

(1987) 05 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No"s. 212 and 245 of 1987

T.C. Antony and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-05-1987

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 13(AA), 13A, 13A(1), 27, 31

Citation : (1987) 05 KL CK 0016

Hon'ble Judges : V.S. Malimath, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : C.S. Rajan, Thomas John and P. Sankarankutty Nair, for the Appellant; Govt. Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Malimath, C.J.—These appeals are directed against the judgment of the learned Single Judge in O.P. Nos. 323/84 and 9988/83. The contesting Respondents in these cases are admittedly members belonging to Scheduled Caste. They were promoted to the cadre of Upper Division Clerks sometimes in the year 1976 even though they had not then passed the prescribed qualifying test as they had the benefit of exemption, for the period specified in Rule 13(AA) of Kerala State and Subordinate Services Rules (hereinafter referred to as the rules). Before the expiry of the time for passing the tests they have also passed the tests prescribed for earning eligibility for promotion to the cadre of Upper Division Clerks. Subsequently, a proposal was made to the effect that they should be given deemed anterior dates of promotion on the found that there were vacancies at an earlier point of time some time in the year 1972 when these Scheduled Caste candidates could have been promoted there being no other eligible candidates for being considered for promotion. Hence a proposal was made to give them deemed dates of promotion with effect from 1972 itself. Objections were called for and some of the Appellants filed their objections. The Appellants are not persons belonging to Scheduled Caste. They contended that

they themselves have passed the test prescribed for earning eligibility for promotion to the cadre of Upper Division Clerks earlier than the contesting Respondents who are members of the Scheduled Caste. Therefore, they contended that the Scheduled Caste candidates cannot be given any deemed dates of promotion earlier than the date on which they actually passed the prescribed test and became eligible according to the rules for promotion. Those objections were overruled and a revised provisional seniority list was published as per Ext. P-3. Aggrieved by the overruling of their objections and according of deemed earlier dates of promotion to the contesting Respondents, the Appellants presented two Original Petitions as aforesaid. The learned Single Judge has dismissed both the Original Petitions. Hence these appeals.

2. The first contention of Sri C.S. Rajan, the learned Counsel for the Appellants, is that the contesting Respondents could not have been given the deemed earlier dates of promotion as has been proposed in the impugned order Ext. P-3. The stand taken on behalf of the State however in this behalf is that from 1972 onwards there were large number of vacancies of Upper Division Clerks which were available for being filled up but that there were no eligible qualified candidates for promotion during that time. As the contesting Respondents had the benefit of exemption from passing the test under Rule 13AA, the Scheduled Caste candidates were entitled to be considered and promoted in the year 1972 itself when vacancies were available for being actually filled up. It is on that basis that the according of deemed dates of promotion from 1972 onwards to the contesting Respondents is sought to be justified. It is not possible to agree with the contention of Sri. Rajan that the promotions having actually been given on the basis of the exemption under Rule 13AA in 1976, it was competent for the authorities to accord deemed dates of earlier promotion to them. If the vacancies were available as contended by the department and if no other senior qualified person was available for promotion the authorities had the necessary competence, nay a duty, to promote the candidates belonging to Scheduled Caste as they could be promoted having regard to the exemption which was available to them under Rule 13AA of the Rules. Hence it is not possible to agree with the contention of Sri Rajan that according of the earlier dates of deemed promotion to the Respondents is not permissible.

3. The main contention of Sri. Rajan, the learned Counsel for the Appellants, however is that though Rule 13AA helped the Scheduled Caste candidates to earn promotion to the cadre of Upper Division Clerks during the period of exemption, the said rule does not enable them to get seniority until they passed the prescribed test. It is his contention that they can only count the date of passing of the examination for the purpose of seniority, and not the actual date on which they were promoted on the strength of the exemption available under Rule 13AA. The learned Single Judge, in our opinion, has rightly repelled this contention. What Rule 13AA contemplates is granting the right to the candidates belonging to Scheduled Caste and Scheduled Tribe for being considered for promotion, even though they have, not actually passed the prescribed test for

earning eligibility for promotion within the specified time. Rule 13A, no doubt, speaks of promotion being on a temporary basis. It further provides that in the event of the candidates that are promoted on the basis of Rule 13AA not passing the prescribed test within the time specified they are liable to be reverted to the original post. That it the only consequence that flows in the event of such candidates not passing the prescribed test within the specified time. The expression "temporarily" used in Rule 13A(1)(a) is only to convey that such candidates are likely to lose title to the post in the event of their not passing the prescribed test. Appointment made under Rule 13A cannot be regarded as temporary appointment as contemplated by Rule 31 of the rules. As on the date on which the Scheduled Caste candidates got promotion on the basis of the exemption under Rule 13AA, it cannot be said that they are not qualified for promotion having regard to the fact that they had the benefit of exemption granted under Rule 13AA. It is no doubt true that the right to earn promotion is by virtue of Rule 13AA which is capable of being defeated by the failure to pass the prescribed test on the part of the candidates within the specified time. If the candidate did pass the prescribed test within the specified time, their title to hold the post does not get defeated. Such of the candidates who passed the tests within the specified time would therefore be entitled to get the date on which on the strength of Rule 13AA they got promoted as the relevant date for the purpose of determination of their relative seniority, in the promoted cadre. This becomes clear when we examine Rule 27 of the rules, which regulates seniority. Rule 27(a) provides that

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 purposes of this Sub-rule, "appointment" shall not include appointment under Rule 9 or appointment by promotion under Rule 31.

It is thus very clear from this rule that seniority of a person in service shall be determined by the date of the order of his first appointment to such service. Explanation to this rule makes it clear that appointments made under Rule 9 or appointment by promotion under Rule 31 cannot be regarded as appointment for the purpose of Rule 27. The promotion made in this case is neither by invoking Rule 9 nor by invoking Rule 31 but by invoking Rule 13AA of the rules. Therefore it is clear that what has to be taken into account for the purpose of determining the seniority of persons promoted under Rule 13AA is the date of the order of first appointment. If a person belonging to Scheduled Caste is appointed on the strength of Rule 13AA and subsequently passes the prescribed test within the specified time, he is not required to be given a fresh order of appointment. This makes it clear that the first appointment so far as persons appointed under Rule 13AA is concerned is the date on which he is actually appointed invoking the exemption granted by Rule 13AA. Hence it follows that for the purpose of determining the relative seniority of candidates who have been promoted under

Rule 13AA what is required to be taken is the date on which they were promoted first on the strength of the exemption granted under Rule 13AA and not the date on which they passed the test within the specified time. It is not disputed that so far as these cases are concerned, the contesting Respondents have passed the test within the specified time. Therefore, they have not lost title to continue in the post to which they were originally appointed by promotion. Hence the authorities were justified in treating the deemed earlier dates of promotion as the dates for the purpose of determining the relative seniority of the contesting Respondents and not the dates on which the contesting Respondents actually passed the test. Hence we see no good grounds to interfere with the judgment of the learned Single Judge. Both the appeals fail and they are dismissed.