
(2009) 03 KL CK 0070
In the High Court Of Kerala
Case No : W.A. No. 1695 of 2008

P.J. Garvasees

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Citation : (2009) 03 KL CK 0070

Hon'ble Judges : M.L. Joseph Francis, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, for the Appellant; N. Sugathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The appellant is the writ petitioner. His grievance raised in the writ petition was against the promotion granted to the 5th respondent, to the post of Assistant Director (Documents), overlooking his superior claim.

2. The brief facts of the case are the following. The appellant, the 5th respondent and three others were advised for appointment by the Public Service Commission (P.S.C.) on 24.9.1998. The 5th respondent was Rank No. 1 and the appellant was Rank No. 5 in the Rank list. All the five candidates, who were advised were, appointed as Scientific Assistants on 28.11.1998. At the relevant time, the 5th respondent was working in the Fisheries Department. She was on maternity leave from 11.9.1998 for a period of 135 days. She applied for extension of time for joining duty till 25.1.1999. After the expiry of the maternity leave, she joined duty on 27.1.1999.

3. The Special Rules provides for a training to Scientific Assistants. The same was completed on 21.9.1999. As per the relevant Special Rules then in force, only after completion of the training, the probation of the incumbent commences. All the appointees completed training on 21.9.1999 and they were put on probation from 22.1.1999. They completed their probation and the same was declared with effect from 22.1.2001.

4. The next promotion post of Scientific Assistant (Documents) is Assistant Director (Documents). One of the qualifications prescribed for the said post is five years' experience. The appellant claimed that since he joined service on 3.12.1998, he acquired the necessary experience on 2.12.2003. The vacancy arose on 9.4.2003. As on that date, no one was qualified among the five incumbents. It was he, who acquired five years' experience first and therefore he was entitled to be considered for promotion.

5. But, ignoring the appellant's superior claim, the Departmental Promotion Committee (D.P.C.) considered Rank Nos. 1 and 2 for promotion. Rank No. 1 was selected and Ext.P9 select list was published. The appellant filed statutory representation against the said list before the Convener of the D.P.C. The said representation was considered and rejected by Ext.P13 order. A further representation filed by the appellant was rejected by the Government by Ext.P14. So, the writ petition was filed challenging Exts.P9, P13 and P14 orders of the Government. The learned Single Judge dismissed the writ petition. Hence this appeal.

6. We heard the learned Counsel for the appellant Mr. Kaleeswaram Raj and Mr. N. Sugathan, learned Counsel for the 5th respondent.

7. In the light of the Special Rules in force at the time of occurrence of the vacancy, normally, the claims of the incumbents for promotion have to be considered. As per the Rules in force at the time of appointment of the appellant and the 5th respondent, the service of a person appointed as Scientific Assistant commences only after completing the training. In other words, his experience can be reckoned only from that date. The appellant and all others started probation on the same day and the probation was declare on the same day. Therefore, the claim of the appellant to supersede his seniors cannot be upheld. Further, we notice that the appellant being only Rank No. 5, he will not come in the field of his choice, when there is only one vacancy. Further, even assuming the appellant's contention regarding late joining of the 5th respondent has some substance, the other persons, that is, Rank Nos. 2 to 4 are persons similarly placed like the appellant in every respects. So, the petitioner can never get promotion superseding them. Therefore, we are of the view that the petitioner does not have any locus standi to challenge the selection and appointment of the 5th respondent.

8. In the result, the appeal fails and it is dismissed.