
(2000) 12 KL CK 0047
In the High Court Of Kerala
Case No : O.P. No. 13535 of 1995

Sindhu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-12-2000

Acts Referred:

Constitution of India, 1950 — Article 320, 321

Citation : (2000) 12 KL CK 0047

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar, P.G. Rajagopalan and N. Gopikrishnan Nambiar, for the Appellant; T.C. Ulahannan, N.N. Sugunapalan and O.V. Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—Pursuant to Ext. P1 notification inviting applications for appointment to various posts under the Kerala State Pollution Control Board, the petitioners were ranked Nos. 1, 2, 4 and 5 respectively for appointment as Asst. Engineers vide Ext. P2 rank list. Subsequently, they were appointed on a provisional basis as Assistant Engineers. This was done pursuant to Ext. P3 letter from the Government suiting that in view of the decision taken by the Government in December, 1987 to entrust the recruitment to various posts in the Board to the Public Service Commission, the permission granted by the Government earlier on 16.4.1994 to fill up the posts in the Board was withdrawn, and that the vacancies can be provisionally filled up by deputation in the case of compelling need the refer. The prayer is to direct the Board to put into effect Ext. P2 rank list and to declare that the rank list is still in force.

2. During hearing today, the learned counsel for the petitioners, Sri. T.P. Kelu Nambiar. submitted that in view of the subsequent event of granting provisional appointment to the petitioners, and in the absence of any enactment passed by the State Legislature, handing over the responsibility for making recruitment to

the posts under the Board to the Kerala Public Service Commission, the relief that is now necessary is to direct the Hoard to make the appointments given to the rank holders regular with retrospective effects.

3. I have heard the learned counsel appearing for the Kerala State Pollution Control Board, as also the learned Government Pleader appearing for respondents 1 and 2.

4. It is conceded in the counter filed by the fourth respondent that Ext. P3 letter is not a substitute for any legislation or amendment to the Water (Prevention and Control of Pollution) Act and Rules, and that it is simply an order duly issued under law, directing the Board to carry out certain actions in conformity with the policy of the State Government.

5. The question therefore is whether Ext. P3 direction can be taken as valid and sufficient to cancel Ext. P2 rank list with all attendant consequences.

6. Art. 320 of the Constitution casts a duty on the Union and State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively. Art. 321 provides as follows:

"321. Power to extend functions of the Public Service Commissions.- An Act made by Parliament or, as the case may be, the Legislature of a State, may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution".

It is therefore clear that Art. 321 contemplates passing of an enactment, if at all that the power of the Public Service Commission are to be extended for making recruitments to fill up posts under any local authority or other body corporate constituted by law or of any public institution, it is not in dispute that the Kerala State Pollution Control Board; which is a creature under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution Act) 1981, is a body corporate coming within the purview of Art. 321. It is clear from Art. 321 that responsibility for making recruitments to posts under the Board can be conferred on the PSC only through an Act of the State Legislature and not by any departmental direction, as the one mentioned in Ext. P3. The said direction, obviously, is an extraconstitutional direction, and not valid. It is pertinent that the decision allegedly taken in December, 1987 remains unexecuted even today through an appropriate legislation. Ext. P3, being against the requirement contemplated in Art. 321, is invalid and it cannot affect the recruitment process which had already commenced pursuant to Ext. P1, whereunder the petitioners herein as also the petitioner in O.P.No. 9391 of 1995 were recruited and appointed, albeit on provisional basis.

7 Ext. P3 is accordingly quashed. There will be a direction to respondents 3 and 4 to put in operation Ext. P2 for the period of two years from the date of Ext. P2.

There will be a further direction that the services of the rank holders in Ext P2 already appointed during the period of validity of the rank list be regularised with effect from their date of joining service with all attendant service benefits.