

(1974) 09 KL CK 0013
In the High Court Of Kerala

K.K. Sivasankaran Nair

APPELLANT

Vs

State of kerala and Another

RESPONDENT

Date of Decision : 09-09-1974

Acts Referred:

Citation : (1977) 2 LLJ 179

Hon'ble Judges : P. Govindan Nair, C.J;V. Balakrishna Eradi, J

Bench : Division Bench

Judgement

P. Govindan Nair, C.J.—The identical question arises for determination in the original petition as well as the writ appeal. We, therefore, propose to dispose of the two cases by a common judgment.

2. The petitioner in O.P. No. 2495 of 1971 and the first respondent in W.A. 346/73 were appointed in the Labour Department of the State as Welfare Assistants. In the year 1966 the State Government decided to abolish 39 posts of Welfare Assistants in the department and ordered accordingly. Consequently the petitioner in the O.P. and the first respondent in the writ appeal ceased to be Welfare Assistants. The relevant part of the order is seen from Ext. P 2 in the original petition. We shall extract two paragraph from that order

In the G.O. read above it was ordered that 39 posts of Welfare Assistants on Rs. 40-120 (pre-revision scale) working in the Labour Department would be abolished. In pursuance of this G.O. the Labour Commissioner furnished to Government a list of the 39 Welfare Assistants in the order of seniority as Welfare Assistants with their service particulars to be displaced from the Labour Department copy of which is attached to this order).

In the Government memorandum read above the Government have directed all the heads of departments and offices to report vacancies of posts with similar qualifications for absorbing these candidates. Sufficient number of vacancies have now been reported in the departments/offices noted below. The Government are, therefore, pleased to absorb all the 39 retrenched Welfare

Assistants whose service particulars are shown in the Annexure to this order is the reported vacancies of L.D. clerks on Rs. 80-160 in the various departments/offices as shown below:

The two persons thereafter took up the appointments which were assigned to them under that order.

3. There were three other Welfare Assistants at the time it was decided to abolish the 39 posts. They were originally recruited as clerks in the Labour Department and it appears they were appointed by transfer as Welfare Assistants. It is not clear from the pleadings whether as clerks they had been confirmed before they were appointed by transfer as Welfare Assistants. Prior to 1961 there were no Special Rules applicable to the Kerala Labour Subordinate Service. The petitioner in the O.P. was appointed by direct recruitment as Welfare Assistant as early as 1957 and so was the first respondent in the writ appeal.

4. Three clerks referred to above and who were working as Welfare Assistants tiled a writ application O.P. No. 3614 of 1966 before this Court claiming that they should be re appointed as clerks in the Labour Department on certain subsequent vacancies arising in the Labour Department. They had so represented to the State Government before filing the writ petition and in the counter-affidavit filed by the State to the original petition it was averred that those representations were under the active consideration of the State Government Counsel for the petitioners at the time of hearing submitted that they would be satisfied with a direction that those representations be dealt with by the Government and appropriate orders passed. Such a direction was, therefore, issued in the original petition. The Government thereafter passed an order on 22.2.69 directing that the three petitioners in O.P. No. 3614 of 1966 be appointed as clerks in the Labour Department assigning them their original seniority in that cadre in that department and they had been thereafter by orders Exts. P. 3 and P. 3(a) produced in the writ appeal posted as Assistant Labour Officers. Isaac, J., in dealing with the original petition moved by the first respondent in the writ appeal directed that the Government should consider whether the same procedure should not be followed in the case of the first respondent by the judgment under appeal in the writ appeal.

5. Counsel for the petitioner in the O.P. has also claimed that the benefits of the order of the Government dated 22.2.69 and the consequential orders must be made available to the petitioner in the O.P. The claim was sought to be supported on the basis of the provision in Rules 7 and 8 of the Kerala State and Subordinate Services Rules. Rule 8 can have no application either to the petitioner in the O.P. or the first respondent in the writ appeal is clear from the rule itself. But Rule 7 in some sense may be said to be applicable if the two persons could be said to be probationers. But even this is very doubtful for when Rule 7 is read with Rule 6 it is difficult to conceive of the termination of the service of an employee consequent on the abolition of a post which is normally referred to as retrenchment, as "discharge of a probationer", within the meaning

of that expression in Rule 7. We, however, wish to express no final opinion on this matter for we think that the case must turn on the wording of the order Ext. P 2 produced along with the original petition. We are unable to understand the order as involving the termination of the services of the person dealt with by that order, So the petitioner in the O.P. and the first respondent in the writ appeal cannot claim that their services had been terminated Though the word retrenchment is mentioned in the order of the Government, the relevant part of which we have read, it is noteworthy that the first paragraph mentioned "displacement", and what actually had been done was to transfer the two persons from the Labour Department to the Revenue Department and absorb them in the latter department. The Government was not obliged to give them appointment as there were no posts of Welfare Assistants available consequent on the abolition of the 39 posts. But it is normal for the Government to provide for their employees when such a contingency arises and it was only appropriate that was done in the case of the petitioner in the O.P. and the first respondent in the writ appeal as both of them had long service. There is no doubt that the two of them have been adversely affected in the sense that they could not attain the position they could have reached had they continued in the Labour Department. But unless they have a legal right to claim any particular vacancy in the Labour Department this Court will not be justified in issuing any direction to the Government to appoint or to notionally appoint them, and give them further promotions on that basis. It is said that 11 vacancies must have occurred between the year 1966 when the 39 posts were abolished and 1970 when an additional 11 vacant posts were abolished, and that the two persons could have been appointed to those places at least notionally and given farther promotions. After 1970 admittedly there were no posts and we are not satisfied that the claim that they should be notionally appointed to the posts which ceased to exist from 1970 can be granted.

6. In the light of the above, the direction issued by the learned Judge in the judgment under appeal in the writ appeal, with great respect to him, cannot stand. We set aside the judgment, allow the writ appeal and dismiss Original Petition 6336 of 1970. We also dismiss Original Petition 2495 of 1971 and direct the parties to bear their respective costs throughout