
(2001) 07 KL CK 0007
In the High Court Of Kerala
Case No : W.A. No. 3179 of 2000

Gracen Charles

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 19, 24, 8

Citation : (2001) 07 KL CK 0007

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : S.P. Aravindakshan Pillay, for the Appellant; C.K. Pavithran, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—This appeal is preferred by the petitioner. Original Petition was preferred seeking a writ mandamus directing the authorities to allow the petitioner to go back to the post of Medical Officer (Ayurveda) in the Department of Indian Systems of Medicine retaining her original seniority in that post. Request of the petitioner was rejected by the Government vide Ext. P3 order dated 16.11.1999. Placing reliance on Note 2 to R. 8 of K.S. & S.S.R. it was pointed out a person holding a post in any class or category in a service in not eligible for the benefit of R. 81 if his appointment to that post was from a post in another class or category in the same service. It was stated that since petitioner was posted in the same service in the same category but on a different post and as such she cannot go back to her earlier post. Learned Single Judge did not find any infirmity in the impugned orders and dismissed the Original Petition. Aggrieved by the same this appeal has been preferred.

2. Counsel appearing for the appellant placing reliance on the Full Bench decision of this Court in Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KLT 766 contended that since petitioner was not confirmed under R. 24 of the K.S. and S.S.R. 1958 it cannot be said that she has lost her lien on the post of Medical

Officer (Ayurveda). Learned Government Pleader on the other hand, submitted the petitioner is not entitled to get the benefit of R. 8. According to him, the benefit of the said rule shall not be available to a person holding a post in any class or category in a service if her appointment to that post was from a post in another class or category in the same service. It was contended that the prayer of the petitioner for quashing Ext. P3 and also Note 2 to R. 8 is without any merit.

3. In view of the above mentioned controversy it is necessary to examine the rival contentions to resolve the dispute. Petitioner was appointed as Medical Officer (Ayurveda) on the advice of the Kerala Public Service Commission by order dated 1.6.1990. She joined duty on 16.6.1990 at Government Hospital, Mararikulam. While working as Medical Officer (Ayurveda) she applied for appointment as Medical Officer (Netra) in the Indian Systems of medicine Department on the basis of a notification issued by the Public Service Commission. Public Service Commission later advice her for appointment as Medical Officer (Netra). Accordingly she was appointed as Medical Officer (Netra) as per order dated 1.8.1996 in the Indian Systems of Medicine Department. Petitioner was relieved from the post of Medical Officer (Ayurveda) on 9.9.1996 and she joined duty as Medical Officer (Netra) in the District Ayurveda Hospital, Kannur on 10.6.1996. While so petitioner submitted a representation before the Government requesting to permit her to go back as medical Officer (Ayurveda) retaining her original seniority. The said request was rejected by the Government. We are of the view Government was right in rejecting her request. In this connection, it is profitable to extract R. 8 for easy reference.

"8. Members absent from duty:- The absence of a member of a service from duty in such service, whether on leave, other than leave without allowances for taking up other employment, on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn-

- a) for re-appointment to substantive or officiating vacancy in the class, category, grade or post in which he may be probationer or an approved probationer;
- b) for promotion from a lower to a higher category in such service; and
- c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate; as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence.

Provided that subject to the provisions of R. 19 shall satisfactorily complete the period of probation on his return.

Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under clause (c) to any other service for which he may be an approved

candidate unless he relinquishes his membership in the latter service in which he is a probationer or an approved probationer;

Provided further that this rule shall not have retrospective effect so as to disturb the decisions taken by the Travancore-Cochin Government in respect of the Travancore-Cochin personnel:

Provided also that his rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note 1: An appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

Note 2: The benefit of this rule shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service."

Note 2 to R. 8 specifically stated that benefit of R. 8 shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service. In the instant case the petitioner was earlier appointed in the post of Medical Officer (Ayurveda). Later she was selected and appointed as Medical Officer (Netra). That is also in the same service, ie., Indian System of Medicines. Since both the posts are in the same service it cannot be said that petitioner was absent from service. Further the post of Medical Officer (Ayurveda) is in the general category and post of Medical Officer (Netra) is in the special category. Further qualification for the post of Medical Officer (Ayurveda) is a Degree or Diploma in Ayurveda of a recognised University or equivalent qualification and "A" class registration with the Council of Indigenous Medicine. Qualification for the post of Medical Officer (Netra) is M.S. Ayurveda Kayachikitsa Netra of Degree or Diploma in Ayurveda of a recognised University or equivalent qualification and Netra Vaidya Visarad or 3 years practical experience (paid or unpaid in Netra Chikitsa under an eye specialist possessing the qualification) Netra Vaidya Visarad or M.S. having Netra. "A" class registration on Ayurveda. On a comparison of the qualification, it is evident that both the posts bear different qualification. There is difference in pay scale as well. While scale of pay of Medical Officer (Ayurveda) is Rs. 2060-3200 (pre-revised) where as the scale of pay of Medical Officer (Netra) is Rs. 2200-3500 (pre-revised). All these factors would indicate that both the categories are different and consequently she cannot go back to the earlier post of Medical Officer (Ayurveda). Note 2 to R. 8 has specifically stated the benefit of the said rule shall not be available to a person holding a post in another class or category in the same service. Under such circumstance we find no infirmity in the judgment of the learned Single Judge to be interfered with in this appeal.

Appeal lacks merits and the same is dismissed.