
(1977) 02 KL CK 0011
In the High Court Of Kerala

Punnose

APPELLANT

Vs

Manager, P. and T. Motor Service

RESPONDENT

Date of Decision : 02-02-1977

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 11, 13

Citation : (1977) 1 ILR (Ker) 650 : (1978) 1 LLJ 88

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Judgement

T. Chandrasekhara Menon, J.—A driver in the service of the P. and T. Motor Mail Service has approached this Court in a writ petition, wherein he has sought for orders for quashing the orders resulting in punishments to him—punishments being one of censure and also a direction to recover Rs. 250 being, the loss incurred by the department on account of the alleged misconduct of the petitioner in the matter of driving the vehicle. He also sought for an order directing the first respondent--Manager, P. and T. Motor Service, Ernakulam, to give the petitioner his due promotion over respondents 2 to 4 on the basis of his seniority and to give him all attendant benefits.

2. It was strongly contended on behalf of the petitioner that, the two punishments as such--one of censure and another of recovery of Rs. 250--for the alleged damages caused by the petitioner could not be imposed by the authorities concerned; and also that in the matter of recovery of damages that had been ordered without any finding that the petitioner was negligent in his job of driving the vehicle, and that no specific amount was shown in the show-cause notice regarding the quantum of damages and that the punishment cannot stand.

3. After going through the relevant records, I am of the view that the petitioner's contentions regarding the same are untenable. As pointed out in *Challappan Nair v. State* (1970) K.L.R. 162, by Justice Mathew, the authority is competent to impose two penalties on the delinquent. In that case the question came up under Rules 11 and 13 of the Kerala Civil Services (Classification,

Control and Appeal) Rules, 1960. It was contended on behalf of the delinquent officer there that no two penalties can be imposed cumulatively. The material part of Rule 13 provides:

Government may impose any of the penalties specified in items [i] and [iii] to [viii] of Rule 11[1] on members of the State service.

Rule 11 provides that,

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant.

It was contended there that the Government was competent to impose only one of the penalties enumerated in Rule 11, and, therefore, the imposition of the two penalties upon the delinquent was not authorised. Mathew, J., pointed out that this contention cannot be accepted. Following the ruling in AIR 1961 S.C. 938, where the word, "everyone of the Directors was construed as meaning all the Directors". Justice Mathew said, "looking at the con-text the same construction should be adopted in this service Rules also".

4. This decision of Justice Mathew is directly applicable here also. Therefore, in the matter of the imposition of the penalties I cannot accept the petitioner's contentions.

5. Now the question arises as to whether on account of the imposition of the penalties the petitioner could be denied promotion, the rule for promotion being on the basis of seniority-cum-fitness. It has been pointed out by the Supreme Court in State of Mysore Vs. C.R. Sheshadri and Others, that seniority-cum-fitness will not mean selection made on merit and ability. There is no question of any comparative assessment as such coming in. In such cases no doubt the suitability or fitness of the person concerned for promotion to the post, his qualification, health, etc., might be relevant and will have to be considered.

6. But the appointment being not on merit or ability, I do not think the punishment of censure imposed on him or punishment of recovery of money, that has also been imposed on him, might be taken into consideration in the matter of determination of his fitness for the post. If such consideration had been taken in the matter, the promotion of respondents 2 to 4 was certainly wrong and the mistake will have to be rectified after hearing the parties concerned.

7. The decision cited by the learned Counsel for the Department, viz., W.A. 199/73 will not indicate anything different from what I have stated above. There are appellant in the case while she was holding the post of a lower selection grade Monitor was reverted by the impugned order therein and afterwards her juniors were promoted in a regular manner as L.S.G. Monitors. The case as put forward before Court was that the selection must be in accordance with Rule 272A of the Posts and Telegraphs Manual and not on the basis of merit and ability. It was contended on behalf of the officer therein that seniority-cum-fitness is what Rule 272A provides and that it is different from a selection based

on merit and ability, and the Court's attention was drawn to the decision in Union of India (UOI) Vs. Mohan Lal Capoor and Others, . In support of this contention it was urged that instead of considering the fitness, what has been done was to refer the matter to the departmental promotion committee and the departmental promotion committee compared the claims of the appellant therein with that of respondents 4 to 6 and the committee selected on the basis of merit and ability. This, it was submitted therein was not choosing on the basis of seniority-cum-fitness. But in the counter-affidavit (in that case), it was asserted that what was considered was fitness and that there was no comparison of merit and ability, Accepting the averments in the counter-affidavit, the Court said "even if Rule 272A was the rule that should have been applied" the Court was not satisfied that this had not been done.

8. What is stated in that decision (W.A. 199/73) would make it clear that no comparative assessment on the basis of merit and ability, where certainly the punishment imposed could be taken into consideration could be had for appointments purely based on seniority-cum-fitness. No doubt a different meaning to the words seniority-cum-fitness had been given in Rev. Mother Provincial v. State (1969) KLT 749 (F.B.) wherein a Full Bench of this Court which was considering the validity of the provisions of the Kerala University Act, Chief Justice Raman Nayar speaking for the Bench gave a meaning to expression seniority-cum-fitness something that is different from the meaning usually attributed to it in the ordinary service rules.

9. It might be noted that subsequently to bring the provision in conformity with the ordinary service rules, an amendment was sought to be incorporated and the amendment was struck down by this Court in Chandrasekhara Pillai v. Accountant-General (1972) III KLT .

10. It is also of interest to note that regarding this provision of the Kerala University Act another Full Bench of this Court in Mercy Mathew v. University of Kerala (1976) KLT S.N. 41 held:

It is clear that this Court was doubtful of the wisdom of the provision in Sub-section (7) of Section 53 of the Act. But it was prepared to uphold the section as necessary to prevent favouritism and secure fair prospects of advancement of the teaching staff. But this approval was qualified by the statement "we would like to make it clear that the seniority-cum-fitness means that due and equal regard should be paid both to seniority and to fitness and since fitness is a matter of degree, it would appear that a senior person can be overlooked in favour of a junior who is demonstrably more fit for the appointment than he is". There was a further qualification to the approval that notwithstanding the wording of the sub-section that direct recruitment could be had only if there is no person available for promotion possessing the necessary qualification, it would be open to the management to resort to appointment otherwise than by promotion if there is no person fit for promotion.

There can be little doubt that to the words seniority-cum-fitness a particular meaning had been given by this Court in *Rev. Mother Provincial and Ors. v. State of Kerala* (1969) KLT 749. This view was reiterated in *Rt: Rev. Dr. M.M. John v. Government of Kerala* (1971) KLT 875. The use of the same expression, which has been judicially interpreted, in the present Act indicates that the legislature has accepted that interpretation. If the intention was that the appointment should be on considerations different from what has been pointed out in (1969) KLT 749, different language would certainly have been adopted. That the legislature has accepted the interpretation is also evident from the fact that the two other suggestions made by this Court in its judgment in (1969) KLT 749 have also been adopted by the Legislature. This Court expressed the view in (1969) KLT 749, that in the matter of appointment of a Principal, it is not desirable to have the selection confined to the teachers in the college or colleges. These restrictions which were contained in Sub-sections [1] and [3] of Section 53 (which were declared void) of the earlier Act have now been removed. Sub-section [2] of Section 57 of the present Act significantly provides "direct recruitment" as a method of appointment to the post of Principal. Secondly, in regard to the appointments other than in the lowest grade of teacher of the college or of all the colleges as the case may be now provided by Sub-section (4) of Section 57 what was pointed out by this Court in the above decision in regard to Sub-section (7) of Section 53 that this Court did not understand the provision therein to preclude appointment by direct recruitment when the person available in the college or colleges are not fit for promotion, has now been specifically enacted in Sub-section (4) of Section 57 of the present Act.

The meaning thus given to the sub-section would enable the management to some extent at least to choose. If a junior is better equipped than he senior the junior can be preferred and automatic promotion of the seniormost if he is not found to be unfit in the sense unsuitable, is not what is meant by the legislature according to the interpretation placed on the provision. There is an element of comparison in determining fitness.

11. In view of what I have stated above, the petitioner is entitled to have his promotion to the post of selection grade driver considered on the basis of what I have indicated above. The O.P. is disposed of as above. No costs.