

(2007) 08 KL CK 0079
In the High Court Of Kerala
Case No : W.A. No. 39 of 2007

The Director of Panchayat and Another	APPELLANT
Vs	
M.V. Ajayakumar	RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Citation : (2007) 3 KLJ 603

Hon'ble Judges : K.S. Radhakrishnan, J;Antony Dominic, J

Bench : Division Bench

Advocate : Benny Gervasiz, GP, for the Appellant; K. Jaju Babu and M.U. Vijayalakshmi, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Respondent here in has preferred O.P. No. 9371 of 2002 seeking a writ of certiorari to quash Ext. P4 order passed by the Director of Panchayats and also a writ of mandamus directing the first respondent to assign seniority to him in the cadre of U.D. Clerk in accordance with order dated 25-03-1991 passed by the Director of Municipal Administration and also for other consequential reliefs. Learned single judge quashed Ext. P4 and declared that the petitioner is entitled to get seniority as U.D. Clerk in the Panchayat Common Service from 25-03-1991, the date of Ext. PI order of promotion as U.D. Clerk.

2. Government Pleader Sri. Benny Gervasiz submitted that the learned single judge overlooked the fact that the petitioner was not test qualified when persons who were in Panchayat Common Service in Ernakulam district along with the petitioner were promoted as U.D. Clerk on 18-07-1990 and 31-08-1990 and none of the petitioner's juniors were promoted as U.D. Clerk in Ernakulam district after the petitioner became test qualified. When Koothattukulam Grama Panchayat was upgraded as Municipality and that the petitioner had given his option to come to Municipal Common Service and the same was accepted by the Government.

3. Sri. Jaju Babu, counsel for the petitioner, on the other hand referred to Ext. P1 order dated 25-03-1991 and submitted that so long as the said order is not set aside or nullified petitioner is entitled to get the benefit of that order. Counsel submitted that as per Ext. PI the only condition for availing of promotion is to pass Municipal Test in four chances and the petitioner had passed Municipal test in November 1989. In other words, counsel submitted that the petitioner had obtained the qualification within the time limit prescribed in Ext. PI. Consequently he was given promotion as U.D. Clerk in the Municipal Common Service which benefit he is entitled to carry when he came back to Panchayat on redesignation of the Municipality as Panchayat. Learned Counsel also referred to the Judgment in *Shaji v. State of Kerala* (1999) (1) KLT 774.

4. Petitioners in this case entered service as L.D. Clerk in the erstwhile Panchayat Common Service on 23-03-1988. He passed M.O.P. in May 1989 and Account Test (Lower) in June 1990 and Panchayat test in November 1990 and became qualified for promotion as U.D. Clerk in November 1990. However while petitioner was working as L.D. Clerk in the Koothattukulam Grama Panchayat it was upgraded as Municipality. Consequently petitioner had opted Municipal Common Service and his option was accepted by the Government as per order dated 26-4-1991. Later he continued as L.D. Clerk in the Koothattukulam Municipality and was promoted as U.D. Clerk under the provisions of the Municipal Common Service Rules and was posted in Taliparamba Municipality. He joined there on 4-4-1991. Later he was transferred and posted in Koothattukulam Municipality by order dated 23-3-1993 and he joined there on 1-4-1993. While the petitioner was working as U.D. Clerk the Municipality was again redesignated as Panchayat. Consequently option of the employees was called for and they were sent back to Panchayat Common Service. Accordingly petitioner continued as U.D. Clerk in the Koothattukulam Grama Panchayat.

5. Government have published Kerala Panchayat Subordinate Service Rules, 1994 (Special Rules) as per Government Order G.O. (P) 151/94/LAD dated 16-6-1994 integrating Panchayat Common Service and Panchayat Department into one service with retrospective effect from 1-1-1990. Special Rules stated that all promotions made after 1-1-1990 would be revised according to the Special Rules. Consequently seniority list of U.D. Clerks after 1-1-1990 was published as per order dated 20-08-1998. In the said seniority list petitioner was assigned rank No. 1269 and date of promotion as 1-8-1994. Later on the strength of the judgment of this Court in W.A. No. 1501 of 1994 seniority list of U.D. Clerk of erstwhile Panchayat Common Service, who were promoted between 1-1-1990 and 20-10-1993, was finalised and a seniority list was published by the Director of Panchayat as per order dated 2-7-2001. Petitioner was promoted as U.D. Clerk on 25-03-1991 while in Municipal Common Service and hence his name was not included in the seniority list of U.D. Clerks who were promoted in between 1-1-1990 and 20-10-1993. Benefit of the judgment in W.A. 1501 of 1994 would be available only to those persons who were promoted while in Panchayat Common Service and under the Rules applicable to them.

6. Petitioner, as already indicated, became test qualified in the departmental test only in November 1990 and persons who entered Panchayat Common Service in Ernakulam along with the petitioner were promoted on 18-07-1990 and 31-08-1990. At that time petitioner was not test qualified. None of his juniors were promoted after the petitioner became test qualified. Petitioner pointed out the names of two persons in the counter affidavit. Same was replied by filing a statement by the first respondent which would indicate that none of the petitioner's juniors were promoted overlooking the seniority of the petitioner. It is stated that the petitioner was not in Panchayat Common Service while he was promoted as U.D. Clerk. There were test qualified seniors. Though the petitioner was eligible for promotion as U.D. Clerk with effect from November 1990, the date on which he became test qualified, it was on 25-03-1991 he was promoted as U.D. Clerk in the Municipal Common Service. Above being the factual situation, we are of the view, learned single Judge was not justified in extending the benefit of the Division Bench judgment to the petitioner since he did not fall in that category as evident from the facts narrated herein before. Petitioner could not succeed in establishing that any of the juniors was promoted overlooking his seniority. Those persons promoted had acquired the test qualification earlier than the petitioner. We are of the view, rights of persons who continued in Panchayat Common Service without exercising option cannot be affected by the orders of repatriation or reversion to Panchayat Service. That being the factual situation, we are of the view, decisions referred to herein before would not apply to the case of the petitioner.

7. Appeal is therefore allowed and judgment of the learned Single Judge is set aside.