

(1989) 01 KL CK 0001
In the High Court Of Kerala
Case No : O. P. No. 676 of 1989

Sarala

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-01-1989

Acts Referred:

Citation : (1989) 1 KLJ 328

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : B. Reghunathan, for the Appellant; K.R.B. Katmal, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Sivaraman Nair, J.—Petitioner was a Lower Division Typist in the Social Welfare Department. The 3rd respondent was her junior in that category. She opted the post of Stenographer in a higher salary scale in the same Department. She was appointed in that post by Ext. P4 order dated 24-11-1984. The scale of salary of a lower Division Typist was Rs. 330-515. The scale applicable to confidential Assistants was Rs. 350-730 at that time. The difference in the scales of salary was maintained ever thereafter. The promotion post for a Lower Division Typist is that of Upper Division Typist. The ratio between Lower and Upper Division Typists was altered to the advantage of the service personnel. As a consequence of that, the third respondent, who was the erstwhile junior of the petitioner in the category of Lower Division Typists, was promoted as Upper Division Typist with effect from 16-9-1985. Petitioner requested in Exts.P5 and P6 to revert her back to the category of Lower Division Typist, so that she may obtain the advantage of promotion as Upper Division Typist in preference to the third respondent. In spite of the recommendations alleged to have been made in her favour by the Head of the Department, the Government rejected her representation in Ext. P9 dated 14-5-1987. Petitioner submitted two further representations, Exts. P10 P 11, on the basis of three orders, Exts. P12, P13 and P14 in which options exercised by

Typists who were permitted to change their category as Clerks were allowed to report. The request of the petitioner is said to have been recommended once again by the Head of the Department, under whom the petitioner was working as Confidential Assistant. A vacancy in the still higher post of "Fair Copy Superintendent arose consequent on the retirement of the then incumbent on 30-4-1988. The third respondent was given additional charge of that post, since she was the senior most in the category of Senior Grade Typists. This was by order dated 27-4-1988. She was provisionally promoted with effect from 1-5-1988 by order dated 21-5-1988- under Exts. P16 and P17. The representations submitted by the petitioner were rejected in Exts. P 18 and P 19 communications dated 25-10-1988 and 29-10-1988. Petitioner assails those two communications as also Exts. P5, P6 and P9 whereby her request for category change and consequential benefits were rejected as also Ext. P16 and P17 whereby the 3rd respondent was promoted. Petitioner also seeks the issue of a writ of mandamus directing the first respondent to allow category change to the petitioner to the post of Lower Division Typist with consequential benefits of promotions on the basis of her original seniority in that post. The stand taken by the Government in the communications which are impugned in this Original Petition seems to be that rule 8 of the Kerala State and Subordinate Services Rules does not apply to cases where a person in one category in a service opts for a change to another category in the same service. Counsel for the petitioner submits that this proposition was clarified in note (2) to the rule, which was inserted by G. O. (P) No. 238/86/GAD dated 23-7-1986, and which was published as SRO No. 1244/86 in KG No. 33 dated 19-8-1986. He submits rightly that that note has no retrospective effect and therefore her claim was not liable to be rejected on the basis of that note-

2. Rule 8 of the Kerala State and Subordinate Services Rules provides for certain rights in favour of members who absent from duty. It provides:

The absence of a member of a service from duty in such service, whether on leave, other than leave without allowances for taking up other employment on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn-

(a) x x x x x x x x x x x x x x x x x

(b) for promotion from a lower to a higher category in such service; and

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate;

X x x x x x x in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence.

The fourth proviso to that rule, which is to the following effect, is also relevant:

Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service no being Military service, solely on his own application, unless such appointment is made in the exigencies of public service.

It is clear from the above, provisions, that only such members of service who absent from duty in that service and not those who absent from one category in the service to another category in the same service-are entitled to the benefits of the Rule. The petitioner was not absent from the service. She was very much a member of the original service. She opted out of the category and in favour of another. She was absent only from the category of Lower Division Typist. She opted out on her own in search of better prospects. Her appointment in the category of Stenographer (Confidential Assistant) was not in exigencies of public service I do not find anything wrong in the orders impugned to the effect that only absence from the "service" and not absence from one category and service in another in the same service will entitle an employee to the benefits of Rules 8 of the Kerala State and Subordinate Services Rules.

3. Petitioner raises a plea of discrimination, because certain persons concerned in Exts. P 12, P 13 and P 14 were allowed category change as Typists inspite of the fact that they had opted for service as Clerks. One significant factor is that there was no difference in the scales of salary in those three cases. Secondly, the personnel in whose favour Exts. P 13 and P 14 orders were issued had repotted before the period of probation was over. Rule 8 was not called in aid in either of them. In Ext. P14, the order" was passed in relaxation of Rule 8 of the General Rules. Those two distinctions are sufficient justification for a different treatment in those cases. The only fact that Rule 8 was mentioned in Ext. P 12 order does not justify a complaint of discrimination. Petitioner opted for service in a different category to her manifest advantage, because the salary scale of a Stenographer was admittedly higher than that of a Lower Division Typist. She enjoyed the benefits throughout. She exercised option after the period of probation was over. In these circumstances, there is no justification for the complaint of the petitioner. She was appointed as a Confidential Assistant in a higher salary scale solely on her own application and otherwise than in the exigencies of public service. She is therefore not entitled to the benefits of Rule 8, particularly in view of its 4th proviso. Even without note 2 which was introduced later, that was the undoubted legal position. Rejection of her request for reoption is fully justified by the rules, I do not find any justification to interfere with the impugned proceedings.

The Original Petition cannot, therefore, be entertained and the same is hereby dismissed.