

(2008) 07 KL CK 0080

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32934a of 2007U

Ravindran K.

APPELLANT

Vs

Mahatma Gandhi University and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 5

Citation : (2008) 3 KLJ 262

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : P.B. Suresh Kumar and Leo George, for the Appellant; T.A. Shaji, SC, P. Ramakrishnan and T.B. Remany, GP, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The petitioner is working as Electrician in the Engineering Unit of Mahatma Gandhi University (hereinafter referred to as "University"). The third respondent is working as Overseer Grade II (Electrical) in the Engineering Unit of the University.

2. The dispute involved in this Writ Petition centres round the method by which the promotion to the post of Overseer Grade I (Electrical) should be made. As per Ext.P 1 order dated 5.6.1999 issued by the University, ratio of 1:1 was provided for promotion from among Oversees Grade II (Electrical) and Electricians. The relevant portion of Ext.P1 order reads as follows:

This office consequent to the decision of the Syndicate vide paper (1) read above, created 3 posts of Grade I Overseers (Electrical) to be filled by promotion from among Oversees Grade II (Electrical) and Electricians in the ratio of 1:1 on the basis of seniority.

3. It is an admitted case that in the year 1999, for the purpose of filling up the three posts of Oversees Grade I (Electrical), no one from among the category of Overseer Grade II (Electrical) was available and the three posts were filled up by

promoted Electricians. It is also an admitted case and it is clear from Ext.P3 provisional seniority list that on 20.1.2005, one Shri Pratap P. Thankappan was promoted as Overseer Grade I (Electrical) while working as Overseer Grade II (Electrical). According to the learned Counsel for the petitioner, this was following the ratio as provided in Ext.P 1 University Order dated 5.6.1999. Now a vacancy of Overseer Grade I (Electrical) exists. According to the petitioner, that vacancy is to be filled up from among the Electricians; and admittedly the petitioner being the senior-most Electrician, he is entitled to be promoted as Overseer Grade I (Electrical). According to the third respondent, the ratio is to be decided not on the basis of the vacancies to be filled up for the present, but on the basis of the cadre strength. The learned Counsel for the third respondent submits that three Electricians having been promoted in the year 1999 as Overseers Grade I (Electrical), the vacancy which exists now is to be filled up promoting an Overseer Grade II (Electrical) and not by promoting an Electrician. If an Overseer Grade II (Electrical) is to be promoted as contended by the third respondent, he should get the promotion as he is the senior-most person in that category. On a representation made by the petitioner on 9.4.2007 to the University, the University issued Ext.P6 memo dated 13.6.2007 which reads as follows:

With reference to the subject cited, Sri. Ravindran, K., Electrician is informed that the Legal Advisor, Mahatma Gandhi University has clarified that the promotion to the post of Overseer Grade I should be made as per the existing U.O. In this regard cited (1) above. As per this U.O., the posts of Overseer Grade I (Electrical) are to be filled by promotion from among Overseer Grade II and electrician in the ratio 1:1 on the basis of seniority. Three Electricians and one Overseer Grade II (Electrical) were promoted as Overseer Grade I (Electrical) till date. So the next vacancies in the post of Overseer Grade I (Electrical) must be filled by promoting the eligible Overseer Grade II (Electrical) till the post of Overseer Grade II (Electrical) attain the strength for maintaining the ratio as per the U.O. Cited (1) above.

4. In the counter affidavit filed by respondents 1 and 2, it is stated that the ratio 1:1 was fixed by the Syndicate not for the purpose of appointment, but for promotion as Overseer Grade I (Electrical) from among Overseers Grade II (Electrical) and Electricians. It is also stated that Shri Pratap P. Thankappan was appointed following the ratio 1:1 as mentioned in Ext.P1 University Order. According to the University, by the appointment of Shri Pratap P. Thankappan, the ratio has not been fully satisfied. It is made clear in paragraph 7 of the counter affidavit that two more posts of Overseer Grade I (Electrical) have to be filled from Overseer Grade II (Electrical) to maintain the ratio 1:1. The stand taken by the University is that in the next arising vacancy of Overseer Grade 1 (Electrical), the third respondent is entitled to be promoted.

5. Learned Counsel for the petitioner relied on the decisions of the Supreme Court in Paramjit Singh Sandhu and Others Vs. Ram Rakha Mal and Others, and The Direct Recruit Class-II Engineering Officers' Association and others Vs. State

of Maharashtra and others, . In Paramjit Singh Sandhu and Others Vs. Ram Rakha Mal and Others, , the Supreme Court held thus -

...What this Court meant while saying that when 1 quota rule is prescribed for recruitment to a cadre it meant that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who come to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and everytime the vacancy is filled in by referring to the source from which the retiring person was recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant by this Court when it said: (SCC p.486, para 14: SCC (L&S) p.318)

The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota.

The quota in the present case is 4:1 that is, four promotees to one direct recruit. Therefore, whenever vacancies occur in the service the appointing authority has to go on recruiting according to quota. In other words, whenever vacancies occur, first recruit four promotees irrespective of the factors or circumstances causing the vacancies and as soon as four promotees are recruited bring in a direct recruit. That was what was meant by this Court when it said that a roster has to be introduced and this roster must continue while giving confirmation....

6. In The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, , while summing up the judgment, the Supreme Court stated thus-

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

7. The learned standing counsel for the University submitted that Note 3 to Rule 5 of Part II of Kerala State & Subordinate Services Rules, 1958 would apply in

the case on hand. Rule 5 of Part II of the Kerala State & Subordinate Services Rules, 1958 along with Notes is extracted below for easy reference:

5. Method of recruitment - Where the normal method of recruitment to any service, class or category is neither solely by direct recruitment nor solely by transfer, but is both by direct recruitment and by transfer -

(a) the proportion or order in which the Special Rules concerned may require vacancies to be filled by persons recruited direct and by those recruited by transfer shall be applicable only to substantive vacancies in the permanent cadre;

(b) a person shall be recruited in such permanent cadre, and only if the vacancy is one which should be filled by a direct recruit under the Special Rules referred to in Clause (a); and

(c) recruitment to all other vacancies shall be made by transfer.

Note - (1) All permanent vacancies and temporary vacancies except those of short duration shall be treated as substantive vacancies.

(2) Leave vacancies and vacancies of less than 6 months' duration shall be treated as vacancies of short duration.

(3) Whenever a ratio or percentage is fixed for different methods of recruitment/appointment to a post the number of vacancies to be filled up by candidates from each method shall be decided by applying the fixed ratio or percentage to the cadre strength of the post to which the recruitment/transfer is made and not to the vacancies existing at that time.

8. On a careful consideration of Note 3 to Rule 5 of Part II of the Kerala State & Subordinate Services Rules, 1958, I am of the view that Note 3 to Rule 5 of Part II of the Kerala State & Subordinate Services Rules, 1958 would apply only when a ratio or percentage is fixed for different methods of recruitment/appointment to a post. In the present case, there is only one method of recruitment/appointment. Different methods of recruitment may arise as mentioned in Rule 5, i.e., by direct recruitment or by transfer, etc. In the present case, the promotion is from the category of Overseer Grade II (Electrical) and from the category of Electrician. A ratio is fixed, as per Ext.P 1, as 1:1. Note 3 to Rule 5 of Kerala State & Subordinate Services Rules, 1958 would have no application to such a situation. The ratio is to be followed in respect of the vacancies as they exist. There is nothing in Ext.P1 or any other rule, which would indicate that the cadre strength is to be taken into account while applying the ratio. Therefore, I am inclined to accept the contention put forward by the petitioner, on the basis of the principles laid down by the Supreme court in the decisions aforesaid. The petitioner being a senior-most Electrician, by applying the 1:1 ratio, he is entitled to be promoted as Overseer Grade I (Electrical), since on the earlier occasion Overseer Grade II(Electrical) was promoted as Overseer Grade I (Electrical).

9. For the aforesaid reasons, the Writ Petition is allowed. Ext.P6 memo dated

13.6.2007 is quashed. Respondents 1 and 2 shall make the promotion to the post of Overseer Grade I (Electrical) on the basis of the aforesaid findings.