
(1989) 11 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 499 of 1982

Jacob Thomas

APPELLANT

Vs

Kerala Public Service Commission and Others

RESPONDENT

Date of Decision : 03-11-1989

Acts Referred:

Kerala Public Service Commission (Composition and Conditions of Service of Members and Staff) Regulations, 1957 — Regulation 12(3)
Kerala State and Subordinate Services Rules, 1958 — Rule 1, 27

Citation : (1989) 11 KL CK 0006

Hon'ble Judges : T.V. Ramakrishnan, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : K.A. Abdul Gafoor, for the Appellant; T.P. Kelu Nambiar, for 1st Respondent and S. Easwara Iyer and E. Subramoni for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Menon, J.—The first Petitioner in O.P. 872/79-D, is the Appellant.

2. The Appellant and respondent 5 and 6 (who were petitioners along with the Appellant) are employees of the Kerala Public Service Commission, for short, the Commission. By virtue of Regulation 12(3) of the Kerala Public Service Commission (Compositions and Conditions of Service of Members and Staff) Regulations, Kerala State and Subordinate Service Rules govern the service of employees of the Commission. It is not disputed that the third Respondent had been in the Government service as L.D. Clerk in the Excise Department since 4th September 1958 and the fourth Respondent also in the Government service as L.D. Clerk in the Revenue Department with effect from 24th July 1958. Both of them continued in that service till they were appointed as L.D. Clerks in the service of the Commission, the third Respondent with effect from 28th July 1964 and the fourth Respondent with effect from 22nd February 1965. The Appellant and Respondents 5 and 6 were appointed as Lower Division Clerks in the service

6f the Commission; the Appellant with effect from 28th August 1965, the fifth Respondent with effect from 29th August 1964 and the sixth Respondent with effect from 26th October 1966. The Appellant and Respondents 5 and 6 were subsequently promoted as Assistant Grade I on. 1st July 1968, 1st May 1968 and 26th October 1968 respectively while Respondents 3 and 4 had to wait for promotion till 21st June 1969 and 14th February 1969 respectively. The reason for supersession of Respondents 3 and 4 was stated to be that these Respondents at the relevant time had not acquired the test qualification. Later the Appellant as also Respondents 5 and 6 were promoted in preference to Respondents 3 and 4 as Senior Grade Assistants on 26th July 1971, 19th July 1971 and 1st September 1971 respectively. Respondents 3 and 4 were promoted to these posts later. Based on their seniority, the Appellant and Respondents 5 and 6 were having in the post of Assistant Grade I and Senior Grade Assistant, they were promoted as Section Officers in preference to Respondents 3 and 4. This was the state of affairs when Respondents 3 and 4 wanted the Commission to restore their seniority in terms of the proviso to Rule 27(a) and (b) of the Kerala State and Subordinate Service Rules.

3. The question thus arising for consideration is, can a person who was a member of a service under the Government prior to 17th December 1958, sever his connection with that service and gets appointed as a member of Anr. service governed by Kerala State and Subordinate Service Rules (but after 17th December 1958), avail of the restoration principle incorporated in the first proviso to Rule 27 of K.S. and S.S.R. as clarified by subsequent notifications? The answer depends upon the construction of the proviso mentioned above.

4. We shall now read the proviso:

Provided that nothing contained in Sub-rules (a) and (b) above shall be deemed to have superseded the orders of the Travancore-Cochin Government in R.Dis. No. 8207/50/CS, dated 7th May 1951 as subsequently clarified in respect of any person who was a member of any service on the date of coming into force of these rules.

5. The content of the proviso can briefly be stated thus: The benefit of the principle of restoration envisaged under the orders of the Travancore-Cochin Government in R. Dis. No. 8207/50/CS, dated 7th May 1951 can be claimed by a member of any service on the date of coming into force of the K.S. and S.S. Rules namely 17th December 1958, notwithstanding anything contained in Sub-Rules (a) and (b) of Rule 27. The restoration principle salvaged by the proviso accordingly helps the seniors, who are superseded or passed over for promotion for want of test qualification and who are entitled to the benefit of the same, to claim such benefit of restoration of seniority even against those appointed in Kerala after 17th December, 1958. See Sahadeva Kurup v. Board of Revenue ILR 1979 Ker 275. The Full bench, according to us, is of the view that the person who claims the benefit of the restoration principle must continue in the service of which he became a member prior to 17th December 1958. It should in this

connection be remembered that in view of Rule 1 of Part II of K.S. and S.S. Rules, Rule 27 shall apply to the holders of all posts appointed thereto, before or after 17th December 1958, the date on which K.S. and S.S. Rules came into force. The cumulative effect of the principle enunciated by the Full Bench in K.V. Sahadeva Kurup's case (1) construing the proviso, Rule 27 and Rule 1 of Part II is that the person who claims; the benefit of restoration principle envisaged in the 1951 Notification, must continue in the service to which he was appointed" prior to 17th December 1958. If that be the position, the benefit of the principle of restoration cannot be claimed by a person who severed his connection with the service of which he became a member prior to 17th December 1958 but joined Anr. service later. It is relevant to note in this context that the persons who claim the benefit here are all appointed afresh after 17th December 1958 to new services, where they claim seniority, on the advice of Public Service Commission.

6. The above position notwithstanding the learned Counsel for the Public Service Commission and the counsel for the parties, who go along with the Public Service Commission, contend that the benefit of the restoration principle can be pressed into service by such persons also in view of the phraseology used in the proviso namely "person who was a member of "any service" on the date of coming into force of K.S. and S.S. Rules that is, 17th December 1958". According to the counsel it is enough if the person concerned shows that he was a member of a service prior to 17th December 1958. The counsel therefore submit that the person who has severed his connection with the service of which he became a member prior to 17th December 1958, still is entitled to claim the said benefit as against persons who were appointed along with him to a different service (on their being appointed thereto along with him on the advice of the Public Service Commission) after 17th December 1958. The judgments in O.P. 150/1974 and O.P. 2961/1982 lend support to the above argument. With respect, we cannot agree with the views expressed in those judgments by learned Judges.

7. It has therefore become necessary to examine the legal parameter of the right claimed by them. We shall first consider the scope of Rule 27 without the proviso. Rule 27 (a) provides that 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. Scope of Clause (b) however need not be considered as the facts of the case do not warrant even a reference to the same. That K.S. and S.S. Rules governs the service of every person in a service whether he was appointed prior to 17th December 1958 or after the said date, is beyond dispute. The seniority of a person appointed to a service prior to 17th December 1958 also therefore requires to be determined in accordance with Rule 27. He is one who admittedly is entitled to the benefit of the 1951 notification namely R. Dis. No. 8207/50/CS, dated 7th May 1951 as subsequently clarified. In order to see that they continue to enjoy the said benefit even after 17th December 1958, the legislature in our view, enacted the proviso. This is further

clarified by the last proviso introduced by G.O. (P) 1257/75/PD, dated 1st November 1975 enabling such persons to restoration of seniority provided for by the 1951 Notification over even those who have been appointed after 17th December 1958.

8. It can therefore be inferred without the fear of contradiction that, but for the proviso the enacting part of Rule 27 would have included the subject-matter of the proviso. Such a proviso cannot be construed as enlarging the scope of the enactment when it can be fairly and properly construed without attributing to it that effect. The well established canon of interpretation" that, the natural presumption is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso, should be borne in mind in this context. (See Craies on Statute Law, 17th edn., page., 218). This being so, the proviso cannot be said to be repugnant to Rule 27 so as to say the same governs a subject-matter different from the one covered by the enacting part of the Rule and as such an independent Rule as contended for by the counsel. A reference in this context to the definition of the word "service" is also relevant. "Service" means a group of persons classified by the State Government as a state or subordinate service as the case may be. However where the context so requires, "service" means the period during which a person holds a post or a lien on a post or is a member of a service as above defined. This is the note attached to the definition of the word "service". This definition read with "the note" makes it still clear that only during the period when he holds the post or the lien on the post to which he was appointed prior to 17th December 1958 the person mentioned in, the Notification can claim the benefit of the restoration of seniority. Any other interpretation, in our view, would defeat the object with which the proviso was enacted. To put it differently any other interpretation would result in perpetrating "incompetence and idleness at the expense of ability and diligence". Going by this principle also the above argument is liable to be rejected. We accordingly reject the same.

The judgment under attack therefore is set aside. The appeal is allowed.