
(1977) 08 KL CK 0028
In the High Court Of Kerala
Case No : W.A. No. 101 of 1977

Kerala Public Service Commission

APPELLANT

Vs

Dr. Kesavankutty Nair and Another

RESPONDENT

Date of Decision : 01-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1977) 08 KL CK 0028

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;K.K. Narendran, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiyar, for the Appellant; Panicker and Poti, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—We cannot agree with the learned Judge in his reasoning or conclusion in having allowed O. P. No. 1423 of 1975 against which this writ appeal has been preferred by the Kerala Public Service Commission. The writ Petition contained somewhat unusual prayers. The Commission had prepared a rank list on 27th February 1973. According to the practice then in force and still being followed by the Public Service Commission, the rank list was to remain in force for a period of one year (we are informed that the present currency of the list is for a period of two years). In accordance with the practice then prevailing, the list was cancelled on 26th February 1974. The writ Petitioner who was aggrieved by the said cancellation filed the writ Petition with the following prayers:

(i) that this Honourable Court be pleased to call for the record and declare illegal the cancellation of the rank list of candidate advised for appointment as tutors, prepared on 7th February 1973.

(ii) to issue a writ of mandamus or any other writ direction or order directing the second Respondent to revive the said rank list treating the same as alive and

advise the Petitioner's name to be appointed as tutor in psychiatry.

(iii) To issue a writ of mandamus or any other writ direction or order directing the second Respondent to forbear from notifying for, fresh selection of candidates to be advised for the vacancies of tutors in psychiatry till the disposal of the Original Petition.

(iv) To issue any other writ direction or order that this Honourable Court deems fit to grant in the circumstances of this Petition.

The short ground on which the learned Judge allowed the writ Petition was that the Petitioner's turn for appointment from the select list prepared on 27th February 1973 did not reach and did not materialise in view of certain stay orders issued by this Court and that it was a fundamental and well-recognised principle that the act of court should not prejudice any person. For this, the learned Judge relied on the decision of the Supreme Court in *Jang Singh Vs. Brijlal and Others*, , and, in particular, the following statement of the principle made by the said Court.

There is no higher principle for the guidance of the court than the one that no act of courts should harm a litigant and it is the bounden duty of courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "*Actus Curiae neminem gravabit*".

A perusal of the decision leaves us in no doubt that the principle thus enunciated by the Supreme Court cannot have any application to the facts and circumstances disclosed in the present case. It is a salutary principle recognised by Rule 3(b) of the Kerala State and Subordinate Service Rules that inclusion in a select list confers no title to appointment. The said rule reads:

3(4) The inclusion of a candidate's name in any list of approved candidates for any service (State or Subordinate) or any class or category in a service, shall not confer on him any claim to appointment to the service, class or category.

A Division Bench of this Court to which one of us (Narendran, J.) was a party, ruled that the Petitioner cannot contend merely on, the strength of the inclusion of her name in the select list published by the Public Service Commission that she had acquired a legally enforceable right to be appointed to the post of Senior Language Teacher. (*Vide Retnamma v. Kerala-Public Service Commission - 1977 KLT 290*). That being the principle recognised by the statutory rule and by the judicial decisions, the Petitioner's prayers themselves appear to us misconceived. We are by no means persuaded that any injustice had been worked on the Petitioner by the stay orders issued by this Court in the proceedings referred to by the learned Judge. O.P. No. 4245 of 1972, which is one of such proceedings, was filed by three persons whose applications to the Public Service Commission had been rejected as defective and who were therefore not included in the select list. They prayed that they should be so

included. The writ Petition was dismissed. There was writ appeal No. 150 of 1973 against the judgment; and pending the writ appeal, a stay was issued by this Court against the Commission making appointments from the rank list with which this case is concerned. The writ" appeal was also eventually dismissed. The case pleaded before the learned Judge and found by him seems to have been that but for the stay order issued by this Court which had stayed the hands of the Public Service Commission the rank list prepared on 27th February 1973 could well have been resorted to and the Petitioner's turn for appointment could well have been reached. We consider these circumstances as wholly inadequate to attract the maxim of. "Actus curiae" expounded by the Supreme Court, as noticed supra. Indeed, in the face of the statutory rule and the judicial exposition, we are unable to find any ground on which the Petitioner can" build up a case of prejudice or hardship. And we are not prepared to find these by hypothesising on possibilities or "might have beens" but for judicial intervention. We are of the opinion that interference under Article 226 and the grant of the reliefs prayed for by the writ Petitioner in the writ Petition were unjustified and cannot be sustained.

We allow this appeal, set aside the judgment; of the learned Judge and direct that O.P. No. 1423 of 1975 will stand dismissed There will be no order as to costs.