

(1972) 06 KL CK 0001
In the High Court Of Kerala

P.A. Kesavan

APPELLANT

Vs

The Inspector General of Registration and Others

RESPONDENT

Date of Decision : 08-06-1972

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1972) 2 LLJ 593

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—The petitioner and respondents 3 to 6 were originally appointed as lower division clerks in the Registration Department in Madras State. Respondents 3, 4, 5 and 6 were admittedly junior to the petitioner in that cadre. All of them were allotted to the Kerala State on its formation on 1-11-1956. In 1966, the petitioner and respondents 3, 5 and 6 were promoted as upper division clerks. But on 13-1-1967, the petitioner was reverted. The fourth respondent filed O.P. No. 2659 of 1966 claiming promotion to the cadre of upper division clerks in preference to respondents 5 and 6 on the ground that the fourth respondent was senior. That claim was upheld by This Court by the judgment, Ext. P-4 dated 18-12-1968, in Writ Appeal No. 167 of 1967. It is stated that this judgment is now pending in appeal before the Supreme Court, though the fourth respondent has been provisionally promoted on the basis of the said judgment.

2. Under the special rules for the Madras Ministerial Service, passing the registration test and account test for subordinate officers, Part I, was a necessary qualification for upper division clerks in Registrar's Office (vide page 312 of Vol. III, Madras Services Manual). This was amended by the Governor of Madras in exercise of the powers conferred on him under proviso to Article 309 of the Constitution by a notification dated 6th February, 1956. Ext. P-2 is a copy of that notification. According to that amendment, passing the registration test alone is necessary for upper division clerks in Registrar's Offices and Sub-registrar's Offices. The Kerala Government, however, passed an order, Ext. R-I dated

14-1-1963, prescribing account test (lower) as a necessary qualification for lower division clerks in all offices except the High Court, and Assistants Grade II in the Secretariat excluding Legal Assistants Grade II in the Law Department of the Secretariat, for confirmation in the lower division or Grade II and for promotion to the upper division or Grade I. This order was amended by another order, Ext. R-2, dated 6th October 1965, exempting the persons who were formerly in service in Madras State or Travancore-Cochin temporarily from passing the said test, and allowing them a period of four years from 14-1-1963 to pass it. It was also provided by Ext. R-2 that unless the persons concerned passed the test within the said period, they would be reverted to their earlier posts, and the confirmation, if any, given to them would be cancelled. The petitioner did not pass the account test within the period allowed by Ext. R-2 ; and it is for that reason that the petitioner was reverted in 1967 as already stated.

3. The petitioner contends on the basis of the decision of This Court in Writ Appeal No. 167 of 1967 that the Government Orders Exts. R-1 and R-2 are not valid in the face of the relevant statutory rules on the subject, and that he is entitled to promotion to the cadre of upper division clerks and for seniority over respondents 3, 4, 5 and 6 on the basis of his seniority in the lower division cadre. He has, therefore, filed this writ petition to quash the promotions granted to respondents 3 to 6 and to direct the first and second respondents, namely, the Inspector-General of Registration and the State of Kerala to consider the petitioner's claim for promotion to upper division clerks and to promote him with effect from the earliest date of promotion of his juniors namely, respondents 3 to 6.

4. In the light of the decision of This Court in Writ Appeal No. 167 of 1967, the petitioner is entitled to succeed. In that case, the petitioner who is the fourth respondent in the present writ petition had not passed the account test; and it was, therefore, contended that he was not entitled to promotion without passing that test which was one of the two tests prescribed by the Special Rules for Madras Ministerial Service. Apparently, counsel in that case was not aware of the amendment of the relevant, rule made as per Ext. P-2, according to which passing of the above test was not necessary. Now the contention is that passing of the account test is necessary for promotion in view of the Government orders, Exts. R-1 and R-2. The learned Government Pleader who appeared in the above writ appeal seems to have been unaware of these Government orders also; and no argument was, therefore, put forward in that case on the basis of the said orders, as is being done now. This does not, however, affect the merit of that decision. The reasons stated in the judgment in that case would apply to the test prescribed by Ext. R-1. As held in that decision, in the absence of special rules made by the Governor in exercise of his powers under Article 309 of the Constitution or any other statutory law, the provisions contained in the General Rules, namely the Kerala State and Subordinate Services Rules, 1958 would apply to the case. According to Rule 28 of the said rules promotion to the cadre of upper division clerks shall be in accordance with seniority subject to the

person's fitness for appointment. There is no case that the petitioner herein is not a fit person for appointment by promotion. It follows that the administrative orders made as per Exts. R-1 and R-2 cannot affect or prevail over the statutory rule mentioned above, and that the petitioner is entitled to promotion in accordance with the said rule.

5. It is stated that the petitioner has been already promoted provisionally as upper division clerk, and that he is holding that post. For the reasons stated above and in the light of the above fact, I direct respondents 1 and 2 to fix the rank of the petitioner in the cadre of upper division clerks just above respondents 3, 4, 5 and 6. This writ petition is disposed of in the manner stated above. There will be no order as to costs.