
(2015) 06 KL CK 0015

In the High Court Of Kerala

Case No : OP(KAT) Nos. 100 of 2015 (Z) and 115 of 2015

Hydross and Others

APPELLANT

Vs

P.K. Suresh Babu and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) 06 KL CK 0015

Hon'ble Judges : P.R. Ramachandra Menon and Babu Mathew P. Joseph, JJ.

Bench : Division Bench

Advocate : Kaleeswaram Raj, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

P.R. Ramachandra Menon, J.—These original petitions have been filed by the very same petitioners being aggrieved of the orders passed by the Kerala Administrative Tribunal in T.A. No. 2150 of 2012 and O.A. No. 1594 of 2014; whereby a stalemate has been resulted in so far as the benefit due to the petitioners as per the order dated 26.9.2014 in T.A. No. 2150 of 2012 has been virtually taken away by the subsequent order dated 29.12.2014 in O.A. No. 1594 of 2014 restricting the scope of consideration despite the observation and direction in the former order to the effect that all the issues were left open to be considered by the concerned Authority. Since the issue involved in both the cases is similar and closely interconnected, they are taken up and considered together. The pleadings and proceedings are referred to, as given in O.P.(KAT) No. 100 of 2015.

2. The dispute is mainly with regard to the seniority of Livestock Inspectors Grade-II. The petitioners herein, on completion of the selection process by the PSC, came to be appointed to the above posts, way back in the year 1996. After the above exercise, another notification was issued in respect of vacancies in the same of Live Stock Inspectors Gr.II. The selection proceedings were finalised and advices were given, pursuant to which the persons concerned joined the service.

In the meanwhile, the mistake committed by the Public Service Commission in omitting to consider the claim of the dependents of ex-servicemen in respect of their quota required to be rectified. Therefore, necessary corrective measures were taken by the PSC and a revised list was issued, re-fixing the seniority, allotting appropriate place to the persons concerned, who were eligible in respect of the ex-service quota. Based on the said revised list, proceedings were finalised by the Director by issuing appropriate orders, which according to the petitioners herein very much adversely affected their rights and interest. This was sought to be challenged by filing W.P.(C) No. 15703 of 2009 before this Court; which was subsequently transferred to the Kerala Administrative Tribunal, where it was renumbered as T.A. 2150 of 2012.

3. While so, some other persons, who came to be appointed subsequently, approached the Government by way of appeal, pointing out that the seniority given to the persons who came to be appointed subsequently, was not correct or proper in the eye of law. The matter was considered by the Government in detail and it was observed that re-fixation of the seniority by the Director based on the revised advice memo issued by the PSC was perfectly in order, in so far as it was in conformity with Rule 27(c) of Part II of the Kerala State & Subordinate Services Rules (for short, KS & SSR). However, the Government observed that, before issuance of such proceedings by the Director, an opportunity of hearing was to be given to the affected parties and hence, it was liable to be reconsidered. The said order bearing No. 1067/2014AD dated 23.6.2014 is produced as Annexure A3 in the OP(KAT) 100 of 2015.

4. When T.A. 2150 of 2012 preferred by the petitioners came up for consideration before the Tribunal on 26.9.2014, it was observed that, by virtue of Annexure A-3 order dated 23.6.2014 passed by the Government, the matter had been ordered to be reconsidered by the Director and in the said circumstances, it was very much open to the applicants to pursue the matter pursuant to the revision of the list to be effected either by the Government or by the Director, Animal Husbandry. All the issues were left open and the matter was disposed of accordingly, as per order dated 26.9.2014. The said order is produced as Annexure A1 in O.P.(KAT) No. 100 of 2015.

5. While so, it came to the notice of the petitioners that the course and proceedings ordered to be finalised as per Annexure A1, and the effect of the said order passed by the Kerala Administrative Tribunal had virtually come to be nullified, as per the subsequent order of the Tribunal in O.A. No. 1594 of 2014 (a copy of which has been produced as Annexure A-2 in O.P.(KAT No. 100 of 2015) whereby Annexure A-9 order passed by the Government was set aside, holding that in so far as the Government had arrived at a finding that the proceedings of the Director were in conformity with the mandate of Rule 27(c) of the KS & SSR, it was not at all necessary for the matter to be reconsidered, after hearing the other persons concerned, which otherwise would only be a futile exercise. After setting aside the said order, the Tribunal observed as follows:

"But we think, a post-decisional hearing by the Director will redress the grievance of the contesting party respondents. They can bring to the notice of the Director the other illegalities in the list, other than the revision of seniority based on the revised advice list furnished by the Public Service Commission."

By virtue of the said order, it is contended by the petitioners herein, that the relief already extended to them as per Annexure A1 order passed by the Tribunal with liberty to challenge the revised list to be issued by the Government/Director, leaving all the issues open, has been unreasonably restricted. The challenge is raised also pointing out that no opportunity of hearing was given to the petitioners herein, as they were never made parties to the subsequent O.A. No. 1594 of 2014. It is in the said circumstances, that Annexure A1 order has been sought to be challenged in O.P.(KAT) No. 100 of 2015, while Annexure A2 is under challenge in O.P.(KAT) No. 115 of 2015.

6. Heard the learned counsel for the petitioners, the learned Senior Government Pleader and the learned Standing Counsel for the PSC at length. After going through the pleadings and proceedings, it is seen that the petitioners herein had sought to challenge the proceedings of the Government/Director and also of the PSC, with regard to the revised seniority list, by filing W.P.(C) No. 15703 of 2009; which was subsequently transferred to the Kerala Administrative Tribunal, where it was renumbered as T.A. No. 2150 of 2012. The prayers in the writ petition are as follows:

"i) issue a writ of certiorari quashing Ext. P3 to the extent it seeks clarification and explanations from the 3rd respondent,

ii) Issue a writ of certiorari quashing Ext. P6 as unjust, illegal and arbitrary.

iii) Issue a writ of certiorari quashing Ext. P7 as unjust, illegal, arbitrary and unsustainable.

iv) To declare that the petitioners are entitled to reckon their seniority as contained in Ext. P5.

v) To declare that the candidates who are included in the rank list on the basis of Ext. P1 will be entitled to reckon their seniority with effect from the date of effective advice.

vi) To declare that the action of the 3rd respondent in preparing district wise combined seniority list of Livestock Inspector Grade-II is unjust, illegal, arbitrary and ultra vires.

vii) To issue a writ of mandamus directing that respondents to give consequential benefits to the petitioner including promotion on the basis of their seniority finalised as per Ext. P5.

viii) To issue a writ of mandamus directing the respondent to refrain from implementing Exts.P6 or P7.

ix) To grant such other reliefs as this Honourable Court may deem fit and proper."

7. It was after considering the above pleadings and prayers, that the Tribunal disposed of the T.A. with liberty to challenge the revised seniority to be issued by the Government/Director pursuant to Annexure-A3 order dated 23.6.2014 issued by the Government, leaving all the issues open. The operative portion of the said verdict as contained in Annexure A-1 reads as follows:

"In view of the said development, this Transferred Application is closed. In case, the applicants are aggrieved by the fresh list that is going to be published by the Government or under the directions of the Government by the Director of Animal Husbandry, they will be free to challenge the same. The closure of this Transferred Application will not affect the contentions raised by them herein. In case occasion arises for them to challenge the new list, they will be free to raise all contentions available to them including those they have raised in this Transferred Application. If the Government proposes to hear the appellants before it while taking a final decision, the applicants and other affected persons shall also be given an opportunity of being heard."

The question is whether any adverse circumstance has been resulted by virtue of the subsequent order passed by the Tribunal in O.A. No. 1594 of 2014 i.e. Annexure A-2; that too, without hearing the petitioners.

8. Evidently, as discussed hereinbefore, vide Annexure A-2 order dated 29.12.2014, the Tribunal set aside Annexure A-9 order dated 23.6.2014 passed by the Government, however, directing the "Director" to consider other objections, if at all to be preferred by the party respondents, restricting such scope of consideration on all points "except with regard to service seniority". This means, the Director is not in a position to make any modification based on the liberty granted in Annexure A-1 verdict and as such, there is no chance for the grievance of the petitioners to get redressed, if they have got a sustainable case in accordance with law. Going by the nature of the proceedings, this Court finds that there cannot be any challenge with regard to Annexure A-1 verdict, in so far as it only directs the matter to be considered by the Government leaving all the issues open. By virtue of the subsequent proceedings/Annexure A2, the rights and liberties stand curtailed much.

9. Admittedly, the petitioners have not brought the effect of the conflicting directions as contained in Annexures A1 and A2 to the notice of the Tribunal. The fact remains that the petitioners were never parties to the proceedings in the subsequent O.A. wherein Annexure A2 order was passed. The rights given as per Annexure A1 order enabling to challenge the proceedings, if adverse, on all grounds stand curtailed by virtue of Annexure A2 order. This is a matter which is to be considered and set right by the Tribunal at the first instance. The petitioners are set at liberty to file appropriate proceedings by way of petition for review before the Tribunal, so as to meet the situation, notwithstanding the bar of limitation, if any, with reference to Rule 21 of the Kerala Administrative

Tribunal (Practice & Procedure) Rules. In the above circumstances, the petitioners are permitted to file appropriate proceedings as above and they are given two weeks" time in this regard. If appropriate review petitions are filed before the Tribunal within "two weeks" from the date of receipt of a copy of this judgment, the matter is required to be considered and finalised on merits in accordance with law, after hearing all the interested parties. "Status quo" shall be maintained with regard to the direction given as per Annexures A1 and A2 till such time.

Both the Original Petitions are disposed of accordingly.