
(2001) 05 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 31962 of 2000

Girija

APPELLANT

Vs

Public Service Commission and Others

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Citation : (2001) 2 KLJ 51

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

Bench : Single Bench

Advocate : T.A. Shaji and P.M. Indu, for the Appellant; O.V. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor

1. The petitioner is working as Analyst. Admittedly, she was so appointed on 2-2-1999 by appointment by transfer from the category of Upper Division Clerk. Being an appointee on transfer, she was on probation for one year within a continuous period of two years. The shortest period during which she can complete her probation is by 28-1-2000. A vacancy of Junior Scientific Officer to which the petitioner aspires promotion occurred, admittedly, in the year 1997, far earlier than the posting of the petitioner in the feeder category to that post. It is submitted by the counsel for the petitioner before me that the said vacancy arose in 1997. When the petitioner staked her claim for promotion, that was rejected as per Ext. P7. Ext. P7 discloses that the vacancy so occurred had been reported to the Public Service Commissioner as per item No. 3 dated 29-11-1999 referred to in Ext. P7. Thus, the vacancy had already been reported for direct recruitment. The petitioner became eligible for promotion on 28-1-2000. By that time the vacancy had already been reported to Public Service Commission initiating the process of direct recruitment. A vacancy so reported cannot be filled up by any other means including promotion even if an incumbent become later qualified for promotion. It is so specified in Govt. Circular No. 6441/

C3/97/P & ARD/ADB dated 21-3-1997. The said circular clearly specifies that once the vacancies are reported to the Public Service Commission, they should neither be cancelled nor be reduced. It is further provided that the appointing authority should note that the date of occurrence of the vacancy should be treated as the crucial date for deciding the method of appointment. Thus as the vacancy has already been reported, filling up of the vacancy by another incumbent by promotion will result in cancellation of the vacancy so reported. Moreover, as on the date of occurrence of the vacancy, the petitioner was not eligible for being promoted. When there was no eligible hand, the vacancy shall go for direct recruitment. Therefore, the date of occurrence of the vacancy shall be treated as the crucial date for deciding the method of appointment. As there were no qualified hands aspiring for promotion on the date of occurrence of the vacancy, it shall be earmarked for direct recruitment. On that ground also the petitioner cannot aspire for promotion. A Division Bench of this court in the decision reported in *Velayudhan v. Secretary to Government* (1955 KLT 793) made it clear that only those who were eligible on the date of occurrence of vacancy alone can claim the post. Nobody who had no right to be promoted in that vacancy on the date of occurrence of the vacancy, even if he subsequently becomes entitled for the post, can have a legal right to insist that he should get the post. This completely answers the question posed by the petitioner in this case. Consequently, the original petition fails and is dismissed.