
(2015) 01 KL CK 0210

In the High Court Of Kerala

Case No : Writ Petition (C). No. 30151 of 2011 (T)

Rajesh K.

APPELLANT

Vs

Cochin University of Science and Technology and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0210

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : K. Jaju Babu, M.U. Vijayalakshmi and T.S. Shyam Prasanth, for the Appellant; M.R. Hariraj, S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—The petitioner, who was selected for appointment as Assistant (Assistant Gr.-II) in Cochin University of Science and Technology (the first respondent) on the basis of a written test and joined duty as Assistant on 27.12.2006, is seeking a direction against the first respondent to declare that he has satisfactorily completed his probation on 27.12.2007 forenoon and also for declaring that he is eligible for promotion to the post of Senior Grade Assistant on 5.1.2008 when he cleared Account Test (Lower) and to revise that part of Ext. P9 gradation list in respect of Senior Grade Assistants so as to place him above respondents 2 to 12.

2. The petitioner alleges that he has secured a higher rank (53rd rank) than respondents 2 to 12 in Ext. P1 list for appointment to the post of Assistant Cadre of respondent university. He further alleges that he joined duty on 27.12.2006 i.e. earlier than the said respondents 2 to 12. His grievance is that in Ext. P9 gradation list published by the respondent university, he was placed lower than respondents 2 to 12, despite his objection to Ext. P7 provisional seniority list.

3. The stand taken by the respondent university was that the petitioner lost seniority as he had cleared the Accountant Test (Lower), Accountant Test

(Higher) and Secretariat Office Manual Test on 11.01.2008 only i.e. ten days after he completed the one year. The petitioner points out that the rules expressly provide the requirements for probation and promotion of Assistant to Senior Grade Assistants and this was pointed out to the first respondent through Ext. P10 representation. However, it could not evoke any positive response. It is with this background the petitioner has filed this writ petition.

4. No counter affidavit was filed by the respondent university.

5. Respondents 3 to 5 and 12 have filed a detailed counter affidavit supporting the stand taken by the university.

6. I have heard the learned Senior Counsel for the petitioner, the learned standing counsel for the respondent university and the learned counsel for the contesting respondents.

7. As stated earlier, the writ petition is filed challenging Ext. P9 gradation list in respect of Senior Grade Assistants and seeking other reliefs also. The claim of the petitioner is that probation in the category of Assistants has to be declared with effect from 27.12.2007 and that he should be given promotion as Senior Grade Assistant towards the vacancies arising thereafter. As it stands now, his probation was declared with effect from 12.01.2008 as per Ext. P4 and was promoted as Senior Grade Assistant on the very same day as per Ext. P5.

8. The stand taken by the respondent university is that the university is following the Secretariat pattern of staff structure in the case of administrative staff on the basis of Ext. R1(A). It was further pointed out that the Government vide Ext. R1(b) order dated 14.11.1961 ordered that "Assistant Grade II in the Secretariat (including Legal Assistants Grade II in the Law Department) and Lower Division Clerks of the Officers of the Public Service Commission and the Director of Public Relations, in the scale of Rs. 50-125, should pass a test on the Kerala Secretariat Manual within the period of Probation". It was further ordered that the penalty for not passing the tests in Office Procedure (Secretariat Office Manual) during the period of probation will be as indicated in Rule 19(b) and 21 of Part II of KS & SSR, 1958.

9. The learned Senior Counsel for the petitioner inviting my attention to Ext. P11 intimation received by the petitioner on 8.11.2012 under the Right to Information Act with the supporting documents would argue that the said document would show that the probation in respect of respondents 3 to 12 were declared long after the petitioner. It was further argued that as per Rule 28A of KS & SSR which is applicable to respondents 1 and 2, now a member of a grade or service, is not eligible for probation unless he has satisfactorily completed his probation in that category. Even if juniors completed their probation earlier, they will have to be considered for probation for earlier vacancies as held by this Court in Varghese v. State of Kerala [1981 KLT 458].

10. The learned counsel for the party respondents would contend that the

petitioner became junior to those respondents and also transferee employees of the respondent university who came on transfer from other universities. It was pointed out that the following are the circumstances under which the petitioner became junior to the party respondents:

"Clause 6 of Part I of Chapter III of the Cochin University First Statutes, 1981 provides for appointment to non-teaching posts in the University by transfer from other Statutory Universities. The said Clause further provides as follows:

Provided also that the person thus appointed on transfer:

- i) Shall be treated as junior most in the respective category in the University with the scale of pay admissible to one initially recruited to the respective category.
- ii) Shall not be required to undergo fresh probation if he has already completed the probation.
- iii) Shall not be entitled to count his previous service towards seniority, but such service be reckoned for purpose of increment, leave, pension, gratuity etc.

The Note to the aforesaid clause explains the expression "junior most in the category" as contextually meaning as follows:

a) Assistant Grade II in the case of persons holding posts such as Assistant Grade I and Senior Grade Assistant."

11. The learned counsel for the party respondents points out that the Senior Grade Assistants, who are Sl. Nos. 11, 12, 20, 21, 23, 24, and 25 in Ext. P9 list, are inter-university transferees. They have been shown to be seniors to the petitioner in Ext. P9. The Inter University Transferees though were juniors to those who had been working in the category of Assistants at the time of transfer of the transferee assistants to the Cochin University of Science and Technology were promoted as Senior Grade Assistants since their probation had already been declared in the university from where they were transferred and, therefore, they were eligible for promotion in the existing vacancies.

12. It was further pointed out that since the transferees were promoted as Senior Grade Assistants, their admitted seniors were eligible for promotion in terms of first proviso to Rule 28(a) of the KS & SSR. As per first proviso to Rule 28(a) of KS & SSR, a probationer in a class, category or grade shall not be superseded for promotion to a higher class, category or grade by his junior, if the vacancy in the higher class, category or grade arises within the period specified in the Special Rules for completion of probation in the class, category or grade in which he is probationer and if he has passed the test or tests prescribed for successful completion of probation and is otherwise eligible and suitable for such promotion; but his promotion shall be subject to the condition that he satisfactorily completes the probation in the class, category or grade from which he was promoted within the period prescribed therefor, and for this purpose the period of service put in by him in the higher class, category or grade shall be

reckoned towards probation in the class, category or grade from which he was promoted and also in the class, category or grade to which he was promoted. Therefore, the probationers like respondents 3 to 15 and 12 became seniors to the transferees in view of the statutory protection given to them under Rule 28(a) of KS & SSR, since all of them passed the prescribed test and completed probation within the stipulated period. It was contended that the petitioner did not pass the prescribed test for completion of probation within the prescribed one year period and, therefore, he did not get protection of Rule 28(a) proviso. Therefore, he became junior not only to the promotees like the respondents, but also to the transferees who had completed their probations when they were promoted.

13. The learned counsel for the party respondents submitted that as the petitioner has not made all transferee assistants who have got promotion as Senior Grade Assistant and who were seniors to the petitioner as per Ext. P9 list, the writ petition is bad for non-joinder of necessary parties. I see valid force in the said submission. The learned counsel invited my attention to the judgment of this Court in O.P No. 41215 of 2003 wherein similar legal issues arose. A copy of the judgment is produced as Ext. R12(A) for reference.

14. In that original petition, this Court held that the proviso to Rule 28(b) in essence is only conferment of the limited benefit to a senior who is fully qualified and who has already passed the test necessary for declaration of probation at the time when the vacancies occurred rendering it unnecessary for such a person to complete his probation. As the petitioner did not pass the prescribed test within the prescribed period, he was not entitled to the protection of Rule 28(b) proviso of KS & SSR. Therefore, this Court cannot find any illegality, irregularity or impropriety in Ext. P9.

15. It is crucial to note that the petitioner has not challenged the order declaring his probation thereby allowing the said order to become final. Therefore, there is no justification for the petitioner to complain that he has been shown junior to those who completed probation within the prescribed period and got protection of Rule 28(a) proviso of KS & SSR.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to get the reliefs prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.