

(2010) 06 KL CK 0069

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 18409 of 2004 (N)

S. Ashok Kumar, Assistant Development

APPELLANT

Vs

State of Kerala, Secretary to Government and Commissioner
for Rural Development

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Citation : (2010) 06 KL CK 0069

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : B. Ragunathan, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—The petitioner was advised by the Public Service Commission for appointment to the post of Assistant Grade-II in Finance Department of the Government of Kerala and he joined the post on 18/05/1981. He was promoted as Assistant Grade-I with effect from 11/05/1983 and was again promoted as Senior Grade Assistant with effect from 26/06/1988.

2. While so, the PSC recruited the petitioner as Block Development Officer in the Rural Development Department in the quota for by transfer appointment. Accordingly, the petitioner was relieved from the Finance Department as per Ext.P1 order dated 13/10/1993. Thereupon the petitioner joined the Rural Development Department, and subsequently, was promoted as Assistant Development Commissioner with effect from 05/06/2004. It is also stated that in the meanwhile as per Ext.P2 dated 23/12/1998, the petitioner was promoted as Selection Grade Assistant in his parent department.

3. Meanwhile on 03/04/1995, before he could complete the probation as BDO, the petitioner submitted a representation to repatriate him to the parent department. That request was rejected by Ext.P11 order dated 07/08/1995 on

the ground that the same was impermissible in view of the judgment dated 03/01/1987 of this Court in W.A. No. 980/87. The petitioner continued to make representations, copies of which are Exts.P3 to P7.

4. While so, Ext.P10 notice was issued by the Government of Kerala on 12/05/2004 directing that appointees like the petitioner be confirmed in the respective services. Accordingly, by Ext.P13 order dated 08/07/2004, among others, the petitioner was also confirmed as BDO with effect from 01/02/1995. However that order was quashed by this Court, as a result of which, the respondents again issued Ext.P14 order dated 15/10/2005 confirming the service of the petitioner as BDO in the Rural Development Department with effect from 01/02/1995. In this writ petition, the petitioner challenges Exts.P11, P13 & P14 and also seeks an order directing the respondents to repatriate him to his parent department with all consequential benefits thereof.

5. Contention raised by the petitioner is that Ext.P11 order rejecting his request for repatriation to his parent department and his confirmation in the Rural Development Department evidenced by Exts.P13 & P14 are against the Full Bench judgment of this Court in Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KLT 766, which was confirmed by the Apex Court in the decision in Ali v. State of Kerala 2003 (2) KLT 922. It is also stated that identical orders issued in respect of certain other employees like the petitioner have been set aside by this Court in Ext.P15 judgment dated 13/07/2007 in WP(C) No. 23343/2004, which was confirmed in W.A. No. 2785/2007 as per Ext.P16 judgment dated 07/04/2008. The learned Counsel submits that against Ext.P16 judgment of the Division Bench, SLP was filed before the Apex Court and the SLP was dismissed as per Ext.P17 order. It is stated that by Ext.P18 order dated 23/03/2010, Exts.P15 to P17 were implemented and benefits were extended to the parties to Exts.P15 to P17. It is contended that the petitioner is similarly situated in all respect and therefore, he is also entitled to similar benefits.

6. The learned Government Pleader however mainly contended that in Ext.P17, the Apex Court had left open the issue to be decided in appropriate proceedings. It is argued that Ext.P15 judgment of the learned Single Judge was rendered relying on the Full Bench judgment in Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KLT 766 and as the Apex Court has left open their legal question in Ext.P17, neither the Full Bench judgment nor Exts.P15 and P16 can be followed as precedent. It is contended that in view of Rule 16, Part-I, KSR, an officer on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. It is contended that because of Rule 16, by virtue of his appointment as BDO, the petitioner has lost his lien in the Finance Department and therefore cannot seek repatriation to that Department.

7. In my view, the issue raised in this writ petition is fully covered in favour of the petitioner by virtue of the Full Bench judgment in Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KLT 766. In that judgment, it has been held that a person,

who is covered by Rule 8 of Part-I KSR, is entitled to get repatriation to his parent Department before confirmation of his probation in the new Department. This judgment of the Full Bench has been confirmed in all respect by the Apex Court in *Ali v. State of Kerala* 2003 (2) KLT 922.

8. In this case, the petitioner joined the Rural Development Department only pursuant to Ext.P1 dated 13/10/1993 and could have been confirmed only after completion of 2 years probation, which is after 13/10/1995. On the other hand, by Exts.P13 & P14, he was irregularly confirmed in the Rural Development Department with effect from 01/02/1995. For that reason itself, Exts.P13 & P14 are illegal. Further, before completion of 2 years, as the petitioner had made representation dated 03/04/1995 seeking repatriation to the parent department, its rejection by Ext.P11 is also illegal.

9. In support of his contention that under Rule 16, Part-I- KSR, in view of the appointment of the petitioner in the Rural Development Department, the petitioner lost his lien in the Finance Department, the learned Government Pleader relied on the Single Bench judgment of this Court in *Gracen Charles v. State of Kerala* 2001 (1) KLT 72. True, in that judgment, it was held that as per Rule 16, Part-I-KSR, an officer on substantive appointment to a permanent office acquires a lien on that post and ceases to hold any lien previously acquired on any other post. However, a reading of this judgment shows that attention of the learned Single Judge was not drawn to the Full Bench judgment in *Balakrishnan Nair v. Ram Mohan Nair* 1998 (1) KLT 766, wherein in paragraph 11, it has been held thus:

From a reading of the above rule, the following position emerges. When an officer is appointed substantively to a permanent post, he acquires a lien on that post and ceases to hold the lien which he acquired previously on any other post. If Rule 16 stood as such, the argument of the respondents could have been accepted that when the appellants were appointed substantively to a permanent vacancy in the Co-operative Department, they lost their lien in the Rural Development Department. But Rule 16 is not absolute. The lien has to be suspended by the Government under Rule 18 and before suspending the lien the Government has to consider the result of the suspension. The lien of an officer cannot be suspended or terminated without his consent.

This judgment has been affirmed by the Apex Court in *Ali v. State of Kerala* 2003 (2) KLT 922.

10. Therefore, by virtue of the authoritative pronouncement by the Full Bench, which has been affirmed by the Apex Court, I am not inclined to place reliance on the decision in *Gracen Charles's* case (*supra*), as canvassed by the learned Government Pleader.

11. Although, the learned Government Pleader is also right in his contention that in Ext.P17 order of the Apex Court dismissing the SLP filed against Ext.P16 judgment of the Division Bench the findings in paragraph 8 of Ext.P15 judgment

has been left open, in my view, that does not mean that the Apex Court has reversed the judgment of the Full Bench in Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KLT 766 or its own judgment in Ali v. State of Kerala 2003 (2) KLT 922.

In the result, the petitioner is entitled to succeed. Exts.P11, P13 & P14 as against the petitioner are quashed. The respondents are directed to allow the request made by the petitioner for repatriation to the Finance Department with all consequential benefits. Orders in this regard shall be passed as expeditiously as possible, at any rate, within three months of production of a copy of this judgment.

This writ petition is allowed as above.