

(2003) 06 KL CK 0053

In the High Court Of Kerala

Case No : W.A. No's. 2742 of 2002, 432 of 2003 and 816 of 2003

K.K. Padmakumar and Others

APPELLANT

Vs

P. Sasikala and Others

RESPONDENT

Date of Decision : 03-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 ILR (Ker) 428 : (2003) 2 KLJ 475 : (2003) 2 KLT 886

Hon'ble Judges : Jawahar Lal Gupta, C.J.;A.K. Basheer, J

Bench : Division Bench

Advocate : N. Sugathan, for the Appellant; Siby Mathew (GP), for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Has the learned single judge erred in accepting the request of the respondents for reversion from the posts of Information Assistants to those of Upper Division Clerks in the Tourism Department? This is the short question that arises for consideration in these three appeals. Counsel for the parties have referred to the facts as averred in O.P No. 20331/1998. These may be briefly noticed.

2. Respondents 1 to 3 had joined service as Lower Division Clerks in the year 1986-87. They were promoted as Upper Division Clerks in the year 1989. In June 1993 they were promoted to the posts of Information Assistants. While they were working as such, the Department has issued an order dated August 19, 1999 certifying that they had successfully completed their period of probation. Vide order dated December 30, 1999 it was ordered that the order of "provisional promotion" as information Assistant shall be treated as one of appointment by transfer.

3. The respondents apprehended that regularization of their services as Information Assistants might deprive them of their chances of promotion in the

parent cadre. Thus, they represented. The representations did not yield any favorable result. Aggrieved by the orders, the respondents filed a petition under Article 226 of the Constitution. They prayed that the orders dated August 19, 1999 (Ext. P4(e)), December 30, 1999 (ext. P4(f)) and October 3, 1998 (Ext. P12) be quashed.

4. The Department as well as various other members of the service contested the claim.

5. The matter was considered by the learned single judge. It was found that the respondents/writ petitioners had retained their lien on the posts of upper Division Clerks. Thus, they were entitled to be reverted from the posts of Information Assistants to those of Upper Division Clerks. In view of this fact the writ petition was allowed.

6. Similar is the position in O.P. No. 22121/1998.

7. Aggrieved by the judgment of the learned single Judge, the respondents in the writ petition have filed these three appeals.

8. Mr. N. Sugathan, learned counsel for the appellants has contended that there is no evidence on the record to show that respondents 1 to 3 or the other private respondents in the connected appeals had any lien on the posts of Upper Division Clerks. Thus, the counsel contends that the view taken by the learned single judge cannot be sustained. A similar contention has also been raised on behalf of the State Government which has filed W.A. No. 432/2002.

9. It is the admitted position that respondents 1 to 3 had joined service as Lower Division Clerks before the appellants. They were promoted as Upper Division Clerks earlier than them. Thus, it is admitted by all concerned, that they were senior in the cadre of Upper Division Clerks. In fact it was on the basis of their seniority that they were provisionally promoted to the posts of Information Assistants in the year 1993. In this situation, the short question that arises for consideration is whether the respondents are entitled to be considered for promotion to every post to which a person junior to them was considered and promoted.

10. Assuming that the respondents had not been confirmed on the posts of Upper Division Clerks they still remained senior to the appellants. Being senior, they had a right to be considered for promotion to every post for which the claim of a person junior to them was being considered. It is the admitted position that there are three avenues of promotion for an Upper Division Clerk. In the ministerial cadre, he can be promoted to the post of Head Clerk. He is also eligible for promotion to the post of Manager, Grade III. The third avenue is the post of Information Assistants. The respondents being senior, had a right to be considered for promotion as Head Clerks or Managers. Grade III before anyone junior to them was actually promoted. It was because of this right that they had objected to their regularization as Information Assistants and sought reversion as

Head Clerks.

11. Counsel for the appellants contends that having been promoted as Information Assistants, the respondents lost their right to be considered for promotion to the other posts.

12. The contention cannot be accepted. Firstly it deserves notice that no rule has been pointed out to show that a provisional promotion as Information Assistant deprives a person of the right to be considered for appointment as Head Clerk or Manager. Grade III. Secondly it deserves notice that Rule 8 of the Kerala State and Subordinate Services Rules which is admittedly applicable in this case, specifically provides that "the absence of a member of the service from duty, whether on leave.....or on deputation or for any other reason.....shall not render him ineligible in his turn for promotion from a lower to a higher category in such service". It is thus clear that even when a member of the service is absent from the post of Upper Division Clerk on account of leave or for any other reason he is entitled to be considered for promotion to every other post for which he is eligible in accordance with the Rules. In the present case, the respondents were absent from the post of Upper Division Clerks on account of their promotion to the posts of Information Assistants. The mere fact that they had obeyed the orders of the authority and accepted appointment as Information Assistants could not mean that the benefit under Rule 8 was not to be available to them. This is precisely what the order passed by the learned single Judge has given them.

13. Mr. Sugathan has contended that the appellants had foregone their promotion to the posts of Information Assistants as well as Chief Accountants. Assuming it to be so, the appellants had exercised their option voluntarily. It was not on the basis of any provision in the Rules or at the instance of the respondents. The exercise of a voluntary option by the appellants cannot result in depriving the respondents of their rights under Rules 8.

14. Another fact which may be mentioned here is that at the time of their promotion as Information Assistants, the respondents were never told by any authority that on acceptance of promotion they would lose their right to be considered for the post of Head Clerks and Managers, Grade III, Nor was there a rule which could have led to such a consequence. Resultantly, the rights under rule 8, which is admittedly statutory, were protected.

15. No other point has been raised.

16. In view of the above we find no merit in these appeals. It may be noticed that there is a delay of 9 days in the filing of W. A. No. 432/2003. In view of our above conclusion, even if the delay is over-looked, the appeal is liable to be dismissed.

Accordingly, the appeals are dismissed in limine.