
(2011) 03 KL CK 0140
In the High Court Of Kerala
Case No : W.A. No. 1856 of 2010

K. Lakshmi

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2011) 03 KL CK 0140

Hon'ble Judges : Jasti Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : Biju Abraham, for the Appellant; K.R.B. Kaimal, for the Respondent

Final Decision : Dismissed

Judgement

1. Chelameswar, C.J.—The Writ Appeal is filed aggrieved by the judgment in W.P. (C) No. 20683 of 2009, by the unsuccessful Petitioner.

2. The prayers in the writ petition is as follows:

- i) Declare that the Petitioner is entitled for appointment to the post of District Judges ear marked for open competition candidates from the Bar.
- ii) To issue such other writ, order or direction as this Hon''ble Court may deem fit and proper in the circumstances of this case.

3. The various grounds on which the writ petition is filed are as follows:

A. It is submitted that the Petitioner is included in the ranked list with rank No. 4 for the post of District Judges from open competition based on her merit and ability. Hence she got an enforceable right for being appointed to the post of District Judge in accordance with law and denial of the same to the Petitioner is violate of Article 14, 16 and 21 of the Constitution of India.

B. It is submitted that there is no specific prescription either in the notification or in the rules regarding the validity period of the ranked list and that there was no

condition attached to the notification that only notified vacancies will be filled up from the present list. Assuming but not admitting that there is such a stipulation the above conditions in the notification has lost its relevance or it is unenforceable in view of the directives issued by the Hon''ble Supreme Court in Civil Appeal No. 1867/2006. It is submitted that the direction issued by the Hon''ble Supreme Court is binding on all authorities and persons and it has got a force of law, which is the constitutional mandate.

C. It is submitted that the ranked list for the post of District Judges is one prepared after elaborate process of selection and it is one to be honoured to fill up the existing vacancies. It is submitted that in terms of the rules as well when a ratio is prescribed for the post that should be strictly adhered to. It is submitted that it is not the case of anybody that the vacancies of District Judges are kept unfilled. Any discriminatory treatment with regard to the selection to the post of District Judges by direct recruitment by ignoring the ratio prescribed is highly unjust, illegal and unreasonable.

D. It is submitted that the right to get public employment in accordance with law is a constitutionally guaranteed right and such a right can be taken away only in accordance with law. It is submitted that the action of the Respondent always demands fairness and reasonableness and they are duty bound to fill up the post of District Judges from the list prepared for the direct recruitees taking into account the cadre strength.

E. It is submitted that the right of a person to get appointment is an accrued right and since the Petitioner is a candidate included in the ranked list with Rank No. 4 she got a right and has a right to get it enforced by invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India.

F. It is submitted that in terms of the judgment of the Hon''ble Supreme Court, the Respondents ought to have notified the vacancies based on the principle laid down therein that when vacancies are notifying apart from the existing vacancy at least 10% of anticipated vacancy should also be taken into account. In that event the Respondents ought to have notified at least 8 vacancies rather than limiting the same to 6. It is submitted that this aspect of the matter is not seen considered by the Respondent while notifying the post.

G. It is submitted that the action of notifying 6 vacancies is against the statutory provisions and the decision taken to report only 6 vacancies cannot stand in the test of law in view of the law laid down by the Honourable Supreme Court in Malik Manzoor Sultan''s case. The inaction on the part of the Respondents in not applying the ratio then existed is highly unjust and illegal.

For these and other grounds that may be urgent at the time of hearing it is most respectfully prayed that this Hon''ble Court may be pleased to call for the entire records and further be pleased to

4. The selection which is sought to be attacked by way of Writ Petition in

question in the instant appeal, is with regard to the selection process to fill up 6 posts of District Judges in the Kerala State Higher Judicial Service, governed by the provisions of the Kerala State Higher Judicial Service Rules, 1961, initiated by Notification dated 16.04.2007. Thereafter much water passed under the bridge. The said selection process was the subject matter of repeated rounds of litigations before this Court as well as before the Supreme Court. The entire history of the litigation is detailed in the judgment reported in 2010 (4) KHC 1 (Jayachandran C. v. High Court of Kerala). Pursuant to the said judgment, the selection process was finalised and the successful candidates were appointed.

5. The instant writ petition is dismissed by the judgment under appeal holding that in view of the judgment referred to above, nothing survives for adjudication in the instant writ petition. Hence the appeal.

6. The learned Counsel for the Appellant argued that the entire selection process is vitiated, firstly for the reason that the selection should be based only on merit without applying any rules of reservation and secondly, the number of posts to which the appointments had to be made by Direct Selection was at least 18 and cannot be limited to "6" as was done by the above mentioned notification.

7. We must make it clear that these submissions are not based on any of the pleadings in the writ petition. (We have already extracted the grounds in the earlier part of this judgment). Secondly, assuming for the sake of argument that such a challenge is to be entertained, it is to be noted that the writ petition, from which the instant appeal arises was filed in the year 2009, i.e, after a lapse of two years from the date of the notification. The above mentioned grounds were available to the Appellant from the day on which the notification was issued. In any view of the matter, in our opinion, the Writ Petition does not deserve any consideration. The learned Judge has rightly dismissed the Writ Petition. We do not see any ground to take a different view on the merits of the case. The writ appeal is dismissed.