
(1992) 02 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 3464 of 1991

V. Paru

APPELLANT

Vs

The Inspector General of Police and Others

RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Constitution of India, 1950 — Article 309, 313

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 6, 7, 8

Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 — Rule 2, 3

Kerala State and Subordinate Services Rules, 1958 — Rule 1, 2(15), 27

Citation : (1992) 2 KLJ 150

Hon'ble Judges : M. Jagannadha Rao, C.J.; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : T.C. Mohan Das and M. Sunil, for the Appellant; M.C. John, Government Pleader for Respondents 1 and 3 and C.S. Rajan, for 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—This Writ Petition has been referred to a Division Bench by an order of a learned Single Judge dated 1st October 1985. The point that arises for consideration in this Writ Petition is whether the Kerala State and Subordinate Services Rules, 1958 (hereinafter called the K.S. and S.S.R.) are applicable, or are not applicable, to the police personnel under the service of the State Government.

2. The facts of the case are as follows. The writ Petitioner is advised by the Employment Exchange, Palghat, for being appointed to the post of Women Police Constable. She, along with the fourth Respondent, was selected by the Superintendent of Police, Palghat (the second Respondent), and were directed to report for medical examination before the Superintendent of the District Hospital. The provisional list would show the name of the Petitioner as first among the 10 candidates provisionally selected as per Ext. P-1, while the fourth Respondent was shown at Sl. No. 3. Sub-sequently the Petitioner was appointed as a Police

Constable on 1st April 1968 as per Ext. P-2 and her probation was declared on 30th September 1970, and the probation of the fourth Respondent was declared on 20th October 1970. The seniority list of Police Constables was prepared as per Ext. P-3 dated 1st April 1971 in which the Petitioner was shown at Sl. No. 2, she being elder to the fourth Respondent. The fourth Respondent was shown at Sl. No. 4. It is the contention of the fourth Respondent that Ext. P-3 seniority list is contrary to Rule 27(b) of the K.S. and S.S.R., inasmuch as the appointing authority was bound to pass a separate order in relation to seniority and should not have been merely guided by the initial list prepared at the time of medical examination. While things stood thus, in a state of dispute, the question of promotion arose. A select list of Women Police Constables fit for promotion as Naik had to be prepared. It was so prepared, as per Ext. P-4, and the Petitioner was shown at Sl. No. 1, while the fourth Respondent was shown at Sl. No. 3. Obviously this was on the basis of Ext. P-1 ranking which according to the fourth Respondent was not a ranking fixed in accordance with Rule 27(b) of the K.S. and S.S.R. On the basis of the select list prepared as per Ext. P-4, posting orders were issued on 14th July 1976, as per Ext. P-5, promoting the Petitioner as Naik in preference to the fourth Respondent. It appears that in the meantime the fourth Respondent had represented to the Inspector General of Police, and he had directed a proper fixation of the ranking as per Rule 27(b) by the second Respondent. Pursuant to a representation made during that period by the writ Petitioner, on 22nd September 1976 the Inspector General of Police informed the Petitioner that as per the provisions contained in Rule 27(b) of the K.S. and S.S.R., the seniority of the Petitioner, and the fourth Respondent, had to be determined by the appointing authority. It is pointed out in the original appointment order No. D.O. 117/69, dated 1st April 1968 of the second Respondent that the name of the fourth Respondent was shown as Sl. No. 1 while the name of the Petitioner was shown as Sl. No. 3, and as such the seniority should have been fixed strictly in accordance with D.O. No. 117/68 of the Superintendent of Police, Palghat. Thereafter a revised gradation list, Ext. P-9, was issued showing the fourth Respondent as senior to the Petitioner in the category of Police Constables and on that basis a fresh select list of Police Constables fit for promotion as Naiks was prepared in supersession of the earlier select list, Ext. P-4. In the select list, Ext. P-10 dated 15th June 1977, the fourth Respondent was shown as senior to the Petitioner. In accordance therewith, an order of promotion was issued on 27th June 1977 as per Ext. P-11, promoting and posting the fourth Respondent as Naik and the Petitioner as Lance Naik. It is no doubt true that the post of Lance Naik is inferior to that of Naik. We have also on record the proceedings, Ext. P-13 dated 21st July 1976 of the Inspector General of Police, addressed to the Superintendent of Police, Palghat, stating that in accordance with Rule 27(b) of the K.S. and S.S.R, the latter was bound to fix the order of preference among those appointed simultaneously, and seniority would be determined in accordance with the said ranking. It is also pointed out that in D.O. No. 117/68 dated 1st April 1968 issued at the time of appointment, the Superintendent of Police had shown the fourth Respondent at Sl. No. 1, and

the Petitioner lower down, and that that order would govern the seniority of the parties.

3. At that stage, the Petitioner filed O.P. No. 2828 of 1977 questioning the above said order dated 21st July 1976, Ext. P-3, issued by the Inspector General of Police directing the Superintendent of Police, Palghat, to correct the ranking of the parties by showing the fourth Respondent at Sl. No. 1 and the Petitioner's name below the fourth Respondent. In that Writ Petition, the fourth Respondent had relied upon a circular dated 10th November 1968 (marked therein as Ext. P-12) to show that the K.S. and S.S.R. were applicable to the Police Department. The learned Single Judge found that the Petitioner would not challenge the validity of the said circular. However, after considering the facts of the case, the Learned Single Judge remitted the matter for re-examination stating as follows:

In view of what is stated above and particularly in view of the fact that there is controversy before me as regards the question as to whether Rule 27 would govern the matter, it appears to me that the proper course herein would be to direct the 1st Respondent to reexamine the questions mentioned above after affording opportunity to be heard both to the Petitioner and the 4th Respondent. Therefore, making it clear that I have not pronounced upon any of the questions mooted before me, I direct the 1st Respondent to re-examine the matter after affording both the Petitioner and the 4th Respondent an opportunity to submit their case as regards the same.

The above said order was passed on 7th December 1979. Subsequently, after considering the representations of the parties, the Inspector General of Police, passed the impugned order Ext. P-16, dated 2nd March 1981 stating that the seniority of Police Constables had to be revised based on the principles laid down in the K.S. and S.S.R. "which is applicable to the police subordinate service also". On that basis the Petitioner's representation was rejected. Questioning the said order, the present Writ Petition has been filed.

4. It is pointed out by the learned Counsel for the Petitioner that Rule 27 of the K.S. and S.S.R. does not apply to the police personnel, the fixation of seniority, if any, in Ext. P-2 order dated 1st April 1968 placing the fourth Respondent above the Petitioner cannot govern the seniority. What governs the seniority, according to learned Counsel for the Petitioner, is the list prepared immediately after medical examination, wherein the Petitioner is shown at Sl. No. 1 and the fourth Respondent at Sl. No. 3. It is in fact argued for the writ Petitioner that there were certain statutes in force, namely, the Travancore Police Regulation, 1095, the Cochin Police Act, 1058 and the Madras District Police Act, 1859, in different parts of the State of Kerala, at the time of commencement of the Constitution of India on 26th January 1950, and that those Acts or Regulations would continue to be in force in the State of Kerala, and therefore the K.S. and S.S.R. made by the Governor in exercise of the powers under Article 309 of the Constitution of India cannot apply. Reliance is also placed upon the Schedules of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 to say that the police

services are not shown either in Schedule I dealing with State service, or in Schedule II dealing with subordinate service. On that basis it is contended that the police services under the State of Kerala do not either belong to the State service or subordinate service, and that Rule 1 of the K.S. and S.S.R. has to be construed as not referable to police services. It is also contended that in view of the proviso added to Rule 1 of the K.S. and S.S.R. in 1974 by G.O.P. 266 dated 31st October 1974 applying the provisions of the K.S. and S.S.R. to other services in Schedule I and II of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, it must be presumed that the K.S. and S.S.R. were not applicable to the service not included in Schedule I or Schedule II of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 prior to 3rd December 1974.

5. On the other hand, it is contended for the Respondents that the above submissions of the Petitioner's counsel cannot be accepted in view of the provisions of Article 313 of the Constitution of India read with Rule 1 of the K.S. and S.S.R. and the reasons mentioned in the Explanatory Note to G.O. (P) No. 266/PD, dated 31st October 1974 above mentioned. Reliance is also placed on the circular dated 13th November 1968 to say that the provisions of the K.S. and S.S.R. apply to police services.

6. The point, therefore, arises for consideration is whether the provisions of the K.S. and S.S.R. including Rule 27 which relates to fixation of ranking or seniority by the appointing authority apply to the police services of the State even though the said services are not listed either in Schedule I or Schedule II of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

7. It is no doubt true that in different areas in the Kerala State various statutes were applicable to police services, namely, the Travancore Police Regulation, 1095, the Cochin Police Act, 1058 and the Madras District Police Act, 1859. The former two statutes were repealed when the Travancore-Cochin Police Act, 1951 was passed. Later all the statutes were replaced by Kerala Police Act, 1960. However, we do not find any provision in the above statutes, in so far as recruitment and fixation of seniority is concerned. These statutes were dealing with certain powers of the police and the procedure for taking disciplinary action, etc., and the appeals to the appellate authority. Be that as it may, assuming that there were certain statutes in force prior to the commencement of the Constitution of India in relation to seniority in police services, it is, in our view, clear from Article 313 of the Constitution of India that all those statutes would cease to be in force, the moment any statute is made by the State Legislature, or any rules are made under the proviso to Article 309 by the Governor of the State. Article 313 of the Constitution of India reads as follows:

Article 313. Transitional provisions.- Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an

all India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

From the above said Article, it is clear that the continuance of the pre-existing law, even assuming that it had reference to recruitment and seniority, would cease to be in force, the moment any provision is made in that behalf under the Constitution. Such provision could be made under Article 309 of the Constitution of India not only by way of law made by the legislature, but also by way of rules made under the proviso to Article 309 of the Constitution of India by Governor. We have, therefore, no hesitation to come to the conclusion that if and when any rules are made by the Governor in accordance with the proviso to Article 309 of the Constitution of India, any law relating to recruitment and seniority, even it be in existence prior to 26th January 1950, would cease to be in force.

8. The next question would be whether any rules have been made under the proviso to Article 309 in relation to recruitment and seniority of the police personnel in the State of Kerala. The K.S. and S.S.R. consist of definition in Part I and Rules in Part II. Rule 1 in Part II, as stood before 31st October 1974, read as follows:

1. Scope of the General Rules.- The rules in this part shall apply to all State and Subordinate Services and the holders of all posts, whether temporary or permanent in any such service, appointed thereto before, or after the date on which these rules come into force as provided in Sub-rule (b) of Rule 1 in Part I, except to the extent otherwise expressly provided (a) by or under any law for the time being in force or (b) in respect of any member of such service by a contract or agreement subsisting between such member and the State Government.

Rule 27 is dealing with seniority, and Sub-rule (b) thereof states that the appointing authority shall, at the time of passing an order appointing two or more persons simultaneously to a service, fix the order of preference among them, and seniority shall be determined in accordance with it..." Rule 2(15) defines service as a group of persons classified by the State Government as a State or a Subordinate Service, as the case may be. Coming to the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, Rule 6 states that the services, the members of which are subject to these rules shall be classified as follows: (i) The State Services; and (ii) the Subordinate Services. Rule 7 defines "State Services" as consisting of the services included in Schedule I, while Rule 8 defines "Subordinate Services" as consisting of the services included in Schedule II. Schedule I of those rules consists of large number of services, but does not deal with any police service. Schedule II also does not deal with any police service. It is on the basis of these two Schedules, read with Rules 6, 7 and 8 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 that the learned Counsel for the Petitioner contended that the police services are neither State Services nor Subordinate Services. The learned Counsel then relies upon the proviso to Rule 1 of the K.S. and S.S.R. which was introduced with effect from 31st October 1974 by G.O. (P) No. 266/P.D., (published in the Kerala

Gazette No. 49 dated 3rd December 1974) to say that it was only from 31st October 1974 that the K.S. and S.S.R. including Rule 27(b) thereof became applicable to the services not covered by Schedule I or Schedule II of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. It is therefore necessary to refer to the said proviso introduced by the above said G.O. with effect from 31st October 1974, to Rule 1 of the K.S. and S.S.R. The proviso reads as follows:

Provided that the rules in this part shall also be applicable to holders of all posts in Government service even though the posts they hold are not classified as coming under a particular service by including in Schedule I or Schedule II of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

In our view Rule 1 of the K.S. and S.S.R., even before the insertion of the proviso on 31st October 1974, was applicable to all the State and Subordinate Services including the services in the Police Department of the State. This is clear from the words "all State and Subordinate Services" in Rule 1 and also the fact that the rules apply to "all services, except to the extent otherwise expressly provided by or under any law for the time being in force, or in respect of any member of such service by a contract or agreement subsisting between such member and the State Government". In so far as the exclusion of the police services in Schedule I or II of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 is concerned, there is a special reason for such exclusion. The Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 have been framed under the proviso to Article 309 of the Constitution of India, and contain the rules specially applicable to departmental enquiries, in so far as Police Department is concerned. Rule 2 of the said rules states that those rules apply to the Kerala Police Service and the Kerala Police Subordinate Service, and to the holders of all posts, whether temporary, or permanent, in such service appointed thereto before, on or after the date specified in sub-rule, except those employed only occasionally or subject to discharge at less than one month's notice. Rule 3(c) of the said rules defines a member of the service as meaning a member of the Kerala Police Service or the Kerala Police Subordinate Service, as the case may be. It appears therefore that the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 did not have to include the police services either in Schedule I or in Schedule II of the said rules, inasmuch as in respect of departmental inquiries, punishment and appeal, separate rules had already been framed by the Governor of Kerala under the proviso to Article 309 of the Constitution of India. Therefore there is any amount of purpose in not including the police services in the Kerala Civil Services (Classification, Control and Appeal) Rules, but that does not mean that the applicability of Rule 1 of the K.S. and S.S.R. is co-extensive with the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. In so far as K.S. and S.S.R. are concerned, as stated above, they would apply to all State and Subordinate Services and read with Rule 2(15) of the said rules, they apply to State and Subordinate Services under the State of Kerala. It is clear from the

police rules referred to above that even in the police service, there is a State Service called the Kerala Police Service and there is a subordinate service called the Kerala Police Subordinate Service. It is therefore clear that for these two services, Rule 1 of the K.S. and S.S.R. would clearly apply.

9. The question then arises as to the purpose and meaning of the proviso to Rule 1 of the K.S. and S.S.R. added on 31st October 1974 and whether the State intended by adding the said proviso that the K.S. and S.S.R. should be extended for the first time to the police services also. For understanding the above said question, it will be necessary to refer to the Explanatory Note to G.O. (P) No. 266/PD, dated 31st October 1974 by which the above said proviso was inserted. It reads as follows:

According to Rule 1, Part II of the Kerala State and Subordinate Services Rules, the rules embodied therein shall apply to all State and Subordinate Services and holders of all posts subject to the conditions specified therein. A question has been raised whether the rules in Part II of the Kerala State and Subordinate Services Rules, 1958 shall be applicable to holders of posts in Government service even though the posts they hold are not classified as coming under a particular service in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Government have been advised that when a person is appointed in the Government service it can either be in the State or Subordinate Service and that therefore even if a post is not classified as coming under a particular service and included in Schedules I and II of the Kerala Civil Services (Classification, Control and Appeal) Rules, the General Rules (Kerala State and Subordinate Services Rules, 1958) will be applicable to the holder of a post in Government service. However, to make the position clear it has been decided that specific provision in this regard should be made in the General Rules. This notification is intended to achieve the above object.

(emphasis supplied)

It is therefore clear that the proviso inserted below Rule 1 of the K.S. and S.S.R. with effect from 31st October 1974 is clarificatory in nature and it must be presumed as if the said proviso had been there from the inception of the rules. In fact, that was what was earlier clarified by way of departmental circular dated 13th November 1968.

10. For all the aforesaid reasons, we hold that the appointing authority had the necessary power to fix the seniority of the Petitioner and the fourth Respondent at the time of appointment and as per appointment orders on 1st April 1968, the fourth Respondent was treated as senior to the Petitioner, and that position was further clarified and affirmed by Ext. P-2 dated 1st April 1968. It is therefore clear that the promotion of the fourth Respondent to the post of Naik in preference to the Petitioner was perfectly valid. The Writ Petition accordingly fails, and is dismissed. but in the circumstances with costs.

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