer on request resulting in forfeiture of seniority. Petitioner admits that she agreed to forfeit her seniority. What she forfeited was seniority which she was entitled to by virtue of Clause(c). On her original appointment in Palghat District, she was entitled to contend that her seniority must be determined by the date of first effective advice of the Commission. When she sought transfer to Calicut in accordance with the existing Government Orders, she agreed to forfeit that seniority. What was forfeited was lost once and for all and cannot be regained. When she agreed to forfeit that benefit, Clause (c) ceased to be applicable to her. Her case would therefore be governed by the first proviso to Clause (a).

8. Learned Counsel for the petitioner contended that the Government Orders relating to inter-district transfers are only executive orders and cannot override the statutory rules. It is true that those Government Orders are only executive orders. But they assumed statutory form under the proviso to Clause (a) of Rule 27. In any event, in securing inter-district transfers, petitioner agreed to forfeit her seniority. It was on the basis of such concession that she obtained inter-district transfer not once but twice. Having derived an advantage by making a concession she cannot now go back on her concession and assert her once existing right.

9. Learned counsel put forward an ingenuous argument viz. that the first transfer was from Palghat to Calicut and the second transfer from Calicut to Palghat and therefore petitioner must get back her original seniority in Palghat District or at any rate, her seniority must be such as is reflected in the new State wise seniority list. The argument is absolutely unsound. When she went from Palghat

to Calicut, she forfeited her past service for the purpose of seniority. It was not merely forfeiture of seniority in the District. She lost her prior service for the purpose of seniority, though not for other purposes. When she went back to Palghat from Calicut, it would have made no difference that she went to Palghat District or to any other District. At that time also, she agreed to forfeit her service in Calicut. In other words, she agreed that she may be treated as a new entrant on the date of her transfer to Palghat and what was forfeited cannot be revived merely because the second transfer, was sought to her original District.

I find no ground to interfere and dismiss the original petition.