

(1996) 12 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 4104 of 1996-L

Thulasidas, C.K. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 28

Citation : (1996) 12 KL CK 0010

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, M.P. Prakash and Thomaskutty, M.A, for the Appellant; P.V. Asha, Government Pleader, for the Respondent

Judgement

C.S. Rajan, J.—The Petitioners are Circle Inspectors of Police. The next higher category to which the Petitioners aspire to be promoted is that of Deputy Superintendent of Police. The above post is a selection post. A select list of Circle Inspectors of Police fit for promotion as Deputy Superintendent of Police for the year 1994 was prepared by the Departmental Promotion Committee (D.P.C.) evidenced by Exhibit P-2 dated 25th October 1994. Eighteen persons were included in the above select list. Thereafter another select list of Circle Inspectors for promotion as Deputy Superintendent of Police was prepared by the D.P.C. and published on 6th January 1996 as per Exhibit P-6. This is for the year 1995. Eighty-nine persons were included in the above list. As per Exhibit P-7 order dated 20th February 1996, 79 Circle Inspectors were promoted provisionally as Deputy Superintendent of Police.

2. The prayers in the Original Petition are as follows:

(i) to issue a writ of mandamus or other appropriate writ, direction or order directing the Respondents to arrange and hold the meeting of the 3rd Respondent for preparing supplemental select list of the year 1995 of Circle Inspectors fit for promotion as Deputy Superintendents of Police for filling up the vacancies in the category of Deputy Superintendent of Police of the year 1996

and to direct the 3rd Respondent to prepare the supplemental list as if the Departmental Promotion Committee was meeting at the time when the names of Circle Inspectors fit for promotion included in Ext. P-6 were approved for promotion and to publish the supplemental select list of the year 1995 before the date of next arising vacancy;

(ii) To issue a writ of mandamus or other appropriate direction or order directing the 3rd Respondent not to consider superseded officers while preparing Ext. P-6 select list of year 1995, for preparing the supplemental select list year 1995;

3. Thus the case of the Petitioners is that while preparing the select list for the year 1994, the D.P.C. ought to have taken into consideration the vacancies which are to arise in the year 1995. When the D.P.C. met to prepare the list for the year 1995, they should have taken into consideration the number of vacancies which are to arise in the year 1996. If such an estimate has been made the cases of the Petitioners would have been considered by the D.P.C. Pursuance to an order passed by this Court on 23rd September 1996 a detailed counter affidavit was filed on behalf of Respondents 1 to 3. The counter affidavit reveals the following facts: The D.P.C. which met on 14th and 15th December 1995 considered 77 existing vacancies and 13 anticipated vacancies for the year 1995. Thus the total number of vacancies were 90. It was averred that the vacancies of 1996 were not considered. Considering the total number of vacancies as 90 the field of choice for preparing the select list was taken as 180+10. It is also stated that action is in progress for the preparation of the select list for the vacancies which may occur during the year 1996.

4. Shri O.V. Radhakrishnan, learned Counsel for the Petitioners argued that select list should be prepared during a calendar year for the vacancies estimated to arise in the next calendar year. Therefore, according to him, when the D.P.C. met to prepare the select list for the year 1995 it should have taken into consideration the vacancies which are to arise in 1996. In order to appreciate the scope of the above argument it is necessary to look into the relevant provisions contained in Rule 28(b)(i)(e) of the K.S. and S.S.R Sub-clauses (a) to (e) of Clause (4) are as follows:

(a) Select lists shall be prepared during a calendar year for the vacancies estimated to arise in the next calendar year;

(b) During the first six months of the year action shall be taken make all the confidential reports up to date, adverse remarks communicated, and orders for expunging such remarks issued wherever necessary. Simultaneously seniority lists shall also be made up to date and probation of officers in the field of choice declared. Confidential Reports and seniority lists shall be made up to date before 30th June;

(c) The Moderation Committee will be convened during the months of July/August;

(d) During September/October the Departmental Promotion Committees will be convened and select lists prepared which will be notified before 30th November and in any case not later than December 31. If any officer becomes qualified after the preparation of the select list, but, before the occurrence of the vacancy, the Departmental Promotion Committee shall meet subsequently and his name shall be considered for inclusion in the select list;

(e) At the time of change over from the existing system the number of vacancies for the current year and the next year shall be considered together.

In this connection it is necessary to remember that these Sub-clauses were added by S.R.O. No. 15/91 dated 1st January 1991. Earlier without the above Sub-clauses (a) to (e) Clause (4) read as follows:

(4) The Committee shall meet periodically to prepare select lists, in the order of merit, of the officers selected for appointment. The Committee may also hold ad hoc meetings for the purpose of making selection to particular vacancies whenever occasion arises. The criterion for assessment of merit shall be the confidential report of the officers. The confidential reports of the officers for atleast the preceding three years shall be made available to the Committee for this purpose. Where remediable adverse remarks recorded in the confidential report of a Government servant are not communicated to the officer concerned, such remarks shall be ignored by the Departmental Promotion Committee while considering his case for promotion. The crucial date for considering the date for considering the eligibility of candidates for inclusion in the field of choice for preparing select lists shall be the 31st March of the year concerned unless otherwise ordered by the Government.

5. Therefore, the rule making authority consciously prescribed a procedure to be adopted by the D.P.C. for the preparation of the select list. According to Sub-clause (b) during the first six months of the year action should be taken to make all the confidential reports up-to-date. Along with the above process the seniority list also must be finalised. Action to declare the probation of the officers also must be completed. Thereafter, during September/October the D.P.C. has to meet to prepare the select list. The select list must be notified before 30th November and the outer limit is 31st December [please see Sub-clause (d)]. Thus it can be seen that when a select list is to be prepared for a given year (1995), the D.P.C. will be meeting only in September/October, 1995. The select list will be published only in November/December, 1995. By the time all the vacancies which arose in 1995 might have been filled up provisionally without reference to the D.P.C. The formalities for convening of the D.P.C. take more time. By the time the D.P.C. meets almost all the vacancies which arose in the current year may not be in existence. Thus the D.P.C. will be confronted with the situation where they can only ratify or regularise the temporary promotions already made. Even a comparative assessment of the persons in the field of choice would become only academic. The members of the D.P.C. which include the appointing authority and the departmental head may not even consider the

case in the proper perspective because any adverse finding may result in the reversion of temporary promotes.

6. Therefore, I think the substitution of Sub-clause (4) with the present procedure covered by (a) to (e) was intended to overcome the above difficulties. If the select lists are prepared for the vacancies anticipated to arise in the next year, regular promotions can very well be effected from the select list without resorting to temporary promotions. But the above rules are followed more in breach than in observance. The regular meetings of the D.P.C. are seldom convened in time. Some times the D.P.C. meets after a decade and prepare consolidated select lists for a number of years. This is a practice which is to be deprecated and stopped forever.

7. The stipulation in Clause (e) that the number of vacancies for the current year and the next year shall be considered together at the time of change over from the existing system is only a transitory provision which can apply only to the then existing system which was prevalent before 1991 and which was substituted by a new procedure contained in the present Sub-clause (4).

8. In the present Original Petition Ext. P-6 select list dated 6th January 1996 was prepared by the D.P.C. in its meeting held on 14th and 15th December, 1995. This is the select list for the year 1995. 89 persons were included in the above select list. According to the counter affidavit, there were 90 vacancies. The averments in the original petition will go to show that serial numbers 16 to 18 in Ext. P-2 select list for the year 1994 were shown as serial numbers 1 to 3 in Ext. P-6 select list. Serial No. 6 in Ext. P-6 select list retired on 30th November 1995 and serial No. 29 expired on 18th October 1995. Serial Nos. 1 to 3 mentioned above were promoted as Deputy Superintendent of Police in January, 1996 itself. Similarly, serial Nos. 4, 5, 7 to 28 and 30 to 85 were promoted and posted as Deputy Superintendent of Police provisionally on 20th February 1996 evidenced by Ext. P-7. Only five Circle Inspectors included in Ext. P-6 remain to be promoted as Deputy Superintendent of Police on the date of filing of the Original Petition in March, 1996. Therefore, if the number of vacancies for the year 1995 and in 1996 were taken into consideration while preparing Ext. P-6 select list, it is obvious that the name of the Petitioners would have been definitely considered by the D.P.C. Therefore, the procedure now adopted in preparing Ext. P-6 select list, which is against the mandatory provision referred to above, has adversely affected the rights of the Petitioners to be considered for promotion as Deputy Superintendent of Police.

9. Under these circumstances, the Respondents are directed to prepare a fresh select list for the year 1995 taking into consideration the vacancies which arose in 1995 and in 1996 in the cadre of Deputy Superintendent of Police. While preparing the above select list the Petitioners' case also must be considered for inclusion in the above select list. The above direction will not affect the persons who were now included in Ext. P-6 select list because they are admittedly seniors to the Petitioners. The above exercise must be completed by the Respondents

within two months from the date of receipt of a copy of this judgment. If the Petitioners are included in the select list as indicated above they are also entitled to be promoted as Deputy Superintendent of Police in accordance with their seniority and dates of occurrence of vacancies.

10. The present case arose in the Home Department. At the same time, there is every possibility of D.P.C. in other Departments not following the mandatory provisions contained in Sub-clause (4)(a) to (e) of Rule 28 (b)(i) of the K.S. and S.S.R. It is highly necessary to see that the Departmental Promotion Committee constituted in every department must follow the above procedure in the matter of preparation of the select list. For the above purpose a copy of this judgment must be sent to the Chief Secretary in order to circulate the same in all the Departments.

With this observation and direction the original petition is disposed of.