

(2006) 10 KL CK 0066
In the High Court Of Kerala
Case No : O.P. No. 20230 of 2003

K.M. Kuriakose

APPELLANT

Vs

The Registrar, M.G. University and Others

RESPONDENT

Date of Decision : 25-10-2006

Acts Referred:

Citation : (2006) 3 KLJ 894 : (2006) 4 KLT 953

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : S.K. Ajay Kumar, Peeyus A. Kottam and Priya A.H, for the Appellant; George Abraham, K. Ramakumar, S.K. Ajay Kumar, George Jacob (Jose), Reena Abraham, T.P. Mathai and C.K. Govindan, for the Respondent

Judgement

Kurian Joseph, J.—What is the crucial date for application of Rule 28(bbb) of the KS and SSR is the issue arising for consideration in this case. Whether a senior becoming eligible owing to exemption after the occurrence of the vacancy and after the examinations taken by his juniors, conducted by the Public Service Commission but before the publication of the result is entitled to get promotion on the basis of exemption is the question to be tackled. The vacancy in the cadre of Upper Division Clerk arose under the respondent college on 1-3-1999. As on that date none in the feeder category of Lower Division Clerk was qualified. Petitioner attained the age of 50 years on 19-9-2000 and according to him, being exempted from test qualification he is entitled for promotion with effect from 20-9-2000. In fact the management promoted the petitioner with effect from 20-9-2000. Later, that was interfered with by the department on the ground that the 4th respondent got qualified on 14-7-2000, the day following the last day of the examination conducted by the Public Service Commission. The result of the examination was published only on 16-10-2000. According to the petitioner, the date of declaration of the result is the crucial date and only if the vacancy remained unfilled for want of qualified persons, the 4th respondent can stake a claim for promotion to the post with effect from the last date of the examination. According to the 4th respondent, the date of occurrence of vacancy being March,

1999, by virtue of the deeming provision under Rule 28(bbb) of the KS and SSR, it is he who first qualified on 14-7-2000, the day following the last date of the examination. I am afraid the contention of the 4th respondent cannot be appreciated. Rule 28(bbb) to the extend relevant reads as follows:-

Where a pass in any examination or test confers on a person the title to any right, benefit or concession, such title to the right, benefit or concession shall be deemed to have accrued - (a) In the case of a person who has passed such examination or test before the 14th August, 1971, on the day following the last day of such examination or test in the subject or subjects and (b) in the case of a person who has passed such examination or test on or after 14th August, 1971, on the day following the last day of the whole examination or test in which he has successfully completed the examination or test by passing one or more subjects.

2. For application of Rule 28(bbb), the promotion should be to the post not involving a change of duty and the vacancies must remain unfilled for want of test qualified hands. In the event of a senior on the basis of the exemption under Rule 13-B of the Rules becoming eligible prior to the publication of the result, that senior has a right to be considered, on the day following the acquisition of eligibility viz. exemption from passing the test. The opening words of the Rule 28(bbb) would show that the pass in the test gives a right to be considered, subject to the other conditions indicated above. If the vacancy remains unfilled as on the date of publication of the result only, such person gets a right to be considered for promotion in the existing vacancy with effect from the last date of the examination. In other words, if there is no vacancy as on the date of publication of the result, that person has no right to be considered for promotion. Naturally there arises no question of any promotion with effect from the last date of the examination. The effect of deemed passing of the test is only to enable the person to claim promotion with effect from the last day of the examination, in case there is a vacancy remaining unfilled as on the date of the publication of the result. The result of the examination was published on 16-10-2000. By the time the petitioner had completed 50 years and thus he became eligible for promotion, being exempted from passing the test qualification. The moment the eligibility arises, petitioner has a right to be considered. It cannot be said that that consideration should await the publication of the result of examination undergone by the juniors, in the instant case the 4th respondent. In this context it will be profitable also to refer to a decision of this court reported in Gopinathan Unnithan vs. State of Kerala (1991 (2) KLT 112) wherein it has been held as follows:-

As per Rule 28(bb), a person will be deemed to have passed the test on the day following the last day of the examination only in case he passes the test when the results are announced. This means that one can be considered to have passed the test on the day following the last day of the examination only after knowing the last day of the examination only after knowing the result of the

examination. Before the results are announced, no one can claim the benefit of R. 28(bbb) of the General Rules. Three conditions are also to be satisfied by one, who relies on the sari rule. They are (1) that the promotion should be to the post not involving a change of duty (ii) that the vacancies must remain unfilled and (iii) that they must remain so unfilled for want of test qualified hands. The vacancies arose on 27-11-1969. A few juniors to the petitioners were fully qualified on that day for promotion to the cadre. They must be accommodated those vacancies will be filled up. Thereafter, few vacancies remained unfilled for want of test qualified hands. To those vacancies, petitioners can be accommodated by invoking Rule 28(bbb), because they succeeded in the test taken by them in October, 1969. So, they can be accommodated only to such of those vacancies which remained unfilled for want of test qualified hands. In other words, they can taken the place below the test qualified hands, who were promoted to the earlier vacancies. In this view of the matter, petitioners can be ranked only below the test qualified juniors, who took the vacancies earlier.

3. Thus the 4th respondent is not entitled to get promotion to the post of Upper Division Clerk in the vacancy which arose on 1-3-1999 under the respondent management with effect from 14-7-2000 since petitioner became eligible earlier. It is submitted that the petitioner retired from service on 30-09-2005 and prior to his retirement he was promoted to the post of Upper Division Clerk on 1-7-2003. Since the petitioner is entitled for promotion with effect from 20-9-2000, it is declared that he shall also be entitled to the consequential benefits with effect from that date in the cadre of Upper Division Clerk. If there was any vacancy after 20-9-2000 and in case there is no senior otherwise eligible, the 4th respondent shall be accommodated. The impugned orders to the extent required will stand quashed. In the light of the above declaration the consequential benefits including fixation and pension shall be made and disbursed to the petitioner within a period of three months from the date of production of a copy of this judgment.

The original petition is disposed of as above.