

(1991) 10 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 2444/87

K. Ramakrishnan

APPELLANT

Vs

The State of Kerala and Another

RESPONDENT

Date of Decision : 23-10-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1992) KLJ 202

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : S. Easwara Iyer, for the Appellant; V.A. Mohammed, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Petitioner is a native of Palghat. He is a Non-Tamilian, his mother-tongue being Malayalam. He is holding the post of Assistant Taluk Supply Officer. He passed the Minority Language Test in Tamil, conducted by the Public Service Commission on 22nd October 1969. The result of that test was published in the Gazette dated 27th January 1970. He put in representation dated 3rd December 1983 for getting benefits on account of his pass in the Minority Language Test, for promotion to the gazetted cadre in a notified linguistic minority area, namely Chittur Taluk and Municipal areas of Palghat Taluk. That representation was rejected by the Director of Civil Supplies. He then went in appeal before the Government. Government declined his request by Exhibit P-12 order dated 13th June 1984, observing:

In case there are persons in the category of Taluk Supply Officer, who possess working knowledge in Minority Language, such persons have to be posted in the locality instead of resorting to temporary promotion.

Petitioner challenged that order before this Court in O.P. 6659/1986. This Court directed the State Government to take up his representation and dispose of the

same in accordance with law. In compliance with that direction, Government issued Exhibit P-14 order dated 12th December 1986. By that, he was informed that persons possessing the language test prescribed in G.O. (Ms.) No. 290/68/PD, dated 12th September 1968 shall be considered for promotion under Rule 9(d) to the executive post in areas where the predominant language is Tamil or Kannada. Government stated that it does not mean that promotion under Rule 9(d) of the General Rules has to be effected from among non-minority language officers, who possess minority language test alone in preference to their seniors, who possess a working knowledge in the concerned minority language, without passing the test. This order is under challenge.

2. On behalf of the State, a detailed counter affidavit has been sworn to by a Senior Grade Assistant in the Sea Food and Civil Supplies Department, Secretariat. It is conceded therein that Petitioner passed the Minority Language Test (Tamil) in the examination conducted by the Public Service Commission on 22nd October 1969. It is averred therein that the executive officers now working in the particular areas are having knowledge of Regional language. The post of Taluk Supply Officer is a selection post. There are Special Rules for regulating appointments to the category of Taluk Supply Officer. No test in the minority language has been prescribed in the Special Rules. Petitioner is far junior in the lower category and therefore he cannot claim promotion to the category of Taluk Supply Officer. Since test in minority language is not at all a qualification prescribed in the Special Rules, Petitioner cannot have a claim for promotion to the cadre of Taluk Supply Officer, overlooking the legitimate rights of many of his seniors. Officers now working in linguistic minority areas are having working knowledge of minority language of Tamil Pass in Minority Language Test is not a must for promotion for a junior. There are number of officers in the grade of Assistant Taluk Supply Officer senior to the Petitioner who have acquired test qualification in Tamil conducted by the Public Service Commission. Those people are also waiting for promotion, to the grade of Taluk Supply Officer. There is no obligation on the part of the Government to give promotion to the Petitioner on the ground that he has Minority Language Test, which qualification was discontinued 15 years back. On these basis, it is contended that Petitioner is not entitled to any of the reliefs asked for.

3. In the counter affidavit, it was stated:

...there is no obligation on the part of the Government to give promotion to the Petitioner on the ground that he has minority language test which qualification was discontinued way back 15 years.

This Court directed the State to file a detailed affidavit, explaining the circumstances in which the above averment was made. Thereupon, the same officer who had sworn the first counter affidavit, filed an additional counter affidavit dated 28th September 1991. For a proper understanding of the contentions therein, I will read paragraph 3.--

The qualification of minority language test was made compulsory for the lower executive post of all Departments, as per G.O. (Ms.) 344/63/Public (N1) dated 27th July 1963. Before that the language test qualification was restricted to all Revenue Officers of and above Tahsildars, all Police Officers of and above Circle Inspectors etc. In G.O. (Ms.) 94/72/PD, dated 3rd March 1972, the Government directed that the minority language test introduced in G.O. (Ms.) 290/PD, dated 12th September 1968 need not be held in future. When the statement of facts in the O.P. was furnished during 1987, 15 years had elapsed since the test qualification was ordered to be discontinued by Government. The notifications produced by the Petitioner before this Hon. Court are copies of time tables of departmental test conducted by Public Service Commission.

4. From the above averments, it is seen that Government by G.O. (Ms.) 344/63/Public (N1) dated 27th July 1963 made the qualification of Minority Language Test compulsory for lower executive post of all departments. Thereafter, by G.O. (Ms.) 290/PD, dated 12th September 1968. Government made a simple test in translation consisting of one paper of two hours duration conducted by the Public Service Commission, obligatory to officers other than Kannadigas or Tamilians. That simple test in translation was abolished by G.O. (Ms.) 375/69/PD, dated 19th December 1969. The consequence thereof is, the Minority Language Test, which was made compulsory for the lower executive post of all departments, by G.O. (Ms.) 344/63/Public (N1) dated 27th July 1963 continued without any change. Exhibits P-15 to P-19 notifications issued by the Public Service Commission establish beyond any shadow of doubt that the Minority Language Test in Tamil and Kannada are being held by the Public Service Commission without any break.

5. The stand taken by the Government in the impugned order, Exhibit P-14 dated 12th December 1986, is that persons possessing requisite language test prescribed in by G.O. (Ms.) 290/68/PD dated 12th September 1968 shall be considered for promotion under Rule 9(d) to the executive post in the areas where predominant language is Tamil or Kannada. In other words, in spite of Exhibit P-7 order dated 19th December 1969, Government insisted on a pass in the simple test in translation, which was made obligatory by Exhibit P-6 order. This is given a go-by in the counter affidavit. Government should not have taken such a contradictory stand.

6. As stated earlier, Public Service Commission is conducting Minority Language Test in Tamil and Kannada without any interruption. That test was one introduced by the Government by G.O. (Ms.) 344/63/Public (N1) dated 27th July 1963. A pass in that test is compulsory for the lower executive post in all departments. Petitioner has, admittedly, passed the test. As per Rule 9(d) of the General Rules, notwithstanding anything contained in the General Rules or in the Special Rules, when a vacancy arises in a post, for the appointment of which knowledge of a particular regional language is necessary and the person who is entitled to appointment to the post, if does not possess such knowledge, any other junior

person who possesses such qualification is to be appointed to that post. This provision was, according to the Petitioner, violated by the Government in effecting appointments to the post of Taluk Supply Officer in Chittur Taluk and the Municipal towns of Palghat Taluk. Since Rule 9(d) begins with the non-obstante clause, that provision must prevail over the Special Rules governing the service. So, if no senior to the Petitioner in service has Successfully taken the Minority Language Test in Tamil, Petitioner should be preferred to the senior.

7. The stand taken by the Government is that one need not pass the Minority Language Test for getting promotion in accordance with the Rule 9(d) of the General Rules, if he is having working knowledge in that language. How exactly the possession of working knowledge can be ascertained is not laid down in any order or circular issued by the Government. The orders now placed before Court go to show that the qualification can be assessed only on the basis of the pass in Minority Language Test conducted by the Public Service Commission. If it is otherwise, and is left to the sweet whims and fancies of the appointing authority to see whether a particular officer has working knowledge or not, it will lead to arbitrariness. It is settled proposition that arbitrariness is anti-thesis to reasonableness and fair-play. It is against the provisions contained in Article 14 of the Constitution. If the Government takes the view that working knowledge in the language is sufficient to enable one to claim promotion to the higher cadre, it will lead to arbitrariness and hence it will be violative of the provisions contained in Article 14 of the Constitution. So, Government are not to decide the working knowledge of an officer in the language except by a pass in the Minority Language Test conducted by the Public Service Commission.

8. Nowhere in the counter affidavit has it been stated that seniors to the Petitioner, who were given promotion to the cadre of Taluk Supply Officer, had acquired the Minority Language Test conducted by the Public Service Commission. The fact that there were seniors to the Petitioner and. they were qualified for promotion to the cadre of Taluk Supply Officer in terms of the Special Rules, will not in any way entitle them to get promotion unless they pass the Minority Language Test in view of Rule 9(d) of the General Rules. In this view, the only course that is now open to this Court is to direct the. first Respondent to review the promotions given to the cadre of Taluk Supply Officer from 3rd December 1983 and to consider the Petitioner's claim for promotion on the basis of his pass in the Minority Language Test conducted by the Public Service Commission. This must be done as expeditiously as possible at any rate, within three months from the date of receipt of a copy of this judgment.

Original Petition is allowed in the above terms. Parties will suffer their costs.