
(1986) 01 KL CK 0002
In the High Court Of Kerala
Case No : O. P. No. 10520 of 1983

Ganesa Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-01-1986

Acts Referred:

Citation : (1986) 23 KLJ 248

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : S. Subramani and M. Balgovindan, for the Appellant; B. Raghunathan and Siby Mathew, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Sivaraman Nair, J.—Petitioners were appointed as Lower Division Clerks in various Departments under the State Government. Respondents 4 to 11 commenced service in the Harijan Welfare Department. The Tribal Welfare Department was a wing of the Harijan Welfare Department since 1975. In 1979 the Department of Harijan Welfare was bifurcated into Departments of Harijan and Tribal Welfare. Since the Tribal Welfare Department was a newly formed one, and even the Harijan Welfare Department was of comparatively recent origin, there was dearth of qualified Lower Division Clerks for promotion as Upper Division Clerks. Promotion to the post of Tribal Extension Officer was from the posts of qualified Upper Division Clerks. At the time of the organisation of the Tribal Welfare Department as a separate Department, there was dearth of qualified hands for promotion as Tribal Extension Officers. It was felt administratively expedient to invite qualified personnel from other Departments to be transferred over to the Tribal Welfare Department. Ext. P1 was, therefore, issued by the Director of Tribal Welfare Department, requesting the Heads of all Departments to forward applications from Lower Division Clerks in those Departments who had passed Account Test (L) and who were willing to come over to the Tribal Welfare Department on inter-departmental transfer basis,

subject to the condition that such persons were willing to abide by the terms and conditions laid down by the Government in that regard. Petitioners who were working as Lower Division Clerks in the Agriculture Department, Public works Department, and Judicial Department applied pursuant to Ext. P1 and were appointed as Lower Division Clerks under the second respondent on 7-7-1980, 8-7-1980 and 1-8-1980 respectively. They were promoted as Upper Division Clerks by order dated 11-7-1980 (petitioners 1 to 3) and 19-8-1980 (petitioners 4 to 6). Petitioners 1 to 3 were further promoted as Tribal Extension Officers by Ext. P2 order dated 4-9-1980 and subsequent orders. The other petitioners were so promoted by orders dated 22-11-1980 and 5-10-1981. Respondents 4 to 11 who were working as Lower Division Clerks at the time of formation of the Tribal Welfare Department had admittedly not acquired test qualifications for promotion as Upper Division Clerks. It also appears that they had not completed the two years period necessary for promotion. In Ext. P3 G. O. dated 14-4-1971, it appears to have been ordered that inter-departmental transferees would be considered for promotion as Upper Division Clerks only after they completed two years of service in the posts to which they were transferees, since the junior-most Lower Division Clerk in the transferee Department would be promoted as Upper Division Clerk only on completion of the period of two years. Ext. P3 Government Order was apparently intended to safeguard the interests of the junior-most on the transferee Department by insisting that the new comer to that category in that Department, who entered the Department by interdepartmental transfer on request, should not steal a march over a person working in the transferee Department who had not attained eligibility for promotion by the time of the inter-departmental transfer. This Original Petition was filed apprehending that Ext. P3 Government Order would be used against them, by reassignment of their ranks.

2. Seven posts of Junior Superintendents were sanctioned in that Department by Ext. P4 order. Such posts were sought to be filled up by upgrading 7 posts of Head Clerks/Tribal Extension Officers, which were occupied by respondents 4 to 11. This result could be achieved, only if the principle of Ext. P3 was made applicable to the petitioners also by insisting that the dates on which they could have been promoted as Upper Division Clerks were postponed till after the completion of two years of service in the Tribal Welfare Department after their inter-departmental transfer to that Department and subject to the seniority of Lower Division Clerks in the Tribal Welfare Department as on the dates of such inter-departmental transfer. Petitioners submit that their transfer to the Tribal Welfare Department was occasioned by paucity of required number of qualified Lower Division Clerks for promotion as Upper Division Clerks, and cannot, therefore, be treated as inter-departmental transfer on request. It is their case, that their transfers were in the exigencies of service and therefore they should not be deprived of the benefit of the service rendered in the transferor Department for the only reason that they responded to Ext. P1 inviting applications for transfer in the exigencies of service. Petitioners, therefore, seek

the issue of a writ of certiorari to quash Ext. P4 order, in so far as it upgrades 7 posts of Head Clerks/Tribal Extension Officers from the 7 Tribal Development officers to posts of Junior Superintendents till special rules are framed by the Tribal Welfare Department. They also seek the issue of a writ of certiorari to quash Ext. P3 order.

3. Counsel for the petitioners submitted that their seniority has to be determined with reference to the date of effective advice for appointment as Lower Division Clerks in any Department of the State or service, and they cannot be deprived of the benefits acquired by them by their service in the Agriculture, Public Works, and Judicial Departments prior to the dates on which they were inter-departmentally transferred to the Tribal Welfare Department. G. O. Ms. 4 of 1961, in amplification of which Ext. P3 was issued, expressly provided, according to counsel, for preservation of all service benefits in favour of persons who were transferred interdepartmentally in the exigencies of service. Reference is also made to the decision of this court in W. A. No. 149 of 1967, where the claim of one of the transferees from the erstwhile Revenue Department to the newly formed Civil Supplies Department for retaining benefits of service in the transferor Department in the transferee Department in almost identical circumstances was upheld by this Court. Reference was also made to the decision of this court in W. A. No. 259 of 1982 upholding the same principle.

4. Naturally, respondents 4 to 11 maintain that the petitioners having been given inter-departmental transfer to the Tribal Welfare Department on request cannot claim any benefit which would result in the claims of the respondents being superseded for purposes of promotion or ranking in the higher categories like Upper Division Clerks, Tribal Extension Officers/Junior Superintendents etc. It was also submitted that seniority lists were published on 9-7-1982 and 15-1-1983, in which the petitioners were shown as juniors to respondents 4 to 11. It is submitted that the petitioners not having challenged the ranking assigned to them in the provisional seniority list in appropriate representations, are not entitled to raise the objections at this stage. Reference was also made to Government Order dated 16-9-1985, whereby scales of salary of Tribal Extension Officers were fixed as Rs. 950-1640, whereas the scale of salary of junior Superintendents created by Ex. P4 was only Rs 520-900. It is, therefore, submitted that the petitioners cannot now complain against the upgradation involved in Ext. P4 order.

5, The point to be decided in this Original Petition is as to whether the petitioners are liable to surrender their service in the transferor department for purposes of seniority, probation, promotion etc. in the transferee-department. It is not disputed that if the inter-departmental-transfers of the petitioners were in the exigencies of service, they would carry the benefits of service rendered by them in the transferor department to the transferee department. Only if such inter-departmental transfer was on request, could it be held that the petitioners were to lose benefits of their service rendered in the transferor department for

purposes of seniority and promotion.

6. The same question was considered by this court in W. A. No. 149 of 1967 and W. A. No. 259 of 1982. The appellant in W. A. No. 149 of 1967, who was appointed as Lower Division Clerk in the Civil Supplies Department in 1957 and which Department was merged into the Revenue Department in 1958 had expressed his willingness for transfer to the Civil Supplies Department under G. O. Ms. 4 of 1961, when the Civil Supplies Department was again formed in 1962. Expression of willingness on his part was treated as converting his interdepartmental transfer as one on request, and he was deprived of the benefits of service in the transferor department for purposes of seniority in the transferee department, because such transferees were to be junior most in the transferee department. This was notwithstanding the provisions contained in the same Government Order, that "persons transferred from one department to another or from one unit to another in the same department due to proved administrative reasons will retain all their rights in the old unit or department, as the case may be". A Division Bench of this court found that the transfer was not made on the request of the appellant. It was observed, that "it was the Government who asked the option of the officers in the Department for being transferred to the Civil Supplies Department. The appellant only expressed his willingness. The transfer, therefore, if at all, was on administrative reasons. It is also not unusual that when persons from one Department are needed to be transferred to another Department on administrative grounds, the willingness of the officers are ascertained before the transfers are made, though the Government are entitled to transfer any servant from one Department to another irrespective of his willingness". Consequently, the transferee-appellant was directed to be assigned his appropriate rank in the transferee Department, giving him credit for the whole of the service in the transferor department. The same principle was affirmed in the judgment in W. A. No. 259 of 1982. The circumstances available in the present case are absolutely identical. The expression of willingness on the part of the petitioners did not deprive them of the benefits of service rendered in the transferor department, and they were entitled to treat their services for purposes of seniority in the transferee department.

7. One other submission, which was urged by the counsel for the respondents, is that the petitioners had to complete probation in the transferee department over again, so that the claims of persons who were already in the transferee department and who had to complete the period of probation or eligibility period for purposes of promotion would not be adversely affected. I do not find anything in the rules which support the submission. The requirement of probation, according to the rules, is in the class, category or service. Admittedly, the petitioner completed the period of probation in the category of Lower Division Clerks in the Ministerial Subordinate Service before they came over to the Tribal Welfare Department. I am not referred to any provision in any of the rules which requires that in the same category in another department, they should complete

probation over again. Indications from the precedents are also just the contrary. W. A. No. 259 of 1982 deal with the same problem, and upheld the Government Order which provided that personnel belonging to the Welfare Department and who were absorbed in the Civil Supplies Department, after completion of probation and the period of eligibility for promotion should get credit for such benefits in the transferee department as well. I do not find anything on principles or on precedents which militates against this conclusion. There is, however, one insurmountable difficulty in granting the reliefs sought by the petitioners. The provisional lists were published in 1982 and 1983. Petitioners were ranked as juniors to respondents 4 to 11 in those list in the category of Upper Division Clerks/Tribal Extension Officers. I am informed by counsel on all sides that the list is yet to be finalised. It will be open for the petitioners to move the Director of Tribal Welfare Department for suitable modifications in the provisional seniority list so as to reflect their seniority taking into account the services rendered by them in the transferor Department. It appears that any relief against Ext. P4 has become academic now in view of the revision of pay scales. The upgradation of posts of Tribal Extension Officers held by respondents 4 to 11 and assignment of rank to them in preference to the petitioners is evidently based on Ext. P3 order. I have already found that the petitioners are not liable to surrender the benefits of service rendered by them in the transferor Department, because they were transferred not on their request but in administrative exigencies. In that view, Ext. P3 may not apply to them. Therefore, it is not necessary for me to quash Ext. P3 order. I need only declare that it shall not affect the petitioners, whose causes will be governed by clause (2) of G. O. Ms. 4 of 1961, to the effect that persons who are transferred in administrative exigencies will be entitled to retain the benefits of service in the transferor Department for all purposes in the transferee Department as well.

The Original Petition is allowed as above. There will be no order as to costs.