

(2007) 03 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3135 of 2005

Shamsul Huda and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Kerala Forest Subordinate Service Rules, 1966 — Rule 2, 6, 9, 9A

Kerala Public Service Commission Rules of Procedure, 1976 — Rule 13

Kerala State and Subordinate Services Rules, 1958 — Rule 2, 2(1), 2(12), 2(6), 2(9)

Citation : (2007) 03 KL CK 0095

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and Babu Joseph Kuruvathazha, K.I. Sageer and Kumari Mini, for the Appellant; P.K. Ravikrishnan, Government Pleader for Respondent No. 1, T.K. Marthandan Unnithan and V. Jayakumar for Respondents Nos. 3, 4, 5, 7, 9 and 10, for the Respondent

Judgement

K. Padmanabhan Nair, J.—The core question arising for consideration in this writ petition is whether the Petitioners who were directly selected for recruitment as Range Officers are entitled to claim seniority from the date of their advice or from the date of joining duty after completing the training. The Petitioners claim seniority with effect from 21-10-1976, the date of advice. It is contended that Respondents 3 to 10 who were directly selected as Forest apprentices are juniors to Petitioners since Respondents 3 to 10 joined service after the above stated date.

2. Kerala Public Service Commission published Ext. P-1 notification on 6-7-1976 inviting applications for selection as Forest Range Officer from among qualified persons by direct recruitment. Petitioners who had passed B.Tech Degree in Forestry from Calicut University applied for that post. On 21-10-1976, Ext. P-2 advice memo was issued informing the Petitioners that they had been selected for recruitment as Forest Range Officers subject to Rule 3(c) of the General Rules of the Kerala State and Subordinate Services Rules, 1958, for short, K.S. and

S.S.R. and whatever further checking Government may find it necessary to do so. They were informed that further instructions will be issued to them. Subsequently, Chief Conservator of Forests (Development) issued Ext.P-2(a) order on 19-11-1976 directing the Petitioners to report for duty before the Conservator of Forests, Northern Circle and Central Circle respectively for practical training on 1-12-1976. Kerala Public Service Commission had published Ext.P-3 notification inviting applications from qualified persons for selection to undergo training in the Forest Rangers Course at the Southern Forest Rangers College, Coimbatore.

3. The following were the material averments in the Writ Petition: Respondents 3 to 10 were selected for Forest Rangers Course. Ext. P-4 is the memorandum issued to the 7th Respondent. Respondents 3 to 10 were directed to undergo practical training at Forest Ranges and only thereafter they became qualified to be appointed as Forest Range Officers. Respondents 3 to 10 completed the practical training only on 21-9-1977 and they became eligible to be appointed as Forest Rangers only after that date whereas Petitioners were appointed as Forest Rangers as early as on 21-10-1976. According to the Petitioners, they were recruited direct to the category of Range Officers under Rule 2(12) of Part I of K.S. and S.S.R. and their seniority is to be reckoned as provided under Rule 27(c) of Part II of K.S. and S.S.R. The specific case put forward by the Petitioners is that since they were advised for appointment under Ext. P-2 with effect from 21-10-1976, that date has to be taken for determining the seniority in the category. Rule 9A of the Kerala Forest Subordinate Service Rules, (for short, K.F.S.S.R.) deals with appointment of Forest Apprentices and they were included in the 5th category whereas persons like Petitioners who were directly recruited as Forest Rangers are included in the first category. A person selected for Forest Apprentice has to undergo Apprentice course for two years and then practical training for one year and hence they have to spend at least three more years to become eligible to get appointed as Forest Range Officers. Though nine vacancies were notified under Ext. P-1, there were only two candidates and hence the Government issued orders on 16-7-1977 stating that those unfilled vacancies can be filled up either by other qualified persons like Forest Apprentices and it was only pursuant to that order, Respondents 3 to 10 were given appointment as Forest Range Officers. A provisional seniority list of Forest Range Officers as on 1-1-1984 was published wherein Respondents 3 to 7 were assigned seniority above the Petitioners. Second Petitioner submitted Ext.P-7 objection and first Petitioner filed Ext.P-8 objection. Second Respondent published Ext.P-9 final seniority list of Range Officers as on 1-1-1984 without considering the objections raised by the Petitioners. In Ext.P-9 also, Respondents were assigned seniority above the Petitioners and challenging that ranking Petitioners submitted Exts. P-10 and P-11 objections. Without considering Exts. P-7, P-8, P-10 and P-11 objections, Anr. provisional seniority list of Rangers as on 1-1-1987 was published by the second Respondent as Ext. P-12. In Ext. P-12 also, Respondents 3 to 10 were given seniority above the Petitioners. Challenging Ext P-12,

Petitioners submitted Exts.P-13 and P-14 objections. No final combined seniority list as on 1-1-1987 was published but second Respondent published Ext.P-15 provisional seniority list of Rangers as on 1-1-1992 assigning seniority to Respondents 3 to 10 above the Petitioners. Petitioners filed Exts. P-16 and P-17 objections challenging Ext. P-15 and no final seniority list was published. Petitioners filed O.P. No. 10226 of 1993 before this Court and this Court issued an interim direction to the second Respondent to consider and dispose of Exts. P-16 and P-17 representations within a period of six weeks from the date of receipt of a copy of judgment. Second Respondent passed Ext. P-19 order rejecting the claim of the Petitioners. Challenging Ext P-19 order Petitioners filed Ext. P-20 appeal. Government issued Ext. P-21 order by which Petitioners were assigned seniority above Respondents 3 to 10 and hence O.P. No. 10226 of 1993 was disposed of on 1-3-1995. Respondents 4 and 6 to 10 filed O.P. No. 6215 of 1995 before this Court. This Court stayed the operation of Ext. P-21 order and subsequently disposed of the writ petition directing the Petitioners as well as the Respondents to file their objections to Ext. P-21 order within four weeks. First Respondent was directed to pass orders within a period of six weeks thereafter. Petitioners were heard by Sri Rudragangadharan, the then Secretary to Government, Department of Forest but he did not pass any order. Petitioners filed Contempt Case No. 1550 of 2004. The first Respondent passed orders rejecting the claim of the Petitioners under Ext. P-27 after a lapse of one year after the date of hearing. Hence this writ petition to quash Ext. P-27 order and Exts. P-9, P-12 and 15 seniority list of Forest Range Officers to the extent it provides seniority to Respondents 3 to 10 above the Petitioners and also for other reliefs.

4. The second Respondent filed a counter-affidavit raising the following contentions: Petitioners and Respondents 3 to 10 were Forest Rangers prior to their promotion to the post of Assistant Conservator of Forests on the basis of Ext. P-9 final Combined Seniority List of Rangers as on 1-1-1984 published in the Gazette on 5-11-1985. Second Petitioner and Respondents 5, 6, 7 and 8 have retired from service and 4th Respondent died while in service. The recruitment of Forest Rangers is governed by K.F.S.S.R as amended from time to time. The method of appointment to the post of Forest Ranger is either by direct recruitment or by promotion. The following are the methods of appointment: (i) Direct Recruitment of Forestry Graduates, who after one year's practical training in the department are appointed as probationary Ranger (DR); (ii) Direct Recruitment of Science Graduates as Forest Apprentices, who on successful completion of the Rangers Course and one year departmental training are appointed as Probationary Ranger (FA), (iii) Recruitment of departmental candidates, namely Deputy Rangers/Foresters who on successful completion of Rangers Course appointed as Probationary Ranger Forester Trained as Ranger, (FTR)] and (iv) Promotion of eligible officers from the category of Deputy Rangers [for short, Forester Not Trained as Ranger, (FNTR). First three categories are recruited through the Kerala Public Service Commission vide Note 2 under

Rule 2 of K.F.S.S.R. in a ratio 1:1:1:1 taking 4 as a unit. If Forestry Graduate hands are not available, such vacancies will also be filled up by Forest Apprentices. In the year 1976, direct recruitment to the posts of Forest Rangers were effected from among the candidates who possessed B.Tech. Forestry Degree of the Calicut University. Petitioners were selected for recruitment as Direct Recruits consequent on Ext. P-1 notification issued by the Public Service Commission and thereafter this course itself was discontinued. Consequent to the starting of B.Sc.(Forestry) by Kerala Agricultural University, Rule 6 of K.F.S.S.R. was amended and now persons who possess B.Sc.(Forestry) of Kerala Agricultural University or other recognized Universities of India or a degree from Indian Institute of Forest Management are considered to be appointed to the post of Rangers in D.R. quota. Ext. P-2 was an advice memo issued to the first Petitioner and based on Ext. P-2, Ext. P-2(a) order was issued directing the Petitioners to join for one year practical training. In Ext P-2(a) it was very specifically stated that candidates advised for appointment as Rangers should undergo practical training in the Department for a period of one year before they are appointed as Rangers against the vacancies reserved for them. Petitioners were actually appointed as Forest Rangers with effect from 1-12-1977 on completion of the one year practical training and that is the reason why they were assigned seniority as shown in Ext. P-9 seniority list.

5. The period of practical training spent by the Petitioners and Respondents 3 to 5 and 7 to 10 will not count for leave, probation, increment, pension etc. and trainees are paid only an allowance during the training period and they will not be paid any salary during the training period. Neither in the case of Petitioners nor Respondents, the period of training was reckoned for the purpose of calculating the seniority. Petitioners who were direct recruits with B.Tech. Forestry qualification were assigned seniority from the date of appointment as Probationary Ranger as per Rule 9 of K.F.S.S.R. The inter se seniority among them is in the order in which their names appear in the advice memo. The Rangers appointed from Forest Apprentices were assigned seniority from the date of appointment as Probationary Ranger provided their appointment is within the quota fixed for F.As. Inter se seniority among them is determined in the order of rank secured by them in the Rangers Course as provided in Sub-rule 9A(f) of K.F.S.S.R. The Rangers appointed from F.T.R. get their seniority from the date of appointment as Probationary Ranger provided the appointment is within the quota fixed for F.T.R. Inter se seniority among the Rangers appointed from F.T.R. who passed Rangers Course together is determined in the order of the rank secured by them in Forest Rangers Course. Respondents 3 to 5 and 7 to 10 had completed the First Year Degree Course. Ext. P-3 is a notification issued by the Public Service Commission inviting applications for selection to Rangers Course 1974-1976 at Southern Forest Rangers College, Coimbatore. Respondents 3 to 5 completed their course on 31-10-1975 and practical training on 31-10-1976. They were appointed with effect from 1-11-1976. Respondents 7 to 10 completed their course on 31-10-1976 and practical training on 31-10-1977 and

they were appointed with effect from 1-11-1977. 6th Respondent completed Rangers Course in 1975-1977 batch on 31-10-1977 and was appointed with effect from 1-11-1977. Petitioners completed practical training on 30-11-1977 and they were appointed with effect from 1-12-1977. Probation of Respondents started with effect from 1-11-1976 and 1-11-1977 whereas the probation of the Petitioners started with effect from 1-12-1977. The averment that Respondents 3 to 10 were appointed in pursuance of the G.O.(P) No. 219/77/Agri. dated 16-7-1977 is denied. They were recruited during the year 1973 and 1974 for filling up the substantive vacancies which arose in 1970 and 1971 under Direct Recruitment of Rangers. 6th Respondent, who belonged to F.T.R. category could not get the benefit of that Government Order. Ext. P-9 seniority list was published considering all the above stated facts. Vacancies arose upto 24-2-1976 have been assigned between F.A., F.T.R. and F.N.T.R. in the ratio of 5:3:2 taking 10 as one unit and thereafter because of the amendment in the ratio of 1:1:1:1 taking 4 as the unit. Petitioners did not prefer any objection to Ext. P-9 seniority list published in the year 1984 within a period of six months from the date of publication and that has become final. In *Karthikeyan v. State of Kerala* I.L.R.2002 (2) Ker 316 this Court upheld the validity of Ext. P-9 seniority list. Since the seniority assigned to the Petitioners and Respondents in Ext. P-9 seniority list is legal and proper, Petitioners are not entitled to get any benefit. The promotion as Assistant Conservator of Forests from the category of Forest Rangers is not based on the seniority alone but based on merit and ability and as such the Petitioners are not entitled to challenge the seniority list, promotion etc.

6. Respondents 3 to 5, 7, 9 and 10 have filed a counter-affidavit raising the following contentions: The claim of the Petitioners that they are entitled to get seniority with effect from 21-10-1976 is not correct and in Exts. P-1 and P-2(a) it was very clearly stated that Petitioners will be appointed as Forest Rangers only after the successful completion of practical training for one year. The period of practical training will not count for probation, leave, increment, pension etc. and training is a condition precedent for appointing a person as Ranger. Petitioners are not entitled to claim seniority prior to a date on which they have completed the training. In Ext. P-1 Gazette Notification it was stated that the person selected through direct recruitment will be appointed only after completion of the practical training for one year and that period will not count for probation, leave, increment, pension etc. Subsequently they have filed an additional counter-affidavit stating that no direction was issued by this Court that any particular officer shall hear and dispose of the objections filed by the Petitioners and Respondents. The direction was to the Government to hear and dispose of the matter. The officer who heard the matter has passed the order and that was signed by Anr. officer for and on behalf of the Government. Ext. P-9 seniority list became final long back and it is highly improper to reopen the settled matters at this distant point of time.

7. Petitioners have filed a reply affidavit to the counter-affidavit filed by the State. The averment that the list published on 1-1-1984 was a combined

seniority list was denied. It was contended that at the time of appointment Petitioners were holding the qualification of B.Tech. Forestry whereas Respondents 3 to 10 had only passed P.D.C. It was reiterated that Petitioners are entitled to get seniority from the date of Ext. P-2 whereas Respondents are entitled to get seniority only from the date of their appointment. It was contended that the fact that Petitioners were appointed and sent for training will not make any change as far as the seniority of the Petitioners are concerned.

8. Petitioners claim seniority over Respondents 3 to 10 on the ground that they were directly recruited for appointment to the post of Forest Rangers on 21-10-1976 and they reported before the Conservator of Forests, North Circle, Kozhikode on 1-12-1976. According to the Petitioners, they were appointed much earlier to the appointment of Respondents 3 to 10, but Respondents 1 and 2 have wrongly assigned seniority to Respondents 3 to 10 overlooking the legitimate claim of the Petitioners. According to the Petitioners, the training they underwent was after their appointment and as such their seniority will have to be reckoned from the date of first effective advice under Rule 27(c) of the K.S. and S.S.R. It is also their case that Respondents 3 to 10 were selected for a training in the Forestry College and after the course, they were deputed for training in the department for Anr. year and they joined in the year 1977. It is contended that that the Petitioners were recruited direct to the category of Rangers as provided under Rule 2(12) of Part I of K.S. and S.S.R.

9. The case of the 6th Respondent stands on a different footing. Petitioners as well as Respondents 3 to 5 and 7 to 10 had to undergo training prior to the date of their joining duty. 6th Respondent was working as a Forester and he was appointed as Ranger on his successful completion of the course (F.T.R.). No training is necessary in his case. Petitioners have wrongly described 6th Respondent also as a Forest Apprentice. 6th Respondent underwent training during the period 1975-1977 and completed his course on 31-10-1977. He was appointed as Ranger on 1-11-1977. He became a member of service with effect from 1-11-1977.

10. Ext. P-2 is the advice memo dated 21-10-1996 issued to the Petitioners by P.S.C. informing them that they were selected for recruitment as Rangers. The Petitioners were directed to report before Conservator of Forests for training on 1-12-1976 as can be seen from Ext. P-2(a). They completed their practical training on 30-11-1977 and were appointed as Forest Rangers with effect from 1-12-1977.

11. Respondents 3 to 5 were selected for Rangers" Course held at Forestry College at Coimbatore in the 1973-1975 batch and they completed the course on 31-10-1975 and completed the practical training on 31-10-1976. They were appointed with effect from 1-11-1976. Respondents 7 to 10 were selected for Rangers" Course in 1974-1976 batch. They completed the course and practical training on 31-10-1977 and they were appointed on 1-11-1977.

12. Ext.P-1 is the notification issued by the Public Service Commission inviting applications for the post of Forest Rangers. Petitioners submitted their applications in pursuance of Ext. P-1 notification. In Ext. P-1, there is a note which reads as follows:

Note.- Persons recruited direct to the category of Rangers shall undergo practical training for a period of one year in the Forest Department prior to their appointment as Rangers. The period spent on practical training in the department will not count for probation, leave, increment, pension etc. During the period of practical training the trainees will be eligible for a monthly allowance as in the case of Forest Apprentices.

(emphasis supplied).

The Malayalam version of the above stated note was also given in the very same notification. In the Malayalam version also it is very specifically stated that those who are selected will have to undergo practical training prior to their appointment.

13. Ext. P-2 is the memo dated 21-10-1976. The operative portion of Ext. P-2 reads as follows:

...is informed that he/she has been selected for recruitment as Forest Range Officers on Rs. 445-835 per mensem in the Forest Department. The selection is subject to Rule 3(c) of the General Rules of the Kerala State and Subordinate Services Rules, 1958 and subject to satisfactory proof of health, and whatever further checking Government may find it necessary to do.

Further instructions will be issued to him/her in due course by the Department referred to in the paragraph above.

(emphasis supplied).

14. Ext. P-2 shows that the Petitioners were selected for "recruitment" as Forest Rangers. Meaning of the words "recruitment" and "appointment" are different and distinct. In Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, a Three Judge Bench of the Supreme Court has considered the meaning and effect of the words recruitment and appointment. It was held as follows:

At this stage, we will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In ontradistinction the word "appointment" means an actual act of posting a person to a particular office.

Recruitment is just an initial process. That may lead to eventual appointment in the service. But, that cannot tantamount to an appointment.

In this case, the Petitioners were selected for recruitment under Ext. P-2 and not advised for appointment. So they were not directly appointed to the post of

Rangers.

15. Ext. P-2(a) is the order issued by the Chief Conservator of Forests (Development). In paragraph 2 of Ext. P-2(a) it is very specifically stated that the Petitioners will report for duty before the Conservator of Forests, Northern Circle, Kozhikode and Central Circle, Trichur, respectively for practical training on 1-12-1976. (emphasis supplied). In paragraph 4 of the order, the officers concerned were given specific instructions to take special interest regarding the training of the Petitioners. In paragraph 5 it is again stated that a person advised for appointment as Ranger should undergo practical training in the Department for a period of one year before they are appointed as Rangers against vacancies reserved for them. It is also stated that the period spent on practical training in the Department will not count for probation, leave, increment, pension etc. It was further stated that they will be given a consolidated monthly allowance. So Ext. P-2(a) is also not an order appointing them as Rangers but only an order directing them to undergo the practical training.

16. Ext. P-3 is the notification issued by the Public Service Commission under which Respondents 7 to 10 were selected. In Ext. P-3 notification it is very clearly stated that the persons selected will have to undergo training in the Forest Rangers Course (1974-1976) at the Southern Forest Rangers College, Coimbatore. In Ext. P-3 it is also stated that the selection is confined to candidates belonging to Kerala State. In Clause 10 of the notification it is stated that the candidates selected by the Kerala Public Service Commission on the basis of the competitive examination as well as the interview can join the College at Coimbatore without appearing for the qualifying examination conducted by the College. Clause 12 provides that the selected candidates will have to execute a bond and on successful completion of the training, candidates will report before the Chief Conservator of Forests and if called upon to serve the State, they shall undergo practical training in the department. It is further stated that after completion of the practical training, they will be appointed as Probationary Rangers in the vacancies reserved for direct recruitment. It is also stated that the period of probation shall be two years on duty within a continuous period of three years. It was also stated that the period of practical training in the Department shall not count for probation, leave, increment, pension etc. and during the period of practical training the trainees shall be given a monthly allowance of Rs. 150 per month plus Dearness Allowance and House Rent Allowance or at such rates as may be fixed by Government from time to time. A perusal of Ext. P-3 notification shows that the normal procedure to get admission in the Southern Forest Rangers College, Coimbatore is regulated by an entrance examination conducted for that purpose. The candidate selected by the P.S.C. on the basis of a competitive examination as well as viva voce can straightaway join the College and they need not pass the entrance examination. On successful completion of the training, they shall report before the Chief Conservator of Forests. There cannot be any doubt that until that moment, they are not the members of the Forest Service. When such a person reports before the Head of the Department,

he will have to undergo practical training. The period of practical training in the department by Forest Apprentice also will not count for probation, leave, increment, pension etc. and during that period they are entitled to get only a consolidated monthly allowance.

17. Whether the practical training underwent by the Petitioners was a training imparted to them after their appointment or before their appointment is the question to be answered. If it is a training after their appointment, that period is to be treated as duty. If it is prior to their appointment that period will not be treated as duty and their probation will start only with effect from 1-12-1977. It is argued that though it is stated that the period of training will not count for leave, probation, increment etc. seniority is excluded and hence this period is to be reckoned for computing the seniority of the Petitioners.

18. It is argued that Petitioners were recruited directly as defined under Rule 2(12) and became members of the service under Rule 2(9) Part I of K.S. and S.S.R. and they were on duty from 1-12-1976. It is also argued that Rule 27(c) of K.S. and S.S.R. applies to this case. Rule 2(12) defines "recruited direct". It reads as follows:

2. Definitions.- In these rules unless there is anything repugnant in the subject or context-

Recruited direct

(12) A candidate is said to be "recruited direct" to a service, class, category or post when, in case the appointment has to be done in consultation with the Commission, on the date of notification by the Commission inviting applications for the recruitment, and in any other case, at the time of appointment.

(i) he is not in the service of the Government of India or the Government of a State; or

(ii) being in the service of the Government of India or the Government of a State, he satisfies all the qualifications (including age) and other conditions prescribed for such recruitment to that service, class, category or post and is permitted to apply for such recruitment by the competent authority; or

(iii) he holds a post, the conditions of service of the holder of which have been declared to be matters not suitable for regulation by rule.

A reading of Rule 2(12) shows that a person can be said to be directly recruited only if the appointment is made to a service, class, category or post.

19. Rule 2(9) of Part K.S. and S.S.R. defines "member of a service". It reads as follows:

(9) "Member of a service" means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to Anr. service, or been discharged

otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.

20. An employee can be treated as "a member of the service" only if he qualifies the conditions stipulated in Rule 2(9) of Part I K.S. and S.S.R. In this connection meaning of word "appointed to a service" given in Rule 2(1) of Part I K.S. and S.S.R. is very relevant. It reads as follows:

(1) A person is said to be "appointed to a service" when in accordance with these rules or in accordance with the rules applicable at that time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof:

Explanation.- The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a post borne on the cadre of Anr. service or to discharge the current duties thereof does not amount to appointment to the latter service.

21. Going by the definition it is very clear that a person can be stated to be appointed to a service only when he discharges for the first time the duties of a post borne on the cadre of service. Ext. P-2 was not an advice for appointment. Ext. P-2(a) produced by the Petitioners shows that they joined duty for training. Learned Counsel for Petitioners placed reliance on the definition given to the word "duty" in Rule 2(6) of Part I K.S. and S.S.R. It is argued that a person undergoing training after joining duty is on duty. Relevant portion reads as follows:

(6) A person is said to be "on duty" as a member of a service:-

* * * * *

(d) when he is on deputation, during his period of probation, for training or for acquisition of higher or additional qualifications in public interest; or

Sub-rule (d) was inserted by G.O. (P) No. 452/79/GAD, dated 6-8-1979 published as S.R.O. No. 1081/79 in Kerala Gazette No. 38, dated 25-9-1978. That amendment was not given any retrospective effect. The Petitioners and Respondents were appointed in the year 1976 and 1977. So on the date on which Petitioners and Respondents were appointed a person who was undergoing training could not be treated as on duty. Further Petitioners did not discharge any of the duties of the post of Rangers after joining duty under Ext. P-2(a).

22. The meaning of the word "training" must be properly construed. In some cases training is an eligibility for appointment, as a qualification to be acquired before appointment. Such a training is not a training for equipment after appointment. A reading of Rule 2(6) of Part I K.S. and S.S.R. makes it very clear that training undergone after appointment alone is taken care. The purpose of Rule 27(c) is to equate the date of advice for appointment made by the Public

Service Commission to the actual date of appointment prescribed in Rule 27(a) of K.S. and S.S.R. Rule 27(a) and (c) of K.S. and S.S.R. read as follows:

27. Seniority.- (a) Seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category or grade.

Explanation.- For the purpose of this sub-rule, "appointment" shall not include appointment under Rule 9 or appointment by promotion under Rule 31.

* * * * *

(b) ...

(c) Notwithstanding anything contained in Clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list.

* * * * *

23. In *Haridasan v. State of Kerala* 1987 (2) K.L.T.466 a Division Bench of this Court has considered the purpose and scope of Rule 27(c) of K.S. and S.S.R. Relevant portion reads as follows:

The purpose of Rule 27(c) is to equate the date of advice for appointment made by the Public Service Commission to the actual date of appointment prescribed under Rule 27(a). When, therefore, seniority has to be fixed in any service, class or grade and there are persons appointed on the advice of the Public Service Commission and also persons not so advised, seniority has to be fixed with reference to the date of advice of the former and the date of appointment of the latter. The date of advice is treated as the date of appointment for the purpose of seniority. This in substance is the effect of Rules 27(a) and (c).

24. Ext. P-1 notification is in tune with Rule 9 of Kerala Forest Subordinate Service Rules. Ext. P-2 advice memo and Ext. P-2(a) appointment order are strictly in accordance with Rule 9 of the Rules. Ext. P-2 was, in effect, an advice for a course of training. So the period of training of the Petitioners cannot be treated as an advice for appointment. In *Haridasan's* case (*supra*) the Division Bench held as follows:

Rule 27(c) applies only to those cases where there is an effective advice on the basis of which an appointment is made. It does not contemplate an advice on the basis of which a person is sent for training. If after training no advice is called for under the relevant rules or none is given under any provision, the person who is appointed subsequently can only rest his claim for seniority with reference to the

date of appointment under Rule 27(a). Rule 27(c) is clearly inapplicable to those cases. Therefore, the advice for training cannot be treated as advice for appointment in 1968, and appointment in 1968 cannot relate back to 1966 for the purpose of fixation of seniority. In that case, we will be doing violence to Clause (a) and (c) of Rule 27. Training is an eligibility for appointment, as a qualification to be acquitted before appointment is not the same thing as training for equipment after appointment. Training undergone after appointment alone is taken case of under Rule 2(6) of the K.S. and S.S.R. and not training which is a pre-requisite for appointment, a training which precedes the appointment. Therefore Respondents 3 and 4 were only selected for training in 1966 to be appointed subsequently. The selection was therefore "to a course of training rather than to an office or post".

25. In *Louis v. Kerala Public Service Commission* . 1965 KLT 1282 this Court has considered the scope of Rule 2 of K.S. and S.S.R.. After analysing the facts of the case this Court held that the Petitioner in that case had the necessary length of service in the post of Grama Sevak and that he was eligible for recruitment to the post of Block Development Officer and hence the period of training must be reckoned as service in the post of Grama Sevak. The period of training was after his joining duty. So the principle laid down in that case can have no application to the facts of this case. Learned Counsel appearing for Petitioners has also relied on a decision of this Court reported in *State of Kerala v. Mathu* 1984 KLT 1014 in which it was held that a candidate who entered in the service and then deputed for training is entitled to get seniority from the date of advice. That was a case in which the candidate was sent for training after appointment. So the principle laid down in that decision is also not applicable to the facts of this case, Learned Counsel also relied on a decision of this Court in *Kerala Unemployment Solution Committee v. P.S.C.* 1988 (1) K.L.J. 660 in which this Court has considered the purpose and scope of Rule 13 of Kerala Public Service Commission Rules of Procedure and also considered the question of selection to the post of Village Extension Officers Gr. II and held that, the candidates who were advised to that post are undergoing training after appointment. The principle laid down in that decision is also not applicable to the facts of this case.

26. In *Jyothish Kumar v. State of Kerala* 2003 (3) KLT 54, Case No. 74, this Court held that training period after appointment deserves to be considered as part of service. It was held that a person is appointed when "he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof. In that particular case the probation commences from the date of appointment and training was not pre-requisite for appointment. So the principles laid down in that case can have no application to the facts of this case.

27. Learned Counsel for the Petitioners also relied on a decision reported in *R.S. Ajara and Others Vs. State of Gujarat and Others*, . Learned Counsel has strenuously argued that Apex Court held that the period underwent as training

can also be taken into account for fixation of seniority. In Ajara's case (supra) the Apex Court considered the question of seniority between direct recruits and promotees in the cadre of Assistant Conservator of Forests. Challenge was against Rules 6, 7 and 8 of Assistant Conservator of Forests (Gujarat Forest Service Class II) Recruitment Rules, 1981. In that case State of Gujarat issued a resolution to the effect that the training period shall be taken into account for the purpose of seniority and seniority of Assistant Conservator of Forests selected through direct recruitment in and after the year 1979 shall have to be determined from the date of their being sent for training. The Apex Court distinguished the decision rendered in Prafulla Kumar Swain's case (supra) and held that in Prafulla Kumar's case (supra) Court was called upon to consider the validity of Regulation 12(c) of the Orissa Forest Service Class II Recruitment Rules, 1959 which provides that service will be counted only from the date of appointment to the service after successful completion of the course of training. It was held that in the regulations appended to the rules in that case there was an express provision that the period of training will not be counted as part of the service. The Court further held that in 1981 Gujarat Rules there is no similar provision and in the absence of a provision similar to Regulation 12(c) in the 1981 Rules it is not possible to hold that the 1981 Rules postulate that the seniority of directly recruited Assistant Conservator of Forests must be counted only from the date of their appointment and the period of training undergone by them prior to the appointment must be ignored. In that case the Apex Court further held that 1981 Rules do not lay down any principle in the matter of fixation of seniority of the Assistant Conservator of Forests who are recruited under the provisions of the said Rules and since the Rules were silent it was open to the State Government to lay down the principle for fixation of seniority by an administrative order and hence the stand taken by the Government that the period spent for practical training should be considered for seniority is correct. So the principles laid down in R.S. Ajara's case (supra) can also have no application to this case at hand.

28. In *Letheefa Beevi v. State of Kerala* 1987 (2) KLT 41 a learned Single Judge of this Court interpreting Rule 27(c) of K.S. and S.S.R. held that there is difference between advice and effective advice. In *Sukumaran Nair v. State of Kerala* 1987 (1) KLT 445 a Division Bench of this Court has considered the scope of Rule 27(c) of K.S. and S.S.R. In that case Petitioner as well as second Respondent were included in the common list but appointed in two different departments. Petitioner was appointed earlier, but discharged for want of vacancy. He re-registered his name with Public Service Commission. Later on he got appointment in the department of second Respondent. The question arose for consideration was whether he is entitled to seniority over second Respondent in the new department. Division Bench of this Court held that the Petitioner and second Respondent were not advised as per the same list for appointment and, therefore, the latter part of Rule 27(c) does not apply. In *Labour Commissioner Vs. Joshua*, Division Bench of this Court has considered the scope of Rule 27(c)

of K.S. and S.S.R. In that case the candidates advised for appointment were not given appointment. Later their advice was cancelled and re-advised for appointment. After considering the facts of the case this Court held that the date of effective advice by Public Service Commission means the date of the letter of Commission on the basis of which they have been appointed. Division Bench also considered the case of persons who got appointment but discharged for want of vacancy and re-appointed later on further advice. Division Bench held that in view of the fourth proviso to Rule 27(c) such persons are entitled to seniority from the date of first effective advice. So the principle laid down in this case can have no application to the facts of this case.

29. In Prafulla Kumar Swain's case (supra) the Apex Court considered the question of computation of seniority among direct recruits under 1959 Rules in Orissa Forest Service Class II with promotees. The Supreme Court considered whether the period of training underwent could be excluded in computing the seniority. Regulation 12(c) of Orissa Forest Service Class II Recruitment Rules, 1984 framed under the recruitment rules provides that finally selected candidates must undergo two years training and during that period a consolidated monthly allowance of Rs. 150 will be paid as stipend. Regulation 12(c) says that the period of training will not count as service under the Government. Interpreting that Regulation Supreme Court held as follows:

Regulation 12(c) is very clear that the period of training is not to be reckoned as Government service.

It was held that seniority can be counted only from the date of appointment and not from the date of selection.

30. Rule 9 of K.F.S.S.R. is similar to Regulation 12(c) framed under Orissa Rules. Rule 9 of K.F.S.S.R. reads as follows:

9. Special provisions for Rangers recruited directly.- (a) Persons recruited direct to the category of Rangers shall undergo practical training for a period of one year in the Forest Department prior to their appointment as Rangers. The period spent on practical, training in the department will not count for probation, leave, increment, pension, etc. During the period of practical training, the trainees will be eligible for a monthly allowance as in the case of Forest Apprentices.

(b) The seniority of candidates recruited direct shall be determined according to the order in which their names are arranged in the advice list of the Public Service Commission.

Rule 9 specifically states that the period spent under practical training in the department will not count for probation, leave, increment, pension, etc. and the seniority of candidates recruited direct shall be determined according to the order in which their names are arranged in the advice list of Public Service Commission. So it is clear that the training period cannot be treated as service. Seniority is an incidence of service and an integral part of it. It has no

independent existence. A period which cannot be counted for probation, increment, leave etc. cannot be counted for seniority also. Though the word "seniority" is not used in Rule 9 of K.F.S.S.R. it is very clearly stated that the period of training will not count for probation, etc. So the principles laid down in Prafulla Kumar Swain's case (supra) squarely apply to the facts of this case.

31. Respondents 3 to 5 have completed the Rangers Course during the period 1973-1975 at Regional Forest Rangers College, Coimbatore. They completed the course on 31-10-1975 and practical training on 31-10-1976. After successful completion of course and practical training they were given appointment with effect from 1-11-1976. Respondents 7 to 10 completed Rangers Course during the period 1974-1976, on 31-10-1976 and practical training on 31-10-1977. After successful completion of course and practical training they were given appointment with effect from 1-11-1977. Respondents 3 to 5, 7 to 10 are governed by the provisions of Rule 9A of the Kerala Forest Subordinate Service Rules. Rules 9A(a) and (f) of the Kerala Forest Subordinate Service Rules read as follows:

9A. Special Provision for Forest Apprentices.- (a) Forest Apprentices shall be direct recruits selected by the Public Service Commission and they shall after successful completion of training in either of the Regional Forest Rangers' Colleges at Coimbatore or Dehra Dun undergo practical training in the Department for a period of one year, after which they shall be appointed as Rangers in the vacancies reserved for direct recruitment.

(b) ...

(c) ...

(d) ...

(e) ...

(f) A Forest Apprentice who satisfactorily completes the Rangers' Training shall be given practical training for a period of one year in the Forest Department and after that shall be appointed as Ranger and shall be on probation in that post for a total period of two years on duty within a continuous period of three years. The period of practical training in the Department shall not count for probation, leave, increment, pension, etc. During the period of practical training, the trainees shall be given a monthly allowance of Rs. 150 plus dearness allowance and house rent allowance or at such rates as may be fixed by Government from time to time.

The seniority of Respondents 3 to 5 and 7 to 10 was reckoned from the date on which they joined duty after completion of practical training as stated in Clause (f) of Rule 9A of K.F.S.S.R.

32. Learned Counsel for the Petitioners placed much reliance on Note 1 to Category 1 Rangers. Rule 2 of K.F.S.S.R. deals with appointment. It is argued

that so far as the direct recruits are concerned, no appointment is necessary whereas in the case of Forest Apprentice recruits a fresh appointment after training is necessary. Note 1 reads as follows:

Note.- 25% of the vacancies shall be filled up by direct recruits who have satisfactorily completed the practical training. 25% by appointment of Forest Apprentices who have satisfactorily completed training in the Forest Colleges at Dehra Dun or Coimbatore and the practical training; 25% by promotion of Deputy Rangers/Foresters who have undergone Rangers' training; and 25% by promotion of Deputy Rangers/Foresters who have undergone Foresters' training:

Provided that when required number of suitable candidates for appointment to the quota fixed for direct recruitment are not available, such vacancies shall also be filled up by appointment of Forest Apprentices under method (2).

The proviso was added only with effect from 16-7-1977. Note 1 shows that 25% of the vacancies shall be filled up by direct recruits who have satisfactorily completed the practical training. Whereas the provision regarding Forest Apprentices is that 25% of the vacancies shall be filled up by appointment of Forest Apprentices who have satisfactorily completed training in the Forest Colleges at Dehra Dun or Coimbatore and practical training. The vacancies earmarked for direct recruits can be filled up only by those direct recruits who have satisfactorily completed practical training. The provision in the note is in conformity with the contention raised by Respondents 1 and 2. That being the legal position, Rule 27(c) of K.S. and S.S.R. can have no application and rule applicable is Rule 27(a) of K.S. and S.S.R. Rule 27(a) of K.S. and S.S.R. provides that seniority shall be determined by the date of the order of first appointment. Persons who are directly recruited as Ranger and Forest Apprentices can be said to be appointed to the service only on the date on which they joined duty after successful completion of practical training. Petitioners were selected for "recruitment" as Forest Rangers and "not advised for appointment" as Forest Rangers. So they are not entitled for seniority from 21-10-1976, the date of Ext. P-2 but only from 28-11-1977, the date on which they actually joined duty after completion of practical training.

33. Learned Counsel appearing for Petitioners has attacked Ext. P-27 order on the ground of violation of principles of natural justice. It is argued that this Court directed the Government to hear and settle the issue between the Petitioners and Respondents after affording an opportunity to the affected parties as per the judgment passed in O.P. No. 6215/1995. It is argued that the matter was heard by One officer but the order was passed by Anr. officer and on that ground alone Ext. P-27 order is to be quashed.

34. It is true that Petitioners filed O.P. No. 10226/1993 challenging the ranks assigned to them in the seniority list dated 25-6-1992. This Court as per order dated 17-8-1993 in O.P. No. 10226/1993 directed to consider and dispose of the two petitions stated to have been filed by the Petitioners. Subsequently the

Government passed Ext. P-21 order. In view of Ext. P-21 order the Petitioners submitted before this Court that their grievances have been ventilated and as such the Original Petition need not be considered on merits. Accordingly Original Petition was disposed of. Aggrieved by Ext. P-21 order some of the Respondents along with others filed O.P. No. 6215/1995 before this Court. This Court by judgment dated 24-3-2003 set aside Ext. P-21 order and directed the Government to consider the claims of Petitioners in that Original Petition. Petitioners in O.P. No. 6215/1995 and Petitioners in this Writ Petition were directed to file representations highlighting their grievances. Final order was directed to be passed within a time frame after hearing the affected parties in this Writ Petition. According to the Petitioners thereafter the Principal Secretary to Government issued Ext. P-24 notice to them to appear before him in person on 12-8-2003. On 12-8-2003 Petitioners were heard by Shri Rudhragangadharan, Secretary to Government, Forest Department, but no orders were passed for more than one year. Grievance of the Petitioners is that on account of the delay they filed C.O.C. No. 1660/2004 and at that stage Ext. P-27 order was issued, signed by 11th Respondent N. Mohanakurup, Additional Secretary to Government.

35. Learned Counsel appearing for Petitioners relying on the decision of this Court in *Union of India v. Andrew* 1996 (1) KLT 133 argued that there is violation of principles of natural justice. In this case there was no direction to a particular officer to hear and dispose of the representation. But the direction was to the Government. Ext. P-27 order was signed by "by order of the Governor". So the principle laid down in *Andrew's* case (*supra*) can have no application to the facts of this case. Learned Counsel for the Petitioners has relied on a decision of the Apex Court reported in *Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another*, and argued that when the case is heard by one person and the order is passed by Anr. person there is violation of principles of natural justice, Apex Court found that no prejudice has been caused to the parties and they were given a fair hearing and therefore, there is no ground to interfere with the impugned order.

He also relied on a decision reported in *Bhattathiripad v. Tahsildar* 1994 (1) KLT 790 and argued that if a particular officer is heard the matter, the successor officer cannot pass orders without hearing the parties. In *Sadasivan v. Joint Registrar* 1994 (2) KLT 238 Anr. learned Single Judge of this Court took a view that hearing of case by one officer and order passed by successor in office is not valid.

36. In this case a direction was given to the Government. The Government was directed to hear and settle the matter after affording an opportunity to the parties to present their respective grievances. Even according to the Petitioners they were given a fair hearing. In O.P. No. 10226/1993 this Court directed the Chief Conservator of Forests (Protection) to consider the representations submitted by the Petitioners and pass orders thereon within a time limit. Initially

their claim was rejected as per Ext. P-19. Petitioners did not challenge that order. On the other hand they filed Ext. P-20 petition before the Hon''ble Minister for Forests. Ext P-20 was treated as an appeal before the Government and Ext. P-21 order was passed by the Government granting seniority to the Petitioners above the Respondents. That order was challenged by some of the Respondents herein and others in O.P. No. 6215/1995. As per judgment in O.P. No. 6215/1995 this Court again directed the Government to hear and settle the issue which resulted in Ext. P-27 order. No useful purpose will be served by disposing this Writ Petition by directing the Government again to hear and settle the dispute. I do not think it is just and proper to keep a two decade issue open by referring the matter back to the Government. There must be a finality to the proceedings. The mere fact that the order was signed by a person other than the person who actually heard the matter is not a ground to set aside Ext. P-27 order and direct the Government to pass fresh orders.

37. Learned Counsel appearing for Respondents has argued that even assuming that the action of the Government giving seniority to them over the Petitioners is wrong, Petitioners are not entitled to get any relief. It was submitted that a provisional seniority list as on 1-1-1984 was published in Kerala Gazette dated 25-12-1984 in which Respondents were assigned seniority over the Petitioners. It is contended that provisional seniority list published on 1-1-1984 was relied on for passing a number of orders and if the seniority assigned to the persons in that list is upset after 23 years, it will create hardships to a large number of persons and also unsettle many matters which were become final. It is argued that in feet the validity of seniority list published on 1-1-1984 was upheld by this Court in *Karthikeyan v. State of Kerala* ILR 2002 (2) 31 and held that seniority of persons finally settled for long years cannot be unsettled after long delay causing injustice to persons in service.

38. According to the Petitioners when the provisional seniority list as on 1-1-1984 was published they filed Exts. P-7 and P-8 representations challenging that seniority list. This fact was specifically denied by the State. It was contended that no such representations were filed. Even assuming that if such representations were filed, those representations must have been disposed of long back. In fact in paragraph 3 of *Karthikeyan's* case (*supra*) the Division Bench recorded the statement made by the State that the list as on 1-1-1984 was finalised after disposing of all the appeals. Ext. P-9 final combined seniority list of Rangers as on 1-1-1984 was published in the Kerala Gazette dated 5-11-1985. There is nothing on record to show that Exts. P-10 and P-11 representations/appeals were actually filed and pursued. Thereafter Ext. P-12 seniority list was published. Even accepting the contention of the Petitioners that they filed Exts. P-13 and P-14 appeals against the provisional seniority list, as on 1-1-1987, Petitioners did not pursue those appeals. Ext. P-15 provisional seniority list of Rangers as on 1-1-1992 was published. Against that seniority list Petitioners filed Exts. P-16 and P-17 appeals and subsequently O.P. No. 10226 of 1993 before this Court. There is absolutely no mention in Exts. P-16 and P-17

about their challenge against the earlier combined seniority lists published on 1-1-1984 and on 1-1-1987. So, even assuming that the seniority assigned to the Petitioners were not correct, they failed to challenge the same at the appropriate time.

39. In Prafulla Kumar's case (supra) Supreme Court held that if there is inordinate delay in challenging the seniority list the Petitioner is not entitled to get any relief. The seniority list in this case is in operation for more than 23 years and Petitioners were sleeping over their rights. No grounds are made by Petitioners to unsettle the seniority list which is in force from 1-1-1984 onwards. In Karthikeyan's case (supra) the Division Bench of this Court considered the seniority list as on 1-1-1984 and held that if the seniority of persons is unsettled at this distant point of time, it is unjust and illegal. The principles laid down in the above two decisions squarely apply to the facts of this case. Hence the Writ Petition is only to be dismissed.

In the result, Writ Petition is dismissed.

I.A. Nos. 10729/2005 and 893/2007 will stand closed.