
(1992) 02 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No's. 5409/90 R, 5701/90 D, 6570/90 F, 5563/91, 6381/91, etc.
and 250/92, 2005/92 and 2334/92 C

Kamalamma

APPELLANT

Vs

The Director of Panchayats and Others

RESPONDENT

Date of Decision : 21-02-1992

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 13A

Citation : (1992) 02 KL CK 0007

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : U.K. Ramakrishnan, P.K. Nair, T.K. Chandrasekhar Das, M.V. Bose, P.V. Narayanan Nambiar, K. Ramakumar, N.J. Johnson and Babu Thomas, for the Appellant; N. Sankara Menon, Government Pleader and B.G. Bhasker, B.G. Harindranath, C. Raghavan and Abraham Vakanal for Respondents 2 and 11, for the Respondent

Judgement

K. Sreedharan , J.—Same issues arise for consideration in these original Petitions. So, I am disposing of them by this common judgment.

2. General principles governing the issue alone are stated hereunder. Individual claims raised by the Petitioners will have to be examined by the concerned District Panchayat Officers and appropriate orders passed accordingly.

3. By G.O. (Ms.) 59/87/LAD, dated 28th February 1987, Government issued Kerala Panchayats (Common Service) Amendment Rules. These Rules prescribe the qualifications and method of appointment of Panchayat Assistant Grade I and Panchayat Assistant Grade II/Bill Collector. Since the controversy is in relation to the interpretation of the qualification and method of appointment to these categories of posts, I read the relevant portion of the Rules.

(1) (2) (3)

2. Panchayat Assistant Grade I By promotion from among Panchayat Assistant

Grade-II/Bill Collector 1. S.S.L.C 2. Panchayat Executive Officers Training or Panchayat Test 3. Pass in Account Test (Lower) 4. Manual of Office Procedure

Note.-The Non S.S.L.C. Panchayat Assistant Grade II/Bill Collector will also be eligible for promotion to the Post of Panchayat Assistant Grade I provided they possess the following test qualifications, namely (1) Panchayat Executive Officers Training or Panchayat Test (2) Pass in Account Test (Lower) and (3) Manual of Office Procedure. They shall not be eligible for further promotion to the post of Head Clerk and Manager.

* * *

Note.-1. The Non S.S.L.C. Junior Bill Collectors who have 10 years service as Panchayat Employees are eligible for promotion as Panchayat Assistant Grade II/Bill Collector, provided they pass the Special Test conducted by the Public Service Commission. The nature, scope and area/field of the test shall be fixed in consultation with the Director of Panchayats. But they will have no claim for further promotion.

2. The Junior Bill Collectors/Peons who have not passed S.S.L.C. but have achieved 100 percent collection for 5 years continuously shall be eligible for promotion as Panchayat Assistants Grade II/Bill Collector. Such Panchayat Assistants Grade II/Bill Collectors have to pass the Special Test to be conducted by the Public Service Commission for getting annual increment in the scale of pay of the Panchayat Assistant Grade II/Bill Collector. The nature, scope and area/field of the test shall be fixed in consultation with the Director of Panchayats. They will not be eligible for further promotion.

4. The above Rule came up for consideration in O.P. 2452/1991. In that case, with reference to Notes 1 and 2 to Category-3, Panchayat Assistant Grade II/Bill Collector I took the view:

A Non S.S.L.C. Junior Bill Collector who has 10 years of service as Panchayat employee can be promoted to Panchayat Assistant Grade II, provided he passes a Special Test conducted by the Public Service Commission. This Special Test is to be treated as an equivalent to S.S.L.C. for the purpose of promotion to the cadre of Panchayat Assistant Grade II. I hasten to add that the pass in that test cannot be treated for any other purpose, as equivalent to S.S.L.C. qualification. A Junior Bill Collector who gets promotion to the cadre of Panchayat Assistant Grade II, on passing the Special Test will not have any right for further promotion. So also, Junior Bill Collectors and Peons who have not passed S.S.L.C, but have achieved 100 per cent collection for five years continuously are also eligible for promotion as Panchayat Assistant Grade II on passing the Special Test conducted by the Public Service Commission, "they are also not eligible for further promotion. So, a Non S.S.L.C. Junior Bill Collector/Peon coming under the notes mentioned above can claim promotion to the cadre of Panchayat Assistant Grade II, which is now redesignated as Lower Division Clerk, on passing the Special Test conducted by the Public Service Commission. He cannot aspire for

promotion to the Higher Cadre.

5. On the date of the passing of Special Rules, there existed Non S.S.L.C. Panchayat Assistants Grade II/Bill Collectors. In respect of these officers, specific provision is made in the Note to a second category, Panchayat Assistant Grade I. As per that Note, a Non S.S.L.C. Panchayat Assistant Grade II/Bill Collector will be eligible for promotion to the post of Panchayat Assistant Grade I, provided he possess the three test qualifications, namely:

(1) Panchayat Executive Officers Training or Panchayat Test;

(2) Pass in Account Test (Lower); and

(3) Manual of Office Procedure.

It is also provided therein that they shall not be eligible for further promotion to the post of Head Clerk and Manager.

6. On the date of the Special Rules, Non S.S.L.C. candidates must have held the posts of Panchayat Assistant Grade II/Bill Collector and Junior Bill Collectors/Peons. Junior Bill Collectors, who have put in 10 years of services, are eligible for promotion as Panchayat Assistant Grade II, Bill Collector, provided they pass the Special Test conducted by the Public Service Commission. Such persons cannot have any claim for further promotion, unless they; pass the three tests, namely Panchayat Executive Officers Training or Panchayat Test, pass in Account Test (Lower) and Manual of Office Procedure. So also, Junior Bill Collectors/Peons, who are not having the S.S.L.C. qualification but have achieved 100 per cent collection for five years continuously, shall be eligible for promotion as Panchayat Assistant Grade II/Bill Collector. But, they will have to pass the Special Test to be conducted by the Public Service Commission for getting annual increments in the scale of pay of the Panchayat Assistants Grade II/Bill "Collector. They are also not eligible for further promotion. Non S.S.L.C. Panchayat Assistants Grade II/Bill Collectors are entitled to promotion to the post of Panchayat Assistant Grade I, provided they pass the three tests mentioned earlier. By G.O. (Ms.) 198/87/ LAD, dated 14th August 1987, Panchayat Assistants Grade II/Bill Collectors were redesignated as Lower Division Clerks and Panchayat Assistants Grade I and Head Clerks Grade II as Upper Division Clerks.

7. Special Rules, introducing the departmental tests, came into force with effect from 28th February 1987. Members of the staff in the department were given time under Rule 13A of the Kerala State and Subordinate Services Rules for acquiring the test qualification. During that period, large number of persons, who had not acquired the test qualification; got promotion to the cadre of Upper Division Clerk. They included persons with S.S.L.C. qualification and non S.S.L.C. candidates. On the expiry of the period of exemption, persons who failed to acquire the qualification had to face reversion for promoting qualified hands. This has given rise to large number of controversies. After the expiry of the period of exemption, no one is entitled to continue in the post of Upper Division Clerk

without the test qualification prescribed by the Special Rules. Non S.S.L.C. Lower Division Clerks and Lower Division Clerks with S.S.L.C. qualification, who got promotion to the cadre of Upper Division Clerk, should face reversion if they have not passed the three tests mentioned in the Special Rules. Those posts will have to be filled up by Lower Division Clerks who have passed the tests: While carrying out that exercise, members belonging to Scheduled Castes and Scheduled Tribes and persons who have completed the age of 50 years, who are entitled to exemption from passing the tests, must be retained in the higher cadre of Upper Division Clerk. In other words, Upper Division Clerks in the department, who are not having the test qualification and who are not exempted from passing the test qualifications, are to face reversion depending on their juniority in the cadre, i.e, the junior-most must face reversion first and the senior-most to be reverted last.

8. In the counter-affidavit filed on behalf of the first Respondent, it is stated that members of the staff in the Panchayat service, who are not having the S.S.L.C. qualification, have passed a Special Test conducted by the Directory Panchayats. The pass in that test, according to the first respondent, makes them eligible for promotion to the cadre of Upper Division Clerk. This argument is not to be taken as the correct position. On the date of the coming into force of the Special Rules; those who were holding the post of Panchayat Assistant Grade II/Bill Collector could get promotion to the higher cadre on passing the three departmental tests irrespective of the fact whether they have passed S.S.L.C. or not. This is so because of the Note to Category-2, Panchayat Assistant Grade I. In the case of Junior Bill Collectors/Peons, the pass in the test conducted by the Director of Panchayats will not confer on them any right to claim the post of Lower Division Clerk as per the Note attached to Category-3, Panchayat Assistant Grade II/Bill Collector. They should pass the Special Test conducted by the Public Service Commission. The Special Test conducted by the Director of Panchayats made mention of in the counter- affidavit cannot be treated as a substitute for the Special Test conducted by the Public Service Commission, mentioned in the Note to Category-3.

9. In the light of the above statement of law; the District Panchayat Officers have to review the promotions given to the Upper Division Clerks cadre as on the date of the expiry of the period of exemption. Reversions and promotions are to be effected with reference to the qualifications as on the date of occurrence of the vacancy. This exercise must be carried out by all the District Panchayat Officers as expeditiously as possible, at any rate, within four months, from the date of receipt of a copy of this judgment. I make it clear that before passing final order, persons who may be adversely affected by the order, should be afforded a reasonable opportunity of being heard in the matter.

Original petitions are disposed of with the above directions.

Issue photo copy of the judgment to the parties on usual terms. A copy of this judgment will be given to the learned Government pleader free of costs for

onward transmission to the District Panchayat Officers for complying with the direction.