

(1983) 11 KL CK 0025

In the High Court Of Kerala

Case No : O.P No's. 5803, 5807 and 5961 of 1983

M. D. Annie and Others

APPELLANT

Vs

The Commissioner, Chalakudy Municipality and Others

RESPONDENT

Date of Decision : 11-11-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) KLJ 745

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : N. Govindan Nair, for the Appellant; Mathews P. Mathewarid T.P.K. Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—The petitioner in O.P. No. 5803 of 1983 is working as Lower Division Clerk|Bill Collector in Chalakudi Municipality while the petitioners in the other two original petitions are working as such in Trichur Municipality. They are persons whose names were registered with the respective employment exchanges and through the letter, they were appointed provisionally in these posts in 1980 for a period of 89 days. Expecting to be ousted from the service at the end of the period, they filed original petitions under Article 226 of the Constitution before this Court (O.P. Nos. 2210 of 1981 and 4152 of 1981) contending that they are workmen and that the concerned department is an industry and that they are entitled to protection under the provisions in Chapter VA of the Industrial Disputes Act, 1947. This court upheld the contention and directed that their services shall not be terminated except in accordance with Chapter VA of the Industrial Disputes Act, but subject to being replaced by regular recruits on the advice of the Kerala Public Service Commission (hereinafter referred to as Service Commission). The petitioners continued in service. While so, on requisition from the concerned authority, Service Commission advertised the posts of L.D. Clerks|Biil Collectors in the Municipal

Common Service and after going through the process of selection, prepared a ranked list which came into force on 1-6-1981. Since the life of a ranked list is two years it would have lapsed on 31-5-1983. Petitioners expect that they will be replaced by persons in the ranked list of the Service Commission and therefore, they have filed these original petitions under Article 226 of the Constitution of India challenging the legality of any appointment of persons from the ranked list prepared and published by the Service Commission. In fact the petitioner in O.P. No. 5961 of 1983-E was ousted to give place to the 4th respondent in that original petition, who has been included in the advice dated 4-6-1983. The contention is that the ranked list having lapsed on 31-5-1983, Service Commission could not advise any person from that list after 31-5-1983 and consequently, no person so illegally advised by the Service Commission could be validly appointed. After the expiry of the life of the ranked list, persons in that list could not be regarded as regular recruits lawfully advised by the Kerala Public Service Commission. Therefore, the argument goes, the petitioners are entitled to continue in service till another ranked list is prepared after due notification, etc. Counter affidavit has been filed only on behalf of the Service Commission. It is sworn to by the District Officer in the District Office of the Service Commission at Ernakulam. It is stated in the counter affidavit that the ranked list came into force with effect from 1-6-1981 and would have lapsed from 31-5-1983. However, it is pointed out that the Director of Municipal Administration, as per letters dated 19-5-1983 and 28-5-1983 received by the Service Commission on 21-5-1983 and 28-5-1983 respectively, reported altogether 100 Vacancies in the cadre of L.D. Clerks|Bill Collectors in the Municipal common service and accordingly 100 selected candidates from the ranked list were advised by the Service Commission on 4-6-1983 and 21-6-1983 respectively. It is contended that though the ranked list lapsed on 31-5-1983 it is subject to the vacancies reported prior to that date and in regard to those vacancies, Service Commission is entitled to advise even after 31-5-1983. The various dates and facts alleged in the countert affidavit are not challenged by the petitioners.

2. Learned counsel for the Service Commission placed reliance on the judgment of Khalid; J. (as he then was) and reported in C. Murughan and others v. State of Kerala and others (1982 (2) ILR (Kerala) Page 74). In that case the ranked list came into force on 28-3-1978. Certain vacancies were reported on 27-3-78 and the Service Commission received the same on the same date. The Commission asked for clarification from the Government and the reply was received on 10-6-1980. On 9-7-1980 two persons in the ranked list were advised. The question arose whether those two persons could be appointed. One of the objections raised was that since the ranked list lapsed on 27-3-1980, the advice on 9-7-1980 would be illegal. This argument was met by contending that since the vacancies were reported to the Commission prior to the expiry of the period of the ranked list, lawful advise could be made even after the expiry of the period. The Court noticed the practical difficulties arising in a particular case preventing the Service Commission from giving advise within a few days after

the receipt of the report of the vacancies and came to the conclusion that the advise was proper and the Government was bound to appoint the persons included in the advise.

3. Learned counsel for the petitioners submitted that the judgment referred to above ignores some of the important provisions of the relevant rules and therefore the same requires reconsideration.

4. The Rules referred to above are the Kerala Public Service Commission Rules of Procedure. Rule 2(a) defines "Advice List" as "List of candidates" drawn from the ranked list and arranged on the basis of the rules of recruitment relating to the post in respect of the vacancies reported from time to time." Rule 2(g) defines "Ranked List" as "list of candidates arranged in the order of merit, either on the basis of the interview or examination or by both." Rules 3 to 10 deals with various aspects of examination, test or interview to assess the merits of the candidates. Rule 11 deals with the decision to be taken by the Commission. Rules 12 and 12A explain in what manner the ranked list is to be prepared in the order of merit.

5. Rule 13 reads as follows:

13. The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of two years whichever is earlier:

Provided that the above rule shall not apply in respect of ranked lists of candidates for admission to training course that leads to automatic appointment to services or posts and that in such cases the ranked lists shall cease to be in force after one month from the date of commencement of the course, or three months from the date of coming into force of the ranked lists, whichever is later:

Provided further that the Commission may take steps for the preparation of a new ranked list wherever necessary even before the expiry of the period of the one year of the ranked list, by inviting applications but that the ranked list prepared in pursuance of the said notification shall be brought into force only after the, expiry of the period of one years of the existing ranked list.

Provided further that a ranked list from which no candidate is advised during the period of one year from the date on which it was brought into force shall be kept in force till the expiry of two years from the said date and in a case where no candidate is advised from the ranked list till the expiry of the said period of one year or till atleast one candidate is advised from the list whichever is earlier.

Rule 14 reads thus:

14. The Commission shall advise candidates for all the vacancies reported and pending before them and the vacancies which may be reported to them for the ?

period during which the ranked lists are kept alive in the order of priority, if any, and, in the order of merit subject to the rules of reservation and rotation, wherever they are applicable.

It is not relevant for the purposes of these cases to consider the other rules.

6. We may now examine the scheme of the above Rules. Service Commission is the constitutional body charged with the function of selecting candidates for recruitment to posts in public services. In Kerala, additional functions have been given to the Service Commission under the Kerala Public Service Commission (Additional Functions as Respects the Services under local authorities) Act, 1973, in relation to the recruitment to posts in various local authorities in the State. As and when the Government or the local authority submit requisitions to the Service Commission, the latter arranges selection of competent persons for the posts referred to in the requisitions. After following the procedure laid down in the Rules, Service Commission prepares ranked list in the order of merit. This is done purely on the order of merit and not subject to various preferences or other considerations laid down in the relevant recruitment rules. Working out the reservations or preferences takes place only when the Service Commission is moved to advise candidates. It is then that the Service Commission prepares the advice list of candidates to be advised for appointment. The ranked list published by the Commission is to remain in force for a period of one year from the date on which it is brought into force, though, however, the list will continue to be in force till the publication of a new list after the expiry of the immediate period of one year or till the expiry of two years, whichever is earlier. The provisos to Rule 12 contemplate certain special provisions to cover special situations. In certain contingencies the ranked list shall be kept in force even beyond the period of 2 years as contemplated in the third proviso. Rule, 14 relates to the manner in which the candidates are to be advised. It says that the commission shall advise candidates for all the vacancies reported and pending before them and the vacancies which may be reported to them for the period during which the ranked lists are kept alive in the order of priority, if any, and in the order of merit subject to the rules of reservations and rotation, wherever they are applicable.

7. In the present cases, the Service Commission gave advice as contemplated in Rule 14 only after the expiry of the two years from the date of the publication of the ranked list, i.e. after the expiry of the life of the ranked list concerned. When the list lapses at the expiry of the aforesaid period of 2 years as contemplated by Rule 13, according to the learned counsel for the petitioners, it is as if there is no ranked list at all in the eyes of law and the Service Commission cannot advise candidates from the legally nonexistent ranked list for the purpose of preparing the advise list and for advising them for appointment. The learned counsel for the Service Commission, however, contents that Rule 13 has to be read with Rule 14 and according to him, under Rule 14, the Commission is competent to advise candidates for all vacancies pending before them and vacancies which may be reported during the period, i.e. the period at the end of which the ranked list

lapses. This power, according to the learned counsel for the Service Commission, exists even after the lapse of the ranked list in relation to vacancies reported during the currency of the ranked list.

8. Rule 13 of course fixes the period during which a ranked list is to have life. Read by itself, it may mean that an appointment from a ranked list which has lapsed is not possible; but, rule 13 cannot be read in total isolation. If there are any other rules having a bearing on this question, those rules also have to be read; as far as possible, the court must endeavor a harmonious construction of the different rules. Rule 14 requires the Service Commission to advise candidates, for all vacancies reported and pending before them and vacancies which were reported to them for the period during which the ranked lists are kept alive. This would indicate that whenever a vacancy is reported to the Commission before the rank list lapses, the Commission has a duty to advise candidate to such vacancy. It is open to the department concerned to report vacancies even on the very day on which the ranked list lapses. This is clearly within the contemplation of Rule 14. If that be so, it is impossible to expect the Service Commission to advise candidates on the very same day on which the vacancy is reported to them. This is because the preparation of advise list consists not merely in copying names from the ranked list, but re-arranging the names in accordance with the directions, priorities, etc. in the special rules and in the rules regarding the reservations. Realistic understanding of rule 14 would clearly lead to the inference that the Service Commission is entitled to and has also a duty to advise candidates even after the lapse of the ranked list, provided the vacancies concerned are reported to Service Commission during the period when the ranked list has life. It is perhaps possible to contend that this part of Rule 14 in a way conflicts with the sweep of rule 13. But, the conflict, if any, is not irreconcilable. The two rules can be interpreted harmoniously so as not to render either rule impotent or otiose. Rule 13 must be read subject to rule 14. In other words, excepting in contingencies as contemplated in rule 14, a ranked list published by the Service Commission shall have life only during the period contemplated in rule 13; or in other words, notwithstanding the lapse of the period of the ranked list as per rule 13; the ranked list could be utilized for the limited purpose of advising candidates in relation to vacancies reported to the Service Commission before the lapse of the ranked list. The same idea could be conveyed by stating that at the expiry of the period of a ranked list as contemplated in rule 13, what lapses is the ranked list except to the extent of the persons who are to be advised in accordance with the vacancies which may be reported to Service Commission before the lapse of the ranked list. This is the only rational and reasonable way of understanding rules 13 and 14 of the Rules. If that be so, there was nothing wrong in the Service Commission advising candidates even after the lapse of the ranked list in relation to vacancies reported to them before the lapse of the ranked list. This is the view taken by Khalid, J. (as he then was) in *C. Muurghan and others v. State of Kerala and others* (1982 (2) ILR (Kerala) Page 74) and I am in respectful agreement with

the same. Petitioners' challenge against the advice by the Service Commission and the contemplated appointments must necessarily fail.

In the result, the original petitions are dismissed. In the circumstances, I make no order as to costs.