
(1984) 10 KL CK 0022
In the High Court Of Kerala
Case No : W.A. No. 719 of 1983

State of Kerala and Others

APPELLANT

Vs

T.T. Mathew and Others

RESPONDENT

Date of Decision : 16-10-1984

Acts Referred:

Citation : (1984) KLJ 898

Hon'ble Judges : K. Bhaskaran, Acting C.J.; K. John Mathew, J

Bench : Division Bench

Advocate : C.P. Sudhaker Prasad and T.P. Keiu Nambiar, for the Respondent

Judgement

K. Bhaskaran, Ag. C.J.

1. This appeal is directed against the judgment of our learned brother Bhaskaran Nambiar, J., dated 2-9-1983 in O.P. No. 6767 of 1981. That writ petition was disposed of by a common judgment, disposing of O.P. Nos. 6767 of 1981, 1524 of 1982 and 9254 of 1982. In all the writ petitions, the question related to the date from which the service of the respective petitioners was to be reckoned. It would appear that on the advice of the Kerala Public Service Commission the petitioners (respondents 1 and 2 in the appeal) entered service; and they were deputed for training along with others as Auxiliary Nurse Midwife. On the completion of their training, the Public Service Commission was again approached by the appellants for preparing a ranked list. The question is, whether it is from the date of the original advice, after the receipt of which the candidates proceeded for training, or from the date of advice after, preparing the second ranked list that the service is to be reckoned. In view of rule 27(c) of the Kerala State and Subordinate Services Rules, there could hardly be any doubt that the service of the Government Servants has to be reckoned from the date of effective advice in respect of them by the Public Service Commission; and the position would remain the same whether the candidates advised proceeded for training or joined duty straightway. Clause (c) of Rule 27 of the K.S. & S.S.R. reads as follows:

(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.

Basing his argument on Exts. P-2 and P3, the counsel for the 3rd respondent Public Service Commission submitted that in this case for the purpose of fixing the seniority of respondents 1 and 2 (the petitioners), service had to be reckoned from the date on which they were advised for training as Auxiliary Nurse Midwife. Ext. P2 is a copy of a memo addressed to one Smt. Paikat Ammu, which in its material portion reads as follows:

Smt. Paikat Ammu is informed that the advice for her recruitment as auxiliary nurse midwife on Rs. 50-150 made in pursuance of this hereby cancelled as she was previously selected by the Commission for the Auxiliary Nurse Midwifery training.

Ext: P3 is a copy of Circular No. D. Dis. (FP-A6) 139788/70 dated 8th September, 1971, from the Director of Health Services, which in paragraph 2 reads as follows:

Those who underwent Auxiliary Nurse Midwifery Training in Kerala Government Schools on the advice of the Public Service Commission need not apply to the Public Service Commission for regular appointment. Their ranking by the Public Service Commission is pending. In the meanwhile they have been appointed on provisional basis.

2. The Government Pleader who is said to have appeared before the learned single Judge submitted that it was not correct to say that he had conceded that the date of advice in the first instance had to be reckoned as the date of entry into service, for the purpose of seniority. We record this submission. We are also deciding this question only on merits, that is, with particular reference to Rule 27(c) of the K.S. & S.S.R. We have not been shown any provision of law which enjoins or enables the Public Service Commission to prepare a second ranked list after the training.

Accordingly, we dispose of the appeal clarifying that the seniority of the petitioners would be reckoned from the date of their having been advised by the Public Service Commission as Auxiliary Nurse Midwife before their proceeding for training. No costs.