
(2013) 09 KL CK 0034

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29429 of 2011 and Order in R.P. No. 175 of 2013

Kerala State Women's Development Corporation Ltd. and
Another

APPELLANT

Vs

Beena, P.M. and Others.

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 729

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Kurian George Kannanthanam and Sri Harish Gopinath, for the Appellant; V. Rajendran for Respondent 1 and Smt. Girija Gopal, Special Government Pleader for Respondent 2, for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—Two petitioners, one Smt P.M. Beena and another person named Sri Ranjith, P. approached the learned Single Judge in two Writ Petitions seeking a direction for issuance of appointment orders from Exhibit P-3 rank list, as the selection process was completed and there were no other hurdles legally coming in the way of such appointments. It is not in dispute that the statements filed by the State as well as the first respondent-Corporation before the learned Single Judge brought on record several facts. However, the learned Single Judge, based on the facts placed on record with regard to publication of notification as per Exhibit P-1 and the completion of selection process by preparing the rank list, directed the respondent authorities to make appointments from the rank list to all vacancies which were available to the post of attenders as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of the judgment. Immediately after disposal of the Writ Petitions, one of the candidates was fortunate enough, i.e., Sri Ranjith, P. and he is appointed as an attender. The appellants have approached this Court contending that no vacancy is available, though they had notified two vacancies of attender post. Prior to publication of the rank list, one of such vacancies came to be filled up by a candidate whose service was regularised after

commencement of selection process, but before completion of the preparation of rank list. Regularisation of service of fourth respondent in W.P. (C) No. 10236 of 2013 is coming in the way of filling up the post; though notified. The writ petitioner Smt. P.M. Beena is not appointed on the ground that one Sri K.T. Krishnan is already regularised as per the order of the Government.

2. After filing of these two appeals, Smt. P.M. Beena approached this court in W.P. (C) No. 10236 of 2013 seeking the following reliefs, which include quashing of appointment of the fourth respondent as attender and to direct the respondent authorities to appoint the petitioner as attender:

(a) call for the records leading to Ext. P-7 and quash the same by the issue of a writ in the nature of certiorari or other appropriate writ, order or direction;

(b) direct the 1st and 2nd respondents by the issue of a writ in the nature of mandamus or other writ, order or direction to appoint the petitioner as Attender in the service of the 1st respondent.

(c) issue such other writ, order or direction as this Hon'ble Court deem fit in the facts and circumstances of the case; and award the costs of these proceedings.

3. During the course of arguments and on verification of records, it is revealed that the appellant Corporation had many employees working on contract basis including attenders. So far as the fourth respondent in W.P. (C) No. 10236 of 2013, he was appointed as Lower Division Clerk on 7-8-2000 on contract basis which came to be extended with artificial break-in service annually. After declaration of law by the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, regarding regularisation of service of persons who came through back door, certain guidelines were issued by the Apex Court having regard to long tenure of such persons on contract basis. As per the law laid down by the Apex Court in Uma Devi's case (supra), within six months, the persons, who have put in ten years service should be regularised, provided they complied with certain conditions like qualification etc. The case of the fourth respondent has to be analysed on the basis of the law declared by the Apex Court in Uma Devi's case (supra).

4. As per the notification at Exhibit P-1, two posts of attender were notified and the excuse, appellant now puts forth is regularisation of the fourth respondent to one of the posts of attender as he was not qualified to continue as Lower Division Clerk with the educational qualification of X standard. Apparently, Smt. P.M. Beena, who is also one of the respondents in W.A. No. 588 of 2013, did apply to the post of attender in response to the notification at Exhibit P-1, went through the selection process and secured second rank as per the rank list. Just prior to notification at Exhibit P-1, no doubt, the appellant Corporation has sought for regularisation of service of fourth respondent Sri K.T. Krishnan as attender, as he could not be continued as Lower Division Clerk for want of educational qualification. The same came to be approved subsequent to the commencement of process of selection to the post of attender. Therefore, by the time rank list

came to be prepared, only one vacancy was available for the post of attender and not two vacancies as notified at, Exhibit P-1. Now the question is whether regularisation of Sri K.T. Krishnan in the post of attender can come in the way of appointment of meritorious candidate who has gone through the process of selection as notified under Exhibit P-1.

5. We note from the records, on 15-7-2006 the Secretary to Government had addressed a letter to the Managing Director as under:

I am to request you to take immediate steps for filling up vacancies against sanctioned posts in Kerala State Women's Development Corporation Ltd., as per Rules. All persons appointed unauthorizedly to Kerala State Women's Development Corporation and working on Contract/Daily Wages basis since 1-5-2001 to till date may be terminated with immediate effect. Report compliance immediately.

By virtue of this letter, all employees on contract basis as on that date were required to be terminated by the Managing Director of the appellant-Corporation. Despite this, they continued the services of contract employees including Sri K.T. Krishnan and there were attempts to regularise the services of some of the employees. We are not concerned with those regularisations which are not the subject-matter of this case. On 15-12-2009, five employees were regularised whose regularisation is not a challenge before us. We are mentioning this date in order to emphasise the fact that as on 15-12-2009 Sri K.T. Krishnan was not regularised for want of ten years of service on contract basis presumably in the light of the directions of the Apex Court in Uma Devi's case (supra). As he could not get regularisation of his service in 2009, whether the Corporation could wait till he completes ten years and then seek for regularisation. This is not the law declared by the Apex Court in Uma Devi's case (supra). Though the records speak that the Corporation took a decision in its Board meeting on 5-1-2010 to regularise the services of Sri K.T. Krishnan and two others, unless and until such decision is in consonance with the directions or the law laid down by the Apex Court, it cannot have any sanctity or legality.

6. Even otherwise, having notified two posts of attender as per Exhibit P-1, there was no justification for the appellant Corporation to deny the post to the rank holder who was successful in the process of selection on the ground that one of the posts is filled up by regularising the services of a candidate which is in total and in flagrant violation of the directions of the Apex Court. Neither the decision of the Board to regularise the services of Sri K.T. Krishnan nor the recommendation sent by the Corporation to the Government for regularising the services of Sri K.T. Krishnan, nor the decision of the Government to regularise the services of fourth respondent Sri K.T. Krishnan is having any sanctity or legality. Therefore, for all practical purposes the two posts were available to be filled up by the appellant Corporation.

7. At the conclusion of hearing, the appellant placed on record another alleged

hurdle, i.e., reservation of posts, a Circular No. 12068/BPE-2/93/Plg dated 1-3-1994. By this circular the Corporation was bound to scrupulously follow the principles of communal rotation and if such communal rotation is followed, there would be only one post of attender in general merit, therefore, the second post could not be given to the general merit candidate. If the Corporation is bound to scrupulously follow the statute or the principles of communal rotation, necessarily they have to follow the law laid down by the Apex Court as well. In the present case, no candidate is before us claiming any communal rotation quota in the present vacancies. Even otherwise, there was no stipulation indicating communal rotation at all at Exhibit P-1. None of the candidates were directed to produce community certificates. The rank list also not prepared on that basis. In the absence of such exercise undertaken by the appellant--Corporation, we cannot appreciate then-stand now that by communal rotation the available vacancy must go to a candidate belonging to a particular community. This stand of the appellant Corporation any way does not justify regularisation of service of Sri K.T. Krishnan, who did not enter the service of the appellant--Corporation through any approved selection process. The contention of learned counsel for the fourth respondent is that he has been retained in service for long and is now over-aged for any other employment. It is pertinent to mention that the writ petitioner Smt. P.M. Beena has also attained the age of 41 years and she will not be eligible to appear or undertake any process of selection in any public sector on account of her age. In that view of the matter, keeping in view the law declared by the Apex Court in Uma Devi's case (supra) and the facts in the present case, we are of the opinion, a genuine candidate who undertakes the process of selection and successfully comes out in the said process cannot be denied opportunity of employment in order to safeguard the regularisation of a candidate, which is not in accordance with law declared by the Apex Court.

In the light of the above observations, Writ Appeals deserve to be dismissed. Accordingly, the Writ Appeals are dismissed and the Writ Petition is allowed quashing Exhibit P-7 order [W.P. (C) No. 10236 of 2013] directing the appellant--Corporation to appoint Smt. P.M. Beena, the second rank holder, to the post of attender, not later than 30-9-2013.