
(1999) 09 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 22276/98

Kuttikrishnan and Another

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 09 KL CK 0049

Hon'ble Judges : P.K. Balasubramanyan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : Kurian Joseph and N. Sugathan, S. Snthosh Kumar, V.N. Seemanthini, K.R.B. Kaimal and N.N. Sugunpalan, for the Appellant; Molly Jacob, Government Pleader for Respondents No. 1 and 2, K. Balakrishnan, for Respondent No. 4, C.P. Sudhakara Prasad, for Respondent Nos. 5 and 6 and P.C. Sasidharan, for the Respondent

Judgement

P.K. Balasubramanyan, J.—Giving effect to the integration of the village staff and the ministerial staff in the Revenue Department in this State has resulted in a number of approaches to this Court by the one wing or the other. The village staff consisted of the Village Man, Village Assistant and the Village Officer. The ministerial subordinate service consisted of the Lower Division Clerk and the Upper Division Clerk. The third Pay Commission recommended that the village staff and the revenue ministerial subordinate staff be integrated into one service with common seniority. A Government Order dated 10th September 1984 hereinafter referred to as the "Integration Government Order" was issued with effect from 10th September 1984. As per the Appendix to that Government Order, Upper Division Clerk was equated to the Village Officer and the Lower Division Clerk was equated to Village Assistant. It was also provided that in seniority, Upper Division Clerk would be above the Village Officer and the Lower Division Clerk would be above the Village Assistant. Members of the staff were not given a right to opt but the integration. Future appointments were to be made from a common list. Integrated seniority list was to be used for promotion

to vacancies that were to arise after 10th September 1984.

2. Earlier, on the formation of the State of Kerala there was conflict between the Madras and Travancore-Cochin personnel brought into a common service. In the year 1975 Special Rules covering both the groups was brought forward. Those Special Rules were challenged before this Court. By the decision reported in Vasudevan Nair v. State of Kerala ILR 1979 Ker 743 this Court found that Special Rules thus framed violated the rights of the Madras personnel and struck down the Special Rules. The court directed that pending the promulgation of fresh rules promotion was to be made on the basis of the seniority in the lower division cadre. In the year 1980 fresh Special Rules for Ministerial Subordinate Service was brought into force. This was again challenged before this Court. This Court by the decision in Gopinathan v. State of Kerala 1984 KLT 726 struck down the Special Rules. The court declared that the Special Rules were inoperative as a whole. This Court also noticed that the Government will have to undertake once again the exercise of issuing fresh orders or rules on the subject. Then also this Court directed that the seniority in the lower division cadre be followed in the matter of promotion until fresh decision is taken. It may be noticed that subsequently this decision has been affirmed by the Supreme Court in the decision in N. Murleedharan and others, etc. Vs. State of Kerala and others, .

3. On 12th June 1985, Kerala Revenue Ministerial Subordinate Service Special Rules was again promulgated. But the Special Rules thus promulgated, omitted to take note of the Integration Government Order issued on 10th September 1984. Therefore on 12th July 1989 a fresh Government Order was issued amending the Special Rules to accommodate the Integration Government Order. O.P. 330 of 1990 and other connected Original Petitions were filed essentially by the revenue staff challenging the Government Order. Those Original Petitions were dismissed by judgment dated 23rd March 1990 and this Court directed that the Special Rules be implemented forthwith. W.A. 362 of 1990 filed against those decisions was also dismissed by judgment dated 27th June 1990.

4. Meanwhile, all promotions to Head Clerks and Revenue Inspectors during the period 1984-1991 had been made only from the Revenue Staff. On 8th March 1991 an integrated seniority list as on 10th September 1984 was published equating the Upper Division Clerk with the Village Officer and the Lower Division Clerk with the Village Assistant. According to the village staff, there had been no review of promotions from 1984 to 1991 and revision of seniority till date in terms of the seniority list dated 8th March 1991. It may be noted at this point that District was the unit appointment as per the Special Rules, Government Order dated 4th September 1992 was also issued to protect the non-qualified Village Assistants who were promoted to the post of Village Officers prior to 30th June 1990 by allowing them to continue in the post of the Village Officer but providing that they can claim promotion to the higher post only on attaining the age of 50 years and passing the test.

5. On 8th March 1993, the Special Rules were amended making the State as the

unit of appointment for all posts with retrospective effect from 1st November 1956. This was challenged in O.P. No. 5119 of 1994 and connected cases. On 6th April 1995, a Division Bench of this Court directed that a seniority list of officers in various cadres governed by all the Special Rules be prepared on the basis of the principles laid down in that Judgment. That decision is reported in ILR 1996 Ker. 733. We may notice that the Petition for Special leave to Appeal (C) 18721/95, filed by the State challenging the above decision was rejected by the Supreme Court on 24th November 1997.

6. On 26th July 1995 a final seniority list of Village Officers up to 9th September 1984 was issued. It covered the period 1st November 1956 to 9th September 1984. Presumably based on the directions to the Division Bench on 13th September 1995 a seniority list of Upper Division Clerks for the period from 1st November 1956 to 9th September 1984 was also published. As per proceedings dated 25th October 1995 the Board of Revenue published the State amalgamation list of Upper Division Clerks/Village Officers as on 10th September 1984. 5144 posts of Village Officers were shown in that list. The list was challenged before this Court in O.P. 16627 of 1995. While that Original Petition was pending, the Government on 23rd February 1996, issued an order constituting a Secretariat Cell to assess the actual vacancies of village Officers from 1st November 1956 to 10th September 1984. On 4th June 1996 a Division Bench of this Court closed O.P. 16627 of 1995 in view of the Government Order constituting the Secretariat Cell to assess the vacancies of Village Officers.

7. Meanwhile, by an interim order in C.M.P. 25934 of 1995 in O.P. 1304 of 1995 this Court ordered that the Government was bound by the judgment in O.P. 5119/94 [I.L.R. 1996 Ker. 733] and was bound to implement that judgment in letter and in spirit unless and until otherwise ordered by the Supreme Court.

8. On 23rd February 1996 by a Government order, the Government constituted a special cell in the Revenue Department for reassessing the vacancy position of Village Officers for the period from 1st November 1956 to 9th September 1984. Meanwhile O.P. 11171 of 1996 was filed by the village staff complaining about the improper conduct on the part of the Government in not filling up the existing post by giving due representation to the erstwhile village staff. On 26th March 1997 the Secretariat Cell reported on the vacancies that existed in the post of Village Officers as on 10th September 1984. By order dated 23rd April 1997 the Government accepted the report of the Secretariat Cell and fixed the vacancies of Village Officers as 5008 as on the relevant date. By proceedings dated 24th October 1997 a provisional integrated seniority list of Upper Division Clerks/Village Officers as on 9th September 1984 was published. As per judgment dated 6th November 1997 in O.P. 11893/97, this Court directed that the seniority list of Village Officers after considering their objections be finalised and the promotions reviewed based on the final seniority list. It was on 24th November 1997 that the Supreme Court dismissed the Petition for Special Leave filed by the State challenging the decision reported ILR 1996 Ker. 733. On 4th December 1997 the

Government wrote to the Secretary, Board of Revenue that the Government had decided to reassess the number of vacancies of Upper Division Clerks applying the same criteria that was used for assessing the vacancies of Village officers and ordering that further promotions will be made and subsequent vacancies filled only after such reassessment was made. On 9th December 1997 an order promoting 87 persons from the list published along with the proceedings dated 24th October 1997 was also issued. On 20th May 1998 this Court disposed of O.P. 11171 of 1996 directing the Board of Revenue to effect promotions to the existing vacancies on the basis of the seniority in the list dated 24th October 1997.

9. On 20th June 1998, a Government Order was issued directing the revision of the vacancies of Village Officers assessed as per the Government Order dated 23rd April 1997. Meanwhile the Government tried to get the direction in O.P. 11171 of 1996 reviewed by filing R.P. 338 of 1998. On 21st August 1998 this Court dismissed the review. It was made clear that existing vacancies must be filled from the existing provisional seniority list till the said list is finalised. On 14th October 1998 another Government Order was issued upgrading the post of Village Officers to that of Head Clerks/Revenue Inspectors. On 30th October 1998 the Government issued an order adding 517 vacancies to the list of Upper Division Clerks for the period from 1st November 1956 to 9th September 1984. This was on the basis of a reassessment made as reported by the Commissioner, Land Revenue. As per proceedings, dated 18th November 1998 the provisional seniority list of Village Officers for the period from 1st November 1956 to 9th September 1984 was revised based on the vacancies assessed by the Government as per the Government Order dated 20th June 1998. On 15th November 1998, C.C.C. 513 of 1998 was filed before this Court complaining of the non-implementation of the direction in O.P. 11171 of 1996 dated 20th May 1998. On 24th November 1998 by an order in C.M.P. 40768 of 1998 in O.P. 23158 of 1998, this Court stayed the operation of the Government Order dated 30th October 1998. On 21st December 1998 this Court passed an order in C.C.C. 513 of 1998 directing the Respondents therein to fill up all the existing vacancies in the post of Deputy Tahsildar, Head Clerk/Revenue Inspector from the seniority list dated 24th October 1997. Though appeals were filed against the order in R.P. 338 of 1998 (how such an appeal is maintainable u/s 5 of the High Court Act is not clear) and against the judgment in O.P. 11171 of 1996, no interim order was passed in those Writ Appeals. The Government challenged the order dated 21st December 1998 in C.C.C. 513 of 1998 before the Supreme Court by filing petitions for Special Leave Nos. 1370 and 1371 of 1999. On 15th January 1999 this Court passed an order varying the interim order for stay earlier granted in O.P. 23158 of and directing the Government to go on with the drawing up of a provisional seniority list and directing it to produce the same before this Court and restraining the State from operating the newly drawn up seniority list until further orders from this Court. On 27th January 1999 a provisional seniority list of Upper Division Clerks/Village Officers as on 9th September 1984 was prepared

as per the proceedings L.R.T. 3-2968/99. On 8th February 1999 the Supreme Court issued notice on the Petitions for Special Leave Nos. 1370 and 1371 of 1999 and stayed further proceedings in the Contempt of Court Case No. 513 of 1998. This appears to have been on the basis of a submission regarding the preparation of a list about the coming into being of which, there is considerable controversy. On 24th February 1999 by another interim order, this Court ordered that the seniority list be finalised after inviting claims and objections. The court had also permitted Counsel for the Petitioners in that case to peruse the list. On 6th March 1999 the Commissioner, Land Revenue as per proceedings No. L.R.(T) 3-2968/99 published the provisional seniority list of Upper Division Clerks from 1st November 1956 to 9th September 1984 and provisional integrated seniority list of Upper Division Clerks/Village Officers as on 9th September 1984. 15th March 1999 was fixed as the last date for circulation of the provisional integrated seniority list of Upper Division Clerks/Village Officers. 16th April 1999 was fixed as the last date for receiving objection. On 4th June 1999 the learned Judge referred the Original Petition to a Division Bench and meanwhile permitted the Government to finalise the seniority list and publish the same. Accordingly the seniority list was finalised and published as per proceedings dated 11th June 1999. The revised list assessing the number of vacancies of Upper Division Clerks as on 9th September 1984 is challenged by the Village Staff and the revised list of vacancies of Village Officers as on 9th September 1984 is challenged by the Revenue Staff in separate Original Petitions. In the Original Petition treated as the main case, namely, O.P. 22276 of 1998, the Government Order, dated 30th October 1998 relating to assessment of vacancies of Upper Division Clerks for the period from 1st November 1956 to 9th September 1984 is challenged with a further prayer for the issue of a direction or for a declaration that only the Upper Division Clerks and Village Officers who were actually occupying the post of Upper Division or Village Officers on the date of the Integration Government Order, namely, 10th September 1984 can be included in the Integrated Seniority List of Upper Division Clerks/Village Officers and for other consequential reliefs.

10. It is first necessary to consider the terms of the Integration Government Order brought into force with effect from 10th September 1984. The copy of the same has been marked Ext. P-11 A in O.P. 22276 of 1998. The order says that on the basis of the recommendation of the Third Pay Commission, the integration was being ordered. Equalisation of posts was on the basis that an Upper Division Clerk of the Revenue staff was to be treated as equivalent to a Village Officer of the village staff. As between the Upper Division Clerk and the Village Officer, the Upper Division Clerk must have seniority and as between the Lower Division Clerk and the Village Assistants, the Lower Division Clerk will have the seniority. After providing that the integration will be with effect from 10th September 1984 the appendix to the order provided as follows:

(1) On the crucial date of integration all those who are Village Officers and Upper Division Clerks will be integrated in one unit and an integrated seniority list will be maintained. Their inter se seniority will be fixed on the basis of their

appointment to the respective categories with the rider that service as Village Officer before 1st January 1968 will be ignored.

(2) On the crucial date of integration all those who are Village Assistants and Lower Division Clerks will be integrated in one unit and an integrated seniority list will be maintained. Their inter se seniority will be fixed on the basis of their appointment to the respective categories with the rider that service as Village Assistant before 1st January 1968 will be ignored.

All future appointments to the post of Village Assistant and Lower Division Clerk were to be made from a common select, list and the integrated list was to be used for promotion to the vacancies that may arise after the date of integration. Thus what was contemplated by the Integration Government Order was the preparation of an integrated seniority list of "all those who are Village Officers and Upper Division Clerks" on the crucial date of integration. Same is the position regarding Village Assistants and Lower Division Clerks. This Integration Government Order which had attained finality did not contemplate any assessment of notional, possible, existing or future vacancies in the post of Upper Division Clerks and Village Assistants. The Integration Government Order directed the preparation of an integration list consisting of Village Officers and Upper Division Clerks who held the post on the crucial date of integration. We find that the entire confusion and complication arose out of the failure of the authorities that be, to prepare an integrated list of those who held offices on the crucial date in terms of Clauses 2 and 3 of the appendix to the Integration Government Order. By proceedings dated 8th March 1991, a provisional integrated seniority list was published. It was submitted on behalf of the village staff by their Counsel M/s N. Sugathan, Kurian Joseph, Senior Advocate, V.N. Seemanthini, K.R.B. Kaimal and Mr. Sugunapalan that the village staff was willing to accept the list appended to Ext. P-1 order as the final integrated seniority list and would be satisfied if relief's are granted to them on that basis. According to the village staff the complications arose by the publication of the subsequent lists, one in 1994, one in 1995, one in 1997 and one in 1999 that has resulted in great injustice to the village staff.

11. The essential grievance of the village staff appears to be that the vacancies of Upper Division Clerks as on the date of integration namely, 10th September 1984 has been unduly inflated by the partisan attitude of the Revenue Officers who were entrusted with the charge of identifying the vacancies in the revenue staff merely on the ground that the posts available to the village staff had been predetermined on a complaint by the village staff that the assessment of vacancies of the village officers was not properly done. In other words, the complaint of the village staff is that the vacancy position of the revenue staff has been unduly inflated to the disadvantage of the village staff. This is sought to be met by Counsel appearing for the revenue staff by pointing out that the reassessment of the village staff has been made only by applying the same yardstick as that was applied for identifying the vacancies of Village Officers and

hence there was no merit in the complaint by the village staff that the vacancy position of Upper Division Clerks been inflated in the final integration seniority list. The learned Government Pleader submitted that in 1999 after identifying the vacancies available in the respective posts as on 10th September 1984 a fresh draft list was published. Thereafter objections were considered and the list has been finalised pending the Original Petition. It is also pointed out that the assessment of revenue staff made by the Revenue Department was not accepted by the Government in its entirety and only 517 posts were added to the vacancies earlier determined and this was done after looking into the relevant matters and there was no justification in interfering with the seniority list published in the year 1999 as per proceedings dated 11th June 1999. The learned Government Pleader further contended that the assessment of number of vacancies in the posts of Village Officers and Upper Division Clerks was to be done by the Government, the Government had do the same and it was only a question of fact which could not be interfered with by this Court under Article 226 of the Constitution unless of course it is shown that the assessment was made on a clearly wrong principle or that there is any apparent illegality attached to the determination. Counsel submitted that various objections raised had been considered and disposed of before the list was finalised and in such a situation, the village staff were not entitled to any relief in their Original Petitions.

12. Before proceeding further, it is necessary to consider the effect of a prior decision of this Court on this question. In that decision reported as *Thankaraj v. State of Kerala* ILR 1996 Ker 733 while discussing the question of seniority of the officers in various cadres in the Revenue Department the said Division Bench understood the scope of the Integration Government Order in the following manner;

The third Kerala Pay Commission recommended the integration of village Staff with the revenue staff. Pursuant thereto Government issued G.O. (Ms.) 91/84/RD, dated 10th September, 1984. By that order Lower Division Clerks were integrated with Village Assistants and Upper Division Clerks with Village Officers. It was to be with effect from 10th September, 1984 itself. The principles governing the integration are contained in the appendix to that Government Order. It is stated that on the crucial date of integration all those who are Village Officers and Upper Division Clerks will be integrated into one unit and an integrated seniority list will be maintained. Their inter se seniority will be fixed on the basis of their appointment to the respective categories, with the rider that service as Village Officer before 1st January, 1968 will be ignored. Likewise the Lower Division Clerks and Village Assistants are directed to be integrated into one unit. Their inter se seniority will be maintained on the basis of their appointment to the respective categories. But the service rendered by Village Assistants before 1st January, 1968 will be ignored.

13. It appears to us that no attempt has been made to prepare an integrated list of the Village Officers and Upper Division Clerks and of Village Assistants and

Lower Division Clerks who were holding office as on the date of the integration, namely, 10th September 1984. What has been attempted is to allegedly identify the vacancies actual and notional of Village Officers and of Upper Division Clerks and that of Village Assistants and Lower Division Clerks as on 10th September 1984. The Integration Government Order speaks of integrating those who were holding the posts on the date of integration. It is this attempt to identify alleged vacancies that has resulted in charges and counter charges to the effect that the available posts of revenue staff had been inflated and the posts of the village staff had also been inflated. This has also resulted in those Lower Division Clerks who entered service just one year before the date of integration, also being reckoned as Upper Division Clerks as on the date of integration, though they had not even completed their probation. We think that on the wording of the Integration Government Order, an exercise of identification of vacancies as on 10th September 1984 is not warranted and what is needed is only to bring together the Village Officers and the Upper Division Clerks who were holding their respective posts as on 10th September 1984 in one integrated list and to bring together the Village Assistants and the Lower Division Clerks who were holding the posts as on 10th September 1984 into an integrated list. We could not find that in any of the prior interlocutory directions or final directions, this Court has in any manner differently interpreted the operative clauses in the Integration Government Order. The fact that accepting one contention or another, the vacancies were directed to be determined would not be material in deciding, on a true and proper interpretation of the Integration Government Order, as to what should be the Integrated Seniority List the preparation of which was envisaged by the Integration Government Order. We are therefore of the view that the Government has to be directed to prepare an Integrated seniority list of Upper Division Clerks and the Village Officers in one category and Lower Division Clerks and Village Assistants in another including therein only those who were holding their respective offices as on 10th September 1984. Once such a list is prepared, the promotions thereafter had to be made by using the said integrated list in terms of Clause 7 of the Integration Government Order.

14. In view of the interpretation placed by us on the Integration Government Order, we are not able to sustain the order of the Government in purporting to identify the vacancies in the village staff and in the revenue staff, actual and notional, as on the date of integration and the attempt to include in the integrated list as on 10th September 1984, the persons who had not even completed their probation in the post of Lower Division Clerks. The list of 1999 now prepared suffers from the vice of not being in terms of the Integration Government Order.

15. It is argued on behalf of the revenue staff that the expression "who are Village Officers and Upper Division Clerks" in the appendix to the Integration Government Order, should be understood as who are eligible to be Village Officers and eligible to be Upper Division Clerks as on the date of integration and the eligibility should be reckoned on the basis of the special rules brought

forward and the various subsequent orders giving retrospective promotion to the members of the revenue staff. On a proper appreciation of the purpose of the Integration Government Order and the wording of the Integration Government Order, we are of the view that this contention cannot be accepted. With respect, we do not find anything in Thankaraj's case ILR 1996 Ker 733 which compels us to interpret the Integration Government Order in a manner different from the one we have adopted. Nor do we see anything in the special rules as amended in 1989 which compels us to adopt an interpretation of the relevant clauses in the Integration Government Order to depart from adopting the rule of literal interpretation.

16. In the above view of the matter, prayer (ia) in O.P. 22276 of 1998 is liable to be granted to the extent of granting a declaration that only those U.D. Clerks and Village Officers who were actually occupying the post of U.D. Clerk or Village Officer on the crucial date of integration, ie., 10th September 1984, can be included in the State Integrated Seniority list of U.D. Clerks/Village Officers as on 10th September 1984, and a further declaration that only those L.D. Clerks and Village Assistants who were actually occupying the post of L.D. Clerk or Village Assistant on the crucial date of integration namely, 10th September 1984 can be included in the State Integrated Seniority List of Lower Division Clerks/Village Assistants as on 10th September 1984. The consequence would be the issuance of a direction to the State of Kerala and the Commissioner of Land Revenue, to prepare an integrated seniority list in terms of the Integration Government Order as interpreted by us above and thereafter, to use that list for promotions to the higher posts subject to other rules and Government Orders.

17. In the view we have taken as above, "the Original Petition filed by the village staff challenging the determination of the vacancies of the revenue staff as on the date of integration and the Original Petition filed by the revenue staff challenging the determination of the vacancy position of Village Officers as on the date of integration have both to be allowed to the extent of directing that a fresh integrated seniority list of Upper Division Clerks and Village Officers on the one hand and Lower Division Clerks and Village Assistants on the other as on 10th September 1984 be prepared solely with reference to the persons who were actually holding the respective offices as on 10th September 1984 and subject to the other conditions prescribed in the Integration Government Order.

18. Considerable amount of argument was raised before us regarding the propriety of the determination of the vacancies actual and notional as on the date of integration of the revenue staff. Earlier, a special cell has been constituted for the purpose of determining the vacancies. The special cell had made a determination. Long thereafter; purporting to accept representations from the respective staff, the concerned authority proceeded to order redetermination of the alleged vacancies that existed as on the date of integration. We think that the said exercise was uncalled for and unwarranted. The argument that these were done because of considerations other than merit

cannot be brushed aside. The argument of the learned Government Pleader and the Additional Advocate General that after all, the determination of the number of vacancies was a question of fact and does not call for interference by this Court exercising jurisdiction under Article 226 of the Constitution of India, though normally sound, cannot be accepted in the circumstances of the case when we find that especially as regards the revenue staff the redetermination got done through the revenue staff itself, and not through the special cell which had earlier been constituted. It Mould have been proper for the Government to have referred the objections if any, to the determination of the vacancies, to the special cell which had been constituted earlier apparently on a suggestion by this Court while dealing with complaints in that behalf, and not to have got it done through the revenue staff itself. It cannot also be overlooked that the so called request for redetermination was entertained long after the original determination was made. Nothing is shown to justify the entertainment of such a belated claim especially in respect of a matter relating to a service like the Revenue Service. But in the view we have taken on the interpretation of the Integration Government Order, we do not think it necessary to finally pronounce on this aspect.

We therefore allow O.P. 22276 of 1998 to the extent of declaring that as per the Integration Government Order what has to be done is to prepare an integrated seniority list of Village Officers and Upper Division Clerks who were holding the posts on 10th September 1984 and an integrated seniority list of Village Assistants and Lower Division Clerks who were actually holding the post as on 10th September 1984 and directing the State of Kerala and the Commissioner of Land Revenue to prepare such a list and to use that list alone for promotions to the vacancies that arose after the date of integration on 10th September 1984 subject to other relevant rules, orders and directions. Since this exercise of determining the persons who were actually holding the post is not likely to take much time, we direct the Government and the Commissioner of Land Revenue to prepare that list within two months from this date. The subsequent promotions will be regulated by that list and the common seniority list of appointees after 10th September 1984 duly prepared.

The Ordinal Petitions are disposed of in the light of the directions as above.