

(2006) 10 KL CK 0098

In the High Court Of Kerala

Case No : C.M. Application No. 1035 of 2006 and W.A. No. 1778 of 2006

K. Harindran

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 2(12)

Citation : (2006) 10 KL CK 0098

Hon'ble Judges : K.P. Balachandran, J; K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, for the Appellant; P.C. Sasidharan, S.C. for P.S.C. and Sandesh Raj, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.

C.M. Appln. No. 1035 of 2006

1. This appeal is filed by the Petitioner with a delay of 5 days. Taking into account the averments contained in the affidavit filed in support of this petition, we are satisfied that the delay shall be condoned. We do so.

W.A. No. 1778 of 2006

2. On condonation of the delay, we heard the Appellant on the merit of the matter.

3. Reversion to accommodate a candidate advised by the Public Service Commission for appointment as L.D. Typist (Kannada), was impugned by the Appellant/writ Petitioner unsuccessfully. Therefore, his appeal.

4. The Appellant entered the service in the year 2001. At that time, there was a vacancy of L.D. Typist (Kannada). The method of appointment to the said post provided that the vacancy shall be filled up by appointing a fully qualified hand in

service, and in its absence, direct recruitment was permissible. As none was available in service, it was reported to the Public Service Commission in 1999. It was, while the recruitment process was midway, that the Appellant was appointed as peon. As he was qualified for being appointed as L.D. Typist (Kannada) he was so promoted. But the Public Service Commission, on finalisation of the rank list based on the vacancy so reported advised the 5th Respondent. In order to accommodate the 5th Respondent, the Appellant was proposed to be reverted.

5. It is contended that this reversion was unjustified, because as on the date of his appointment, there was no qualified hand in service available. On the date of direct recruitment of the 5th Respondent, the Appellant was available in the service with the required qualification and therefore, he was not liable to be reverted.

6. When a vacancy is already reported to the Public Service Commission, that cannot, in any manner, be filled up, except as provided in circular No. 4441/Adv-C3/97/P& ARD, dated 21-3-1997 which provides as follows:

(ii) The Appointing Authorities should exercise extreme diligence and accuracy in reporting vacancies to the Public Service Commission. When once the vacancies are reported to the Commission they should neither be cancelled or reduced. They should also note that the date of occurrence of the vacancy should be treated as the crucial date for deciding the method of appointment. The practice, if any, of filling the vacancies by promotion/transfer after reporting the vacancies to the Commission should be discontinued.

7. In the light of this instruction, filling up of the post of L.D. Typist by promoting the Appellant/writ Petitioner was not justified. Such filling up can, at the best, be temporary.

8. Moreover going by the definition of the word "recruited direct", in Rule 2(12) of Part I of the Kerala State and Substantiate Services Rules, 1958, a person is said to be a "recruited direct", if the appointment has to be done in consultation with the Commission, on the date of notification issued by the Commission. Going by this rule, "direct recruitment" shall relate back to the date of notification. On this ground also, the Appellant cannot assail the threatened revision, as the 5th Respondent on appointment will be as "recruited direct on the date of notification" which is far earlier than his promotion.

So, we find no reason for interference. However, if there are any vacancies of Typist or Confidential Assistant, as the learned Single Judge has given freedom for appropriate authority to consider, that direction shall remain. In all other respects, the writ appeal shall stand dismissed.