
(1986) 10 KL CK 0030
In the High Court Of Kerala

Gnanamony

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-10-1986

Acts Referred:

Citation : (1987) 1 LLJ 277

Hon'ble Judges : Viswanatha Iyer, J;Paripoornan, J

Bench : Division Bench

Judgement

Paripoornan, J.—The appellant in this Writ Appeal is the petitioner in O.P. No. 91 of 1982-J. The petitioner as well as the second respondent were Legal Assistants Gr. II and were advised for appointment on 5th November 1966 and 7th December 1966 respectively. The second respondent was junior to the petitioner. While serving as Legal Assistant Gr. II the petitioner took 50 days' medical leave. Declaration of satisfactory completion of his probation was postponed. The petitioner's probation was declared with effect from 9th January 1969. The second respondent was so declared with effect from 7th December 1968. The second respondent was promoted as Legal Assistant Gr. I earlier, from 7th December 1968 and the petitioner was promoted to that cadre with effect from 9th January 1969. On representations filed by aggrieved persons, the Government passed Ext. P 10 order dated 30th September 1981 placing the petitioner below the second respondent and one E.K. Reghuramachandran. In the O.P. the challenge was against Ext. P10 order and also for a declaration that the petitioner is entitled to have his probation in the cadre of Legal Assistant Grade II declared with effect from 18th November 1968 and to get consequential promotions on that basis. M.P. Menon, J. by judgment under appeal dated 10th February 1986 dismissed the Original Petition. The petitioner has come up in Writ Appeal.

2. We heard counsel for the appellant, Mr. C.P. Sudhakara Prasad. It is fairly clear that under Rule 27 of the K.S.S.R. seniority in a grade should count from the date of regular appointment to a post. The second respondent was appointed as

Legal Assistant Gr. I on 7th December 1968. The petitioner was appointed on 9th January 1969 only. The second respondent is admittedly senior to the petitioner in the post of Legal Assistant Gr. I. One E.K. Reghuramachandran, who is also declared as senior to the petitioner in Ext. P10 dated 30th September 1981, took up the matter before the Government and the Government by G.O. (Rt) No. 640/77/Law dated 11th August 1977, held that seniority in Grade I should depend upon the date of regularisation in that grade. In that view, Reghuramachandran was held to be senior to the petitioner. The petitioner filed O.P. No. 3669/77-C assailing the aforesaid Government Order dated 11th August 1977 (Ext. P9 in that case). George Vadakkal, J. by judgment dated 5th March 1980, upheld Ext. P.9 order dated 11th August 1977 and held that E.K. Reghuramachandran is senior to the petitioner in the category of Legal Assistant Gr. I. The petitioner filed an appeal there from as W.A. 230 of 1980. The writ appeal was also dismissed. One of the contentions raised in the writ appeal was that the petitioner's probation should be declared to have been completed earlier and the period when he was on medical leave should also have been treated as period of probation. The Division Bench referred to the relevant decisions on the subject, and in particular, the earlier Division Bench decision in Shareef Rawther and Another Vs. State of Kerala and Others, at p 116 and observed as follows:

The period would count for probation but would not be a period of probation....

The period during which a person is on leave is a period which will count for probation in the sense that it is a period the nature of which is such that it could be a period of probation. It is one thing to say that the period counts for probation and another to say that it is a period of probation. Within a period counting for probation a person may be on duty for a lesser period and that latter period alone will be the period of probation.

...a period of leave would not be a period of duty.... Therefore the plea of the petitioner that though he was on medical leave for 30 days that period also could be taken to be a period of probation to be reckoned in considering whether he had satisfactorily completed the probation earlier cannot be accepted by us.

3. Only two points were raised before the learned Single Judge. The first was that the order dated 11th March 1969 (Ext. P1) regarding the declaration of satisfactory completion of the prescribed period of probation in the category of Legal Assistants Grade II, was not directly challenged in O.P. No. 3669 of 1977, as affirmed in W.A. No. 230 of 1980. The second was that the period of medical leave should have been reckoned as period of duty for the purpose of probation. There is no force in the above submissions. The declaration regarding the satisfactory completion of the probation was very much in issue in O.P. No. 3369 of 1977 as also in W.A. No. 230 of 1980. If it was not challenged earlier, we see no reason why the petitioner should be allowed to challenge Ext. P1 dated 11th March 1969, at this distance of time, nearly 16 years after Ext. P1. The first ground of attack is without force. Regarding reckoning the period of medical leave as period of duty, it was directly in issue in O.P. No. 3669 of 1977. It was

also pointedly urged in W.A. No. 230 of 1980 and in para 6 of the judgment the learned Judges held that the medical leave for 30 days could not be taken to be a period of probation to be reckoned in considering the satisfactory completion of the probation. The second ground of attack also fails.

4. We do not find any other ground having been urged before the learned Single Judge. The points raised in the O.P. and argued before the learned Single Judge are covered by the earlier decisions of this Court in O.P. No. 3669 of 1977, as affirmed in W.A. No. 230 of 1980. The earlier Division Bench decision in Shereef Rawther's case (supra) also concludes the matter. In this view of the matter, we concur with the reasoning and conclusion of the learned Single Judge. No interference is called for in this Writ Appeal and it deserves to be dismissed. We hereby do so.

5. Appellant's counsel Mr. Prasad sought to raise new grounds based on Rule 27 of the K.S.S.R. and the fact that the second respondent did not protest against the lower rank assigned to him on earlier occasions and did so only after Ext. P10. The counsel argued that the "sit back" theory will apply. These points are not seen to have been placed before the learned Single Judge. We see no reason as to why the appellant should be permitted to raise-new pleas for the first time in writ appeal. We refuse to entertain the said pleas.

6. This writ appeal is without force. It is dismissed in limine.