

(2010) 09 KL CK 0183

In the High Court Of Kerala

Case No : W.A. No. 1576 of 2010

Moyish A.V., Preventive Officer, Sivasankaran P.G., Excise Guard, Excise, Haroon Rasheed M.A., Excise Guard and Ajayakumar C., Excise Guard, Excise Range

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0183

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P. Ravindran, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Connected Writ Appeals are filed against common judgment of the learned single Judge dismissing various Writ petitions filed by Excise Guards challenging the appointment of Preventive Officers by direct recruitment after Ext.P7 amendment introduced to the Special Rules on 4.6.2008. Some of the petitioners in the WPC were provisionally promoted as Preventive Officers and the proposal to revert them to accommodate direct recruits was also challenged before the learned single Judge. The learned single Judge interpreted the amended provisions to the effect that direct recruitment to the post of Preventive Officers was discontinued only with effect from 4.6.2008 and not with retrospective effect from 30.3.2001 as claimed by the petitioners in the WPCs. The learned single Judge also did not interfere with appointment made by the State from the list prepared by PSC pursuant to the notification issued on 28.3.2007 for direct recruitment. It is against this judgment that appeals are filed and we have heard various counsel appearing for the appellants, Government Pleader and counsel appearing for contesting parties.

2. Appellants have referred to the amendment carried out to Rule 2 of the Special Rules vide Ext.P7 amendment. According to them, by virtue of the

retrospectivity given to the second proviso substituted in Rule 2 direct recruitment to the post of Preventive Officer stands dispensed with from 30.3.2001 onwards. Consequently direct recruitment made in 2007 itself is against the rule now made. Counsel appearing for the contesting parties and Government Pleader appearing for the respondents submitted that retrospectivity is given only to the substituted second proviso to Rule 2 and the provision for direct recruitment is contained in Clause (i) of Rule 2 which is given only prospective effect under the amendment. The further contention of the respondents is that the first proviso is also deleted with prospective effect after the amendment. After hearing both sides and on going through the amended provision, we are of the view that the contention canvassed by the appellants is unacceptable because substitution of the second proviso to Rule 2 with retrospective effect is only for the purpose of filling up the vacancies available for promotees equally between those who passed SSLC and those who did not pass SSLC. In other words, the second proviso refers only to promotees and at the same time, direct recruitment until 4.6.2008, that is upto the date of amendment of Rule 2 was possible but only to the extent of vacancies reserved for direct recruits under the unamended provision which was one out of four. We therefore uphold the finding of the learned single Judge that retrospectivity does not cover direct recruitment. In other words, direct recruitment could be made to one out of four posts arising until 4.6.2008. Therefore we reject this contention.

3. The next contention raised by appellants is that instead of filling up the the quota available for direct recruits, the State Government absorbed excess number of direct recruits and are filling up all the vacancies arising thereby denying the quota reserved for Excise Guards. The contention of the respondents on the other hand is that even though surplus were selected and appointed in supernumerary posts, they are absorbed in service only against quota available for direct recruits. This position claimed by the respondents is emphatically denied by the appellants by contending that ratio is not maintained in the appointments. We do not find any such controversy arising from the facts and figures considered by the learned single Judge and so much so we do not propose to go into this allegation, that is about the denial of quota for promotees. However, We make it clear that prior to amendment on 4.6.2008, posts available until then should be filled up strictly in terms of the then existing rules that is by assigning one post out of four for direct recruits and three should be filled up by promotees. If appellants have any grievance after the list finalised after the disposal of these Writ Appeals, that is by effecting reversion of provisional hands and by accommodating direct recruits strictly against posts reserved for them, appellants are free to contest if irregular appointments are made denying the quota reserved for promotees. In violation of the ratio provided for appointment.

Writ Appeals are dismissed, but with the above observations.