
(1979) 10 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 5357 of 1976-D

Ramachandran Nair and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-10-1979

Acts Referred:

Kerala Labour Subordinate Service Special Rules — Rule 5, 7
Kerala State and Subordinate Services Rules, 1958 — Rule 19, 20, 21

Citation : (1979) 10 KL CK 0009

Hon'ble Judges : George Abraham Vadakkal, J

Bench : Single Bench

Advocate : M. Ramachandran and K.R.B. Kaimal, for the Appellant; Government Pleader for Respondents 1 and 2, T.P. Kelu Nambiar, for 3rd Respondent, C.M. Kuruvilla and John Mathew for Respondents 6, 7 and 9 to 14 and P.K. Kesavan Nair, K.N. Narayana Pillai, T.K. Venugopalan and A.S. Parameswaran for 8th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

George Vadakkal, J.—The Petitioners, three in number, at the time when the Original Petition was filed were Upper Division Clerks. The only point raised before me by their learned Counsel is Exts. P-6, P-7 and P-8 orders produced along with C.M.P. No. 13990 of 1978 seeking an amendment of the Original Petition are incompetent insofar as the said orders, as averred in the affidavit in support of the said petition, amount to conferring undue benefits upon Respondents 4 onwards and the first Respondent, State is not competent to pass the said orders.

2. By Exts. P-6 and P-8 in relaxation of Rule 21 of the Kerala State and Subordinate Service Rules, 1958, the probation period of Respondents Nos. 4 and 8 respectively in the cadre of Assistant Labour Officer, Grade II was extended till "the second day following the last day of the whole examination in which they completed the Account Test". By Ext. P-7 order likewise the Government extended the probation of the 11th Respondent as Assistant Labour

Officer, Grade II, till the second day following the last day of the whole examination in which he completed the Account Test in 1977, by Ext. P-8 order the Government in relaxation of Rule 21 earlier referred to extended the period of probation of the persons mentioned therein in cadre of Assistant Labour Officer Grade II up to the dates noted against each name. The persons mentioned therein are Respondents Nos. 6, 7, 10, 13, and 14. These orders are impugned on the ground that the said orders retrospectively extended the period of probation of the persons mentioned in each of the said orders.

3. Respondents 4 to 14 are direct recruits to the post of Assistant Labour Officer Grade II. Under Rule 5(i) of the Kerala Labour Subordinate Service Special Rules every person recruited direct or by transfer to the post of Assistant Labour Officer Grade II is required to be on probation for a total period of two years on duty within a continuous period of three years. Under Rule 7 of the same rules every persons so appointed by direct recruitment shall within the period of probation pass the Account test (lower). The case of the Petitioners is that the Respondents 4 to 14 did not acquire the Account Test qualification within their period of probation and that therefore under Rule 19(b)(i) of the Kerala State and Subordinate Services Rules, 1958 they have to be discharged from service. In that connection the learned Counsel for the Petitioners submits that the retrospective extension of period of probation as per Exts. P-6 to P-8 orders are invalid and void. On that basis it is submitted that the competent authority should be directed to discharge Respondents 4 to 14 from service.

4. The learned Counsel appearing for Respondents 4 to 14 pointed out that Respondents 5, 9 and 12 acquired the test qualification within the period of two years out of three years during which period they were on probation this fact is not controverted on behalf of the Petitioners. In that view, the Petitioners are not entitled to have any relief as against Respondents 5, 9 and 12 in that they are entitled to have their probation declared in accordance with the rules governing the same. I should here notice that as a matter of fact, it has been declared that these Respondents have satisfactorily completed their probation.

5. So far as Respondents 6, 7, 10, and 13 are concerned, it is submitted on their behalf that they acquired the Account Test qualification within the total period of three years mentioned in the rule. It is also averred in the counter affidavit on behalf of the State that it has been declared that these Respondents also have satisfactorily completed their probation; so far as Respondents 6 and 7 are concerned such declaration was on 21st April 1974; so far as the 10th Respondent is concerned, on 27th April 1974; and so far as Respondents 13 and 14 are concerned, on 18th April 1974.

6. Respondents 4 and 11 appear to have acquired the Test qualification only after the expiry of the total period of three years but within the period of their probation as extended by Exts. P-6, P-7 and P8.

7. The only question that arises for consideration herein is as to whether the first

Respondent is competent to retrospectively extend the period of probation. Referring to Rule 21 of the General Rules the learned Counsel for the Petitioner submitted that the first Respondent, the State is not competent to extend such period of probation with retrospective effect. It is not disputed that the Government have power to extend the period of probation. If the Government is competent to pass an order extending the period of probation I see no reason why it cannot retrospectively extend the period of probation even if it be after the expiry of the period of probation. Nothing has been brought to my notice which will take away the power of the Government to pass retrospective orders of the nature in question. In that view I am not prepared to uphold the contention advanced that Exts. P-6 to P-8 orders are invalid or void.

8. As already pointed out the first Respondent has declared that Respondents 4 to 14 have satisfactorily completed their probation. Such declaration is in accordance with Rule 20 of the General Rules. The said orders have not been impugned before me and in the absence of challenge of the said orders declaring the satisfactory completion of probation by Respondents 4 to 14, I do not think that the Petitioners are entitled to challenge Exts. P-6 to P-8 orders. In that view also there is no merit in this writ petition.

This writ petition fails and is dismissed. In the circumstances of the case there will be no order as regards costs.