(2000) 04 KL CK 0024

In the High Court Of Kerala

Case No : O.P. No. 27869/99

Seethilal, K. and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 1, 2, 5, 51A

Citation : (2000) 04 KL CK 0024

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K.R.B. Kaimal and Paul C. John, for the Appellant; P.V. Asha, Govt. Pleader for Respondents 1 to 3 and O.V. Radkakrishnan, for 4th Respondent, for the Respondent

Judgement

C.S. Rajan, J.—The Petitioners are Excise Guards in Alappuzha Revenue district. They are S.S.L.C. holders. According to them they had passed the prescribed test for promotion to the post of Preventive Officers. Thus they became fully qualified for promotion as Excise Preventive Officers. The promotion to the post of Excise Preventive Officers is governed by the provisions contained in the Special Rules for the Kerala Excise and Prohibtion Subordinate Service. Excise Preventive Officers are included in category No. 2 under Rule 1 of the above Rules. Category No. 3 is Excise Guards. The method of appointment to the category of Excise Preventive Officers is laid down in Rule 2, which reads as follows:

Excise Preventive Officers:

1. Direct recruitment.

2. Promotion from category 3. Provided that every fourth vacancy shall be filled or reserved to be filled by direct recruitment. Provided further that the remaining vacancies shall be filled by promotion from among Excise Guards possessing the minimum qualification of S.S.L.C. standard and those who do not possess this qualification in the ratio of 1:1.

2. The Government introduced Note (3) to Rule 5 of K.S. and S.S.R. Part II as per notification dated 5th December 1992 which reads as follows:

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.

Therefore it was argued by Sri K.R.B. Kaimal, learned Counsel for the Petitioners that thereafter the ratio for direct recruitment and promotion has to be applied on the total number of posts for the category and not on the number of vacancies. It was further averred in the Original Petition that the total number of posts in the category of Preventive Officers in Alappuzha Excise Division is 61. The sanctioned strength of Excise Preventive Officers as on 31st December 1994 was 57 as per the final seniority fist of Preventive Officers. Thus the quota for direct recruitment can only be 15. As against this position, there are 20 direct recruitment in the cadre of Excise Preventive Officers in Alappuzha Excise Division. Thus there is an excess of 5 direct recruits. On that premises it was strongly contended that there was absolutely no scope for any further direct recruitment of Excise Preventive Officers in Alappuzha division.

3. It was further argued by the learned Counsel that the matter is now covered by a ruling of the Supreme Court reported in Prakash v. Kurian 1999 (2) KLT 710. In the above case an apparent conflict or inconsistency between a provision contained in the Special Rules for the Kerala Agricultural Income Tax and Sales Tax against Note (3) of Rule 5 of the K.S. and S.S.R. was considered by the Supreme Court. The provision contained in the above Special Rules was that 20 percent of the successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining vacancies shall be filled or reserved to be filled up by transfer of Assistant Sales Tax Officers etc. Considering the impact of Rule 5 on the above provision in the Special Rules, the Supreme Court observed as follows:

In our view, all the aforesaid submission is without any substance. As discussed above, Rule 5 of the General Rule is enacted to govern special rules, with regard to the method of recruitment in esses when appointments are by direct recruitment and by transfer in any substantive vacancies in permanent cadre. The language in Rule 5 is clear and unqualified. The intention of the Legislature of adding Note 3 is also clear and is added to fill in existing lacuna in the method of recruitment provided in special rules. As stated above, for appointment to category 3, i.e, to the post of Agricultural Income Tax Officers and others method of appointments only provides that 20 percent of successive substantive vacancies shall be filled or reserved to be filled by direct recruitment and the remaining vacancies are to be fitted or reserved to be filled by transfer. On what basis the substantive vacancies are to be determined was not provided and therefore that lacuna is filled up by the aforesaid Note (3) in Rule 5. In any case, even if there is repugnancy or inconsistency, the law is settled to the effect that general rule later in time prevails over earlier special rule if it clearly and directly supercedes the special rule. It is also well settled that special rule can be altered, abrogated or repealed by General Rule by an express provision. In the present case, the language of Note (3) specifically makes it applicable to General Rule stating ''whenever'' the ratio or percentage is fixed for different methods) of recruitment, the method prescribed therein would apply. So the word ''whenever'' would cover Special Rule prescribing ratio or percentage of appointment between direct recruit and by transfer and the rule making authority has specifically provided that ratio or percentage for the vacancies is to be computed on the basis ''not to the vacancies existing at that time'', but on the basis of the cadre strength. Hence there is no question of repugnancy between Rule 5 Note (3) and the method of appointment provided in Special Rules.

4. On the other hand Smt. P.V. Asha, learned Senior Government Pleader argued that the above ruling of the Supreme Court is not applicable to the facts of this case. Thus, according to the learned Senior Government Pleader, there is substantive difference between the provisions contained in the two Special Rules. The learned Government Pleader also placed reliance on a Division Bench ruling of this Court reported in Velappan v. State of Kerala ILR 1997 Ker 441. There this Court held that if there is any in consistency or repugnancy between a provision contained in the Special Rules and in the General Rules the Special Rules will prevail in view of Rule 2 of the General Rules.

5. The above argument was also dealt with by the Supreme Court in paragraph 16 of the above ruling as follows:

16. The learned Counsel for the Respondent vehemently contended that as per Rule 2 of the General Rules quoted above, if there is any repugnancy between the General Rule and the Special Rules applicable to any particular service, then. Special Rules are to prevail in respect of said service over the provisions in the General Rules. It is submitted that Rule 5 and Note (3) of that Rule are part of the General Rule and, therefore, the Special Rule in the Kerala Agricultural Income Tax and Sales Tax Services prescribing method of appointment would prevail. It is contended that the said rule specifically provides that 20 percent of the ''successive vacancies'' shall be filled up by direct recruit and remaining shall be filed by transfer. It is therefore, submitted that whenever substantive vacancies are to be filled in, 20 percent of the said vacancies are required to be filled in by direct recruit and remaining vacancies are required to be filled in by transfer. He referred to the maxim ''generalia specialiabus non derogant'' meaning thereby general things do not derogate from special things and ''geperaliabus specialias derogant'' which means special thing derogate, from general things.

Thus it is now clear that Rule 5 was enacted to govern all the cases of the recruitment to a service where there is provision for direct recruitment and by transfer. The intention of the Government was to apply the ratio between the two methods of appointment to the cadre strength and not on arising vacancies. The Division Bench ruling of this Court reported in Velappan v. State of Kerala ILR 1997 Ker 441 considered the impact of Note (3) to Rule 5 on the same Special Rules. Considering the above aspect this Court held as follows:

Considering the fact that the amendment is made on 5th December 1992, and as the amendment does not mention when it comes, into force, it is presumed that it comes into force only from the date on which it is published in the Gazette, namely, 2nd February 1993. It cannot have retrospective operation. As indicated supra, General Rule 5 would be applicable to cases of recruitment by transfer and direct recruitment. It has no application to a Special Rule which also contemplates appointment by promotion to the post of Excise Inspector. As pointed out by learned Advocate General, Rule 5 is in conflict with the Special Rule and even the amended Rule 5 does not in any way affect the process of determining the number of vacancies. Special Rules speak of vacancies only.

6. Therefore I have to consider again the scope of Note (3) added by the amendment. Dealing with the scope of statutory notes the Supreme Court held as follows: in the ruling reported in Tara Singh and Others Vs. State of Rajasthan and Others, .

The Notes which are appended to the Rules are of aid not only in applying the rules but also in interpreting the true import of the Rules.

According to the Supreme Court, the Notes are part of the Rules because they are for the guidance of the authorities. They are not inconsistent with the Rules but are intended to fill up the gaps where the rules are silent.

7. The above ruling was followed by a Division Bench of this Court in Krishna Varna Raja v. D.E.O. Kasaragod (1976 KLT 506). The above Division Bench was considering the Note added to Rule 51A of Chapter XIV-A of the K.E.R. According to the above ruling, the intention of the rule making authority is clarified in the Note. It was also intended to clear any possible ambiguity existing in the main body of the rule, thus filling up any lacuna or gap.

8. The main part of Rule 5 of Part II K.S. and S.S.R. is applicable only when the method of appointment is by direct recruitment and recruitment by transfer. It does not refer to appointment by promotion. But Note (3) deals with all methods of reciuitment/ appointment. Note (3) does not restrict its application to the two methods mentioned in the main body of the rule. Thus, according to me, if at all there is an ambiguity regarding the main part of Rule 5, it has been clarified by the rule making authority to apply whenever a ratio or percentage is fixed for different methods of recruitment/ appointment. Thus the fixed ratio or percentage mutt be applied to the cadre strength of the posts and not according to the vacancies existing. Applying the principles laid down by the Supreme Court and by this Court regarding the scope of a Note added in a rule which forms part of the rule, it can be safely held that whatever ambiguity is there in Rule 5 is cleared by categorically stating that the ratio or percentage must be

applied to the cadre strength and not to the existing vacancies. Moreover, it may not be appropriate for me now to distinguish the ruling of the Supreme Court when it has been held that the language of Rule 5 is clear and unqualified. It was further held that the intention of the Legislature in adding Note (3) is clear and is added to till in the existing lacuna in the method of recruitment provided in the Special Rules.

9. Under these circumstances the Original Petition is allowed. It is declared that direct recruitment to the cadre of Excise Preventive Officers must be confined to the ratio prescribed as applicable to the cadre strength and not to the existing vacancies. The Respondents are directed to effect the promotions to the cadre of Preventive Officers following the observations made in this Judgment.

