

(1987) 07 KL CK 0082
In the High Court Of Kerala

Haridasan and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 31-07-1987

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 2(6), 27(c)

Citation : (1987) KLJ 994 : (1988) 1 LLJ 220

Hon'ble Judges : V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Judgement

Baskaran Nambiar J.

1. Training may be a qualification prescribed for appointment; training may be a requirement demanded after appointment. Does the period of training affect the question of seniority under the Kerala State and Subordinate Services Rules (K.S. & S.S.R. for short) This, therefore, is the question posed for consideration in this Writ Appeal.

2. The Writ Appellants, Diploma holders in Engineering, were advised by the Public Service Commission for appointment as Instructor Grade II on 8th August, 1966. Both of them joined duty in October 1966. Respondents 3 and 4 did not apply for the post of Instructors, but applied, pursuant to a different notification, for the post of Instructor Trainees. The notification stated that the applications were invited "for selection for training and sub sequent appointment" as Instructors. They were person appointed to a class, category or selected as trainees and advised for training in July 1966 and were subsequently appointed as Instructor Grade II only in August 1968, about two years after the appellants were appointed. Respondents 3 and 4 however, have been assigned ranks 621 and 599 given seniority over the appellants who have been given ranks 629 and 635. Contending that they are entitled to seniority over respondent 3 and 4, the appellants filed the writ petition, O.P. No. 3053 of 1981, challenging the grading list and claming appropriate reliefs. This claim was resisted by the state and the respondents on the plea that the date of advice by the Public Service

Commission is the relevant date under Rule 27(c) of the K.S. & S.S.R. and as respondent 3 and 4 were advised in July 1966 and appellants were advised only in August 1966, they were entitled to seniority. It is ?duty? as defined in Rules 2(6) of the K.S. & S.S.R. and has to be reckoned for purpose of seniority. The learned single judge rejected the contentions of the appellants, upheld the contention of state and respondents 3 and 4 and dismissed the Writ Petition. Aggrieved, this appeal is filed.

3. To deprive a person appointed earlier, of his seniority based on that appointment, and to confer seniority on a person appointed later, very strong reasons backed by clear statutory provisions are required. We shall, therefore, refer to the relevant rules in K.S. & S.S.R. for this purpose.

4. Rule 27(a) and (c) relevant for our purpose read as follows:

27. Seniority.?(a) Seniority of a person in a service, class category or grade shall, unless he 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.

x x x

(c) Notwithstanding anything contained in Clauses (a) and (b) above, the sonority 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 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.

x x x

5. The period of training is treated as period of duty in Rule 2(6) as follows:

A person is said to be on duty as a member of service.:

(a) When he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service:

x x x

6. The seniority in any service, class, category or grade is therefore primarily fixed with reference or grade is the date of first appointment to service, class, category or grade. The date of first appointed authority is situate or for any other administrative reason, though all the persons may be selected and included in the same rank list and advised for appointment at the same time. When, therefore, the Public Service Commission situate in Trivandrum advises several candidates for appointment, it may be that persons in Trivandrum may get appointment orders immediately while those in Kasaragod, at the northernmost tip of the State may have appointment orders issued by these offices only very

late, for no fault of the candidates. This injustice is sought to be remedied by the insertion of the proviso in Rule 27(c) under which the date of effective advice by the Public Service Commission for appointment to the post fixes the seniority. The purposes of Rule 27(c) is thus to equate the date of advice for appointment made by the Public Service Commission to the actual date of appointment prescribed in Rule 27(a). When, therefore, seniority has to be fixed in any service, class or grade and there are persons appointed on the advice of the Public Service Commission and also persons not so advised, seniority has to be fixed with reference to the date of advice of the former and the date of appointment of the latter. The date of advice is treated as the date of appointment for purposes of seniority. This in substance is the effect of Rule 27(a) and (c).

7. Admittedly there is a date of advice for appointment so far as the appellants are concerned while respondents 3 and 4 have no such advice for appointment. The seniority of respondents 3 and 4 can therefore be fixed only with reference to the date of their first appointment and the seniority of the appellants with reference to the date of their advice for appointment by the Public Service Commission. If so, the appellants were advised in 1966 and the respondents 3 and 4 were appointed for the first time only in 1968. The appellants' seniority cannot thus be in doubt or in dispute.

8. But, it is contended that the advice given by the Public Service Commission when respondents 3 and 4 were sent for training should be deemed to be an advice for "training for the purpose of appointment". It is stressed that under the rules a second advice for appointment is not contemplated and therefore, the earlier advice for training should be treated as an advice for training and appointment notwithstanding the fact that they were appointed only two years later. This contention cannot be accepted for the simple reason that Rule 27(c) applies only to those cases where there is an effective advice on the basis of which an appointment is made. It does not contemplate an advice on the basis of which a person is sent for training, If after training no advice is called for under the relevant rules or none is given under any provision, the person who is appointed subsequently can only rest his claim for seniority with reference to the date of appointment under Rule 27(a). Rule 27(c) is clearly inapplicable in those cases. It is not possible, therefore, to agree with the learned single Judge that the advice for training should be treated as equivalent to advice for appointment. Advice in 1966 for training cannot be treated as advice for appointment in 1968, and appointment in 1968 cannot relate back to 1966 for the purpose of fixation of seniority. In that case, we will be doing violence to Clauses (a) and (c) of Rule 27.

9. The facts of this case add strength to this conclusion that advice for training cannot be treated as advised for appointment. Applications were invited by the Public Service Commission under two different notifications, one for appointment of Instructors and the other for Instructor trainees. The notification for trainees

specifically stated that it was for "training and subsequent appointment". It was also stated specifically therein that the selected candidates will be sent for months' training, commencing from 1st August 1966 on a stipend of Rs. 100/- per mensem and "on completion of their successful training" "they will be appointed as regular Instructors on Rs. 80-180 (pre-revision scale)". The trainees were also bound to execute bonds "to serve the department for at least five years after completion of training". Respondents 3 and 4 were, therefore, aware that they were only selected for training and a "subsequent appointment order" alone earned an appointment. When in January 1968, there were no vacancies, respondents 3 and 4 were informed that they were permitted to seek employment elsewhere. If they were already advised for appointment in July 1966 as they now claim, they should have displaced the appellants and secured appointment. They did not rightly make any such exaggerated claim and they were not given any such relief. The order issued in 1968 that respondents 3 and 4 can seek employment elsewhere is itself a clear indication that they were not appointed earlier. These facts thus clearly establish that there was no appointment made in favour of respondents 3 and 4 at the time when they were sent for training and they were not actually appointed in 1966. They could not claim seniority on the basis of Rule 27(a) or on the basis of Rule 27(c) over persons appointed in 1966. Respondents 3 and 4 were appointed only in 1968 and they could claim seniority only from that date.

10. Without an advice for appointment in 1966, without being actually appointed in 1966, respondents 3 and 4 still claimed seniority from 1966 on the basis that they should be deemed to be on duty in 1966 while they were undergoing training. It is for this purpose that the definition clause in Rule 2(6) of the K.S. & S.S.R. is pressed into service, under which a person performs the duties while he is undergoing training. Training as an eligibility for appointment, as a qualification to be acquired before appointment is not the same thing as training for equipment after appointment. Training undergone after appointment alone is taken care of under Rule 2(6) of the K.S. & S.S.R. and not training which is a pre-requisite for appointment, a training which precedes the appointment. This distinction is clearly borne out by the several Special Rules. Thus in the Kerala Civil Service (Executive) Rules, relating to appointment for Deputy Collectors, Rule 6(b) states that every person recruited direct shall also undergo suitable training as may be prescribed by the State Government. So also rules relating to the Kerala Co-operative Service, for the appointment of Registrar of Cooperative Societies, Rule 5(a) states that persons appointed to the post of Assistant Registrar of Co-operative Societies, by direct recruitment, shall undergo training for a period of two years. There are similar provisions in other rules. On the other hand, in the Kerala General Subordinate Service, relating to posts in the Community Development Department, Rule 8 says that every person selected for appointment as Extension Officer for Women Welfare, shall undergo training in one of the training centres in the State before appointment to the posts. Distinction between training given before appointment and training imparted

after appointment is maintained under the Special Rules also.

11. Justice Mathew in *Louis v. Kerala Public Service Commission* 1965 II L.L.J. 364, was considering the case of a Gramasevak who was appointed and then sent for training and relying on Rule 2(6) the learned Judge held that the period of training must be reckoned as service for the post of Gramasevak. We are in agreement with this reasoning.

12. In the present case, Respondents 3 and 4 were only selected for training in 1966 to be appointed subsequently. The selection was therefore "to a course of training rather than to an office or post."

13. The learned single Judge has held that the notification inviting applications for Instructor Trainees was "for the sole purpose of appointment, subject to the completion of training and therefore the advice tendered for training should be deemed to be advice for appointment itself." The learned Judge proceeds to state that to read the notification divorced from appointment is to mutilate the notification. It has to be borne in mind that neither the Public Service Commission nor the Government assured appointment after training. In fact Respondents 3 and 4 were told expressly that they could seek employment elsewhere when there was no vacancy in 1968. The notification itself mentioned about a subsequent appointment to follow later. The notification speaks of training and appointment and does not treat both of them in the same class or category. The notification does maintain the distinction between training and appointment. In the circumstances, with great respect, it is difficult to agree with the learned Judge that advice for training should be treated as advice for appointment.

14. When there were two notifications, and the appellants applied for the post of Instructors and respondents for trainees under a different notification, Respondents 3 and 4 cannot contend that they should be deemed to have applied for the post of Instructor. We do not think that Respondents 3 and 4 could have been appointed as Instructors in 1966, even though they applied only as Trainees. We do not know whether they would have been selected as Instructors if they had applied for the post of Instructors. We do not consider those contingencies when they did not, in fact, apply to be appointed as Instructors under the notification (Ext. P2). For the same reason, we do not consider in detail the qualifications fixed for the different categories in both the notifications, for nothing turns round on those aspects as seniority is with reference to appointment and not with reference to training undergone before appointment.

15. The counsel for the fourth respondent contended that seniority was given to the trainees in identical circumstances in the previous batch. Particulars of those selections and the notification on the basis of which they were appointed have not been given in the pleadings. They are not parties to this proceeding. It is difficult to consider those pleas without proper pleading and relevant documents.

Even if some mistake has been committed in the past, it is no ground for repeating the same in future, when it is brought to the notice of the court.

16. In the result, the appeal is allowed and the Judgment of the learned single Judge is set aside. Instructors Grade II appointed by direct recruitment in 1966 shall be given seniority with reference to their dates of advice by the Public Service Commission and Instructor Trainees who were appointed in 1968 will be given seniority with reference to their dates of appointment as Instructors. On this basis the gradation list (Ext. P9) will be revised and the appellants will be given the appropriate rank and attendant benefits of promotion etc., according to the relevant rules and according to law.

17. The parties will bear their costs.

18. Issue photostat copy of this Judgment to counsel appearing for the parties on usual terms.