
(2005) 08 KL CK 0053
In the High Court Of Kerala
Case No : W.A. No. 2275 of 2004

Sesu Naik

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 24
Constitution of India, 1950 — Article 226, 327(25), 342, 342(2)
Kerala State and Subordinate Services Rules, 1958 — Rule 13AA

Citation : (2005) 4 ILR (Ker) 385 : (2005) 4 KLT 527

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : V.V. Asokan, K.I. Mayankutty Mather and Sunil Shanker, for the Appellant; Sunny Xavier, A.C.G.S.C. and Vaheeda Babu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—A very important substantial question arises in this case - whether an incumbent who obtained appointment and later promotion on the strength of he being member of a community included as Scheduled Tribe as per the Presidential Order can be denied of all such benefits, if on a subsequent enactment that community is excluded from the list of Scheduled Tribes.

2. The appellant-writ petitioner is a member of Marati community in Kasaragod Taluk in Kasaragod District. This community was included as item No. 28 in the Constitution (Scheduled Tribes) Order, 1950, promulgated by the President exercising powers under Article 342(1) of the Constitution of India. Later by reason of an enactment in terms of Sub-Article (2) of Article 342, namely, Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002, which was enforced with effect from 7.1.2003, this community was taken out of the list of Scheduled Tribes.

3. The petitioner obtained appointment as Lower Division Clerk in the Judicial

Ministerial Service on 17.9.1981. At that time his community was included in the list of Scheduled Tribes as per the Presidential Order. For further promotion pass in Account Test (Lower) is essential. In terms of Rule 13AA of the General Rules in KS & SSR members of Scheduled Castes and Scheduled Tribes are exempted from such departmental test, for getting promotion. Accordingly, rendering the benefit of the said Rule, the appellant was promoted as Upper Division Clerk on 16.9.1985. He was further promoted as Junior Superintendent on 24.11.1995. On all these occasions, he was rightly regarded as a member of Scheduled Tribe, on the strength of the Presidential Order then in force. He was continuing as such.

4. While so, the aforesaid amendment came into effect with effect from 7.1.2003, Stated to be based on the amendment deleting his community from the list of Scheduled Tribes, the entire benefits of test exemption and consequent promotions granted to him are taken away as per Exhibit P6 order dated 30.10.2004 and he is reverted back to his entry cadre of L.D.C. We wonder, the petitioner is not sent away, projecting this proposition further as he got initial appointment based on the reservation applicable to the members of Scheduled Tribe.

5. The test exemption available under Rule 13AA to the members of SC/ST was being extended from time to time. When he was promoted as U.D.C. and later as Junior Superintendent, exemption was statutorily available to him. At that time his community has been included in the list of Scheduled Tribes as per the Presidential Order. Merely because by subsequent amendment, the community is deleted from the list of Scheduled Tribes, whatever benefit availed of by an incumbent on the basis of he being a member of Scheduled Tribe on the strength of the Presidential Order then in force cannot be taken away. At the relevant points of time, going by the Presidential Order he was a member of the Scheduled Tribes as specified in Articles 342 read with Articles 327(25) of the Constitution of India. The said amendment has only prospective effect from 7.1.2003. The only hurdle which he may face because of the amendment is that he will not be entitled to further promotion, based on any test exemption. But whatever promotions already gained cannot be taken away.

6. Therefore, merely because of the deletion of a community, by reason of an amendment, from the list of Scheduled Tribes, a member of that community who had availed of the benefit need not surrender the benefits enjoyed and availed. Necessarily, Exhibit P6 is liable to be quashed.

7. According to us, he ought not have been relegated to the statutory appeal available in terms of Rule 24 as done in the impugned judgment. That appeal is available only against an order which "denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by any Rules or by agreement". In this case the impugned order was passed varying his caste status which he availed once as per law. Therefore, he cannot on that reason be relegated to the appeal available under Rule 24 of the Civil Services

(Classification, Control & Appeal) Rules.

8. Even otherwise this being gross injustice meted out to him, violating his fundamental and constitutional rights, alternative remedy, if any, available shall not be a reason to deny the invocation of power of this Court under Article 226 of the Constitution of India.

Accordingly, Exhibit P6 is quashed and the Writ Appeal is allowed.