
(1993) 01 KL CK 0006

In the High Court Of Kerala

Case No : W.A. No. 967 of 1987 and R.P. No. 8 of 1993

Vimala Kumari and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 31
Public Service Commission Rules — Rule 13, 14, 28
Rules for the Kerala Agricultural Income Tax and Sales Tax Subordinate Service — Rule 14, 15, 16, 17

Citation : (1993) 01 KL CK 0006

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

Bench : Full Bench

**Advocate : S. James Vincent and K. Radhakrishnan Nair, for the Appellant;
Syriac Joseph, A.A.G. I for Respondents 1 and 2 and T.P. Kelu Nambiar, for 3rd
Respondent, for the Respondent**

Final Decision : Dismissed

Judgement

Krishnamoorthy, J.—This Review Petition is filed by Respondents 1 to 3 in the Writ Appeal who are Petitioners in O.P. No. 6720 of 1986 against which the Writ Appeal was filed.

2. The Writ Appeal was heard along with certain other Writ Appeals and was disposed of by a common judgment dated 4th December, 1992. The Writ Appeals were filed by the State.

3. It is alleged in the Review Petition that the review Petitioners had engaged Mr. K.S. Rajamony, Senior Counsel as their advocate who was appointed as a Member of the Kerala Public Men Corruption Commission and on his accepting the assignment the Petitioners engaged the present Counsel Mr. James Vincent who filed Vakalath in the case on 23rd March 1992. He had also filed G.M.P. No. 2294 of 1992 on 23rd March 1992 for an early posting of the Writ Appeal. But when the Writ Appeals were posted for hearing before the Full Bench in

November, 1992 the name of Counsel was omitted to be noted in the cause list and the names of the parties alone were shown. Accordingly Counsel had no notice and the Writ Appeal happened to be disposed of without hearing Counsel for the review Petitioners. Even though in the judgment Sri K. P. Satheesan is shown as having represented the review Petitioners, his name was also not noted in the cause list so that he also could not take part in the hearing of the case. Accordingly this review Petition is filed to review the judgment and re-hear the Petitioners.

4. On verification of the files it is seen that though the present Counsel had filed vakalath on 23rd March 1992, his name was not shown in the cause list and so he could not appear while the case was taken up for arguments. In these circumstances, sufficient grounds are made out by the review Petitioners to hear the Counsel appearing for them as also Counsel for the other parties and we are considering the matter in details after hearing the argument of Counsel for the review Petitioners also. This order shall be treated as an addendum to the main judgment.

5. Writ Appeal No. 967 of 1987 arises out of O. P. No. 6720 of 1986 which was heard along with other Original Petitions filed by Ors. who were similarly situated. The writ Petitioners had applied for appointment as Sales Tax Officers pursuant to a notification by the Public Service Commission dated 20th July 1982. Petitioners were included in the ranked list dated 31st October 1984. Their complaint was that in spite of the prescription of the ratio 1:3 in the Kerala Agricultural Income Tax and Sales Tax Service Special Rules, the number of vacancies ear-marked for direct recruits was not reported to the Public Service Commission consequent, to which the Departmental promotees were wrongly occupying such positions on provisional promotions. According to the Petitioners if all the existing vacancies available for direct recruitment were reported, to the Public Service Commission, the Petitioners who were included in the ranked list would have been appointed. Later by G.O. (P) 131/85/PD, dated 4th November 1985 the ratio 1:3 between direct recruits and promotees was amended as 1:4 with retrospective effect from 1st April 1981. Petitioners challenged the vires of the amendment to the Special Rules with retrospective effect from 1st April 1981 and consequently they sought the issue of a writ of mandamus directing the Respondents to report 25 per cent of the vacancies in the category of Sales Tax Officers which arose subsequent to 1st April 1981 to the Public Service Commission and to appoint direct recruits in the vacancies earmarked for them in accordance with the Special Rules.

6. The learned Single Judge rejected the prayer of the Petitioners to quash the G.O. dated 4th November 1985 whereby the percentage of vacancies available for direct recruits was reduced from 25 per cent to 20 per cent. On the question as to the number of vacancies available for direct recruitment, the learned Judge excluded 4 vacancies as having been filled up by special recruitment under Rule 17A of the K. S. S. R., under the Sports Quota and also under the Dying-in-

harness Scheme. On that finding and applying the reduced ratio of 20 per cent earmarked for direct recruits, the learned Judge came to the conclusion that 7 more vacancies have to be filled up by direct recruitment and accordingly the Board of Revenue was directed to immediately report 7 vacancies to the Public Service Commission within a period not exceeding 10 days from the date of judgment. It was further ordered that on receipt of such a report, the Public Service Commission shall advise 7 more candidates from the ranked list for appointment and also issued certain directions for appointing those persons as Sales Tax Officers. It was further directed, that the Board of Revenue will also reassess the actual number of vacancies available for the period from 1st April 1974 to 30th October 1987 and if it is found that the direct recruits are entitled for appointment against more vacancies, the Board of Revenue shall report the matter to the Commission before 30th October 1987 and shall effect appointments from the ranked list of candidates prepared by the Public Service Commission in accordance with the Special Rules and the rules regarding reservation contained in Rules 14 to 17 of the K.S.S.R.

7. In the Writ Appeals the above judgment was challenged by the State mainly challenging the exclusion of candidates recruited under Rule 17A, under the Sports Quota and under the Dying-in-harness Scheme" from the quota available for direct recruits.

8. At this stage, it is to be noted that by order dated 7th December 1987 in C.M.P. No. 31619 of 1987 a Division Bench of this Court stayed the operation of the judgment dated 18th September 1987 in O.P. No. 6720 of 1986 till the disposal of the Writ Appeal. The present Petitioners did not take any steps to get the order vacated or modified and the stay order continued till the disposal of the appeal. But in one of the connected appeals though originally this Court granted an interim order staying the operation of the judgment of the learned Single Judge in C.M.P. No. 26065/87, by an order dated 23rd October 1987 that order was modified and this Court directed the Government that 7 vacancies shall be reported to the Public Service Commission on or before 30th October 1987.

9. By the judgment dated 4th December 1992 the Full Bench confirmed the judgment of the learned Single Judge. Taking into account the earlier order of the Division Bench dated 23rd October 1987 directing the State to report 7 vacancies to the Public Service Commission, this Court directed the Commission to file a statement showing the names of the 7 persons who are to be advised as per the ranked list. Pursuant to that, the Public Service Commission. filed a statement to the effect that after the judgment of the learned Single Judge dated 18th September 1987 two vacancies were reported to the Commission by letter dated 29th September 1987 and one vacancy was reported by letter dated 7th October 1987. There were four more vacancies which remained to be reported as per the order of the learned Single Judge This Court held:

The ranked list having expired, the question of directing the Public Service Commission to advise the Petitioners does not arise.

But it was further directed that the four persons whose names were given in the list submitted by the P.S.C. be appointed in the quota of direct recruits as expeditiously as possible as it is for no fault of the direct recruits that the vacancies were not reported in time in spite of a direction by this Court. The Writ Appeal was disposed of with the above directions confirming the judgment of the learned Single Judge.

10. In the Review Petition two grounds have been raised:

(i) that the observation that the ranked list having expired, the question of directing the Public Service Commission to advise the Petitioners does not arise is not the correct position of law and that notwithstanding the expiry of the ranked list on 30th October 1987, this Court is entitled to command the 1st Respondent to compel the P.S.C. to advise the names of the Petitioners as there are vacancies available;

(ii) that by the direction given by this Court benefit is obtained by persons who had not filed any Original Petition before this Court and at any rate benefit should have been confined to the Petitioners who alone approached this Court.

We shall consider these grounds now.

11. Along with the Review Petition the Petitioners have also filed C.M.P. No. 115 of 1993 to admit two documents as additional evidence which we have already allowed. Ext. P-8 is the extract of a notification in the Kerala Gazette dated 11th August 1987 by which the P.S.C. invited applications for the post of Sales Tax Officers and the anticipated Vacancies were shown as 16. According to the review Petitioners, the above notification would clearly show that there were 16 vacancies available before the expiry of the list on 30th October 1987 and they are entitled to be advised in those vacancies. It was further contended by them that the Court in the circumstances of the case is entitled to direct the Public Service Commission to advise the candidates even if the list has expired.

12. The contention of the Petitioners is that Ext. P-8 will clearly show that 16 vacancies arose during the currency of the list which expired on 30th October 1987. But Counsel for the Public Service Commission submitted that by Ext. P-8 itself it cannot be said that there were 16 vacancies and that the Commission invited applications only in exercise of their power under the third proviso to Rule 13 of the Public Service Commission Rules of Procedure. The third proviso to Rule 13 is to the following effect:

Provided further that the Commission may take steps for the preparation of a new ranked list wherever necessary even before the expiry of the period of one year of the ranked list, by inviting applications but that the ranked list prepared in pursuance of the said notification shall be brought into force only after the expiry of the period of one year of the existing ranked list.

Ext. P-9 is a letter from the Secretary to Government, Taxes Department, to the Public Service Commission. That letter would make it clear that it was not

because the Government reported the vacancies that the Commission notified the posts but it was only in exercise of their power under the third proviso to Rule 13. That letter shows that by letters dated 7th March 1988 and 22nd June 1989 the Government had requested the Public Service Commission to keep in abeyance the steps taken for direct recruitment to the post of Sales Tax Officers in the Agricultural Income Tax and Sales Tax Department, until a final decision is taken by Government in regard to the question of abolition of direct recruitment to the cadre of Sales Tax Officers. Thereafter, a policy decision was taken to continue the existing system of direct recruitment and accordingly the Public Service Commission was requested to proceed with the selection. This letter makes it clear that it was not because of the request by the Government that the Commission notified the, posts but only in exercise of their power under the proviso to Rule 13. Thus there is nothing to show that 16 vacancies were available on the date of Ext. P-8, for Ext. P-8 itself shows that the anticipated vacancies were 16.

13. Even assuming that 16 vacancies were available, we do not think that it would advance the case of the Petitioners. Admittedly, the validity of the ranked list expired on 30th October 1987 and till that date there was no requisition from the Government to advise candidates by which the Petitioners will be entitled to be advised. Rule 13 of the P.S.C. Rules of procedure is clear on the matter and it reads as follows:

13. The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three years whichever is earlier.

(Provisos omitted)

As stated earlier, by order in C.M.P. 31619 of 1987, dated 7th December 1987, the Division Bench granted a stay of the operation of the judgment of the learned Single Judge and accordingly the State was not bound to report the vacancies as ordered by the learned Single Judge; but it was later modified in Anr. connected matter and the State was directed to report 7 vacancies. In those 7 vacancies admittedly the Petitioners will not come as they are lower down in the ranked list. Petitioners did not take any steps to get the stay vacated or modified. In these circumstances, the question to be considered is as to whether in spite of the expiry of the list, this Court can direct the Public Service Commission to advise candidates for appointment from that list. Rule 13 of the P.S.C. Rules of Procedure is clear to the effect that the validity of the list is only for 3 years. The P.S.C. could not be requested to report any vacancies to the Government thereafter. But Counsel for the review Petitioners relied on a decision of the Supreme Court in Prem Prakash Vs. Union of India (UOI) and Others, and certain other decisions of this Court and contended that even after the expiry of the list, the Court has power to direct the Public Service Commission to advise candidates

for appointment. We shall consider these cases relied on by the review Petitioners.

14. In 1984 S.C. 1831 the question arose as to the filling up of the quota reserved for Scheduled Caste candidates in the Delhi Judicial Service. No doubt, it was observed therein as follows:

There should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates.

But it is to be noted that the above observation was made taking into account the rules as also the administrative instructions issued by the Government of India which have to be read together by reason of Rule 28 thereof. In paragraph 15 of the judgment their Lordships relied on a notification dated 8th February 1982 issued by the Ministry of Home Affairs. In that notification it was provided, among other things as follows:

The matter has been carefully considered. Normally recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future: in case names of selected candidates are already available there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already in the list of selected candidates awaiting appointment. Thus there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies either by the method of direct recruitment or through a Departmental Competitive Examination.

It was also held by their Lordships that the rules have to be read along with the administrative instructions in the matter, which is clear from paragraph 17 which is to the following effect:

Though the Rules ought to be amended that does not mean that administrative instructions can be ignored by the High Court until that is done. The Assistant Registrar says in paragraph 9 of his counter-affidavit that "administrative instructions cannot be allowed to prevail over the statutory rule." That would be correct provided that the administrative instructions are contrary to the statutory rules, In this case Rule 28 itself says that "Appointments made to the service by competitive examination shall be subject to order regarding special representation in the service for Scheduled Castes and Scheduled Tribes issued by the Central Government from time to time. Therefore far from, their being any inconsistency between the statutory rules and the administrative instructions it is clear that the two have to be read together.

From the above it can be seen that under the administrative instructions once a list is prepared it will be valid till all the candidates included in the list are appointed and it was on this basis that the Supreme Court decided the case. That cannot apply to the situation arising here, for there is a clear provision in Rule 13 quoted above that a ranked list prepared will have validity at the most only for 3 years;

15. In *Padmanabhan y. State of Kerala* ILR 1982 Ker 346 a request for advice from the list was received by the Public Service Commission when the .list was alive though the advice made was after its lapse. It was in those circumstances that this Court held that an advice made after the expiry of the list by the Public Service Commission is valid if the request for advice from the list was received by the Commission when the list was alive,

16. In *Raman Namboodiri v. Rajan* ILR 1984 Ker 641 also the request for advice of candidates in the select list was received by the Commission before the expiry of the list and accordingly this Court held that in such cases the candidates can be advised even after the expiry of the list.

17. The above two decisions cannot have any application to the facts of this case, for there was no request by the State to the Commission for advising candidates before the expiry of the list.

18. *S. Jeevadas v. State of Kerala* 1978 (2) S.L.R. 590 was a case where the Public Service Commission had already advised candidates from the ranked list. In that context this Court held:

Once the Public Service Commission has already advised candidates from the ranked list, the Department has only to act on the basis of such advice and it is not expected to concern itself with the question as to whether the select list from out of which the advice was tendered has subsequently become time expired. The Department having been furnished by the Public Service Commission with an advice list, appointments are to be made on the basis thereof, irrespective of whether or not the ranked list continues to be in force.

In that case the advice by the Public Service Commission was sent to the State during the currency of the list and the facts of that case has no bearing on the facts of this case.

19. The decision in *Rajamma v. State of Kerala* 1983 KLT 457 has to be confined to the facts of that case. In that case the appointment was refused solely on the basis of sex and this Court held that it is discriminatory and it was in those circumstances that this Court held that even after the expiry of the list Court can give direction in appropriate cases for making appointments. But in that decision it was made clear that in the case of other persons who are guilty of laches the principle cannot be extended. The facts of that case are very peculiar and it cannot have any general application and the Court cannot pass any order in violation of the rules framed by the P.S.C. in that regard. As stated earlier, the

dictum laid down in that decision must be confined to the facts of that case.

20. In *Annie v. Commr., Chalakudy Municipality* 1984 KLT 170 it was held that realistic understanding of Rule 14 would clearly lead to the inference that the Service Commission is entitled to and has also a duty to advise candidates even after the lapse of the ranked list, provided the vacancies concerned are reported to Service Commission during the period when the ranked list has life. In that case the request for advice from the State was received during the currency of the list whereas in this case there was no request by the State to the Commission when the list was alive.

21. Learned Counsel for the Petitioners also relied on a reported decision in *W.A. No. 595 of 1981*. In that case the Petitioner came to this Court before the expiry of the ranked list. There was also an interim direction during the pendency of the O. P. to make appointments according to Rules. This Court held that in spite of that direction appointments were made, the Court can interfere and direct the Petitioner to be appointed in accordance with the ranking in the list. That case has also no bearing, for the direction given by the learned Single Judge in this particular case was stayed by the Division Bench.

22. Counsel relied on the following observations of a learned Single Judge of this Court in ILR 1982 Ker 346:

No doubt, on the question of advice the 3rd Respondent has a case that the Public Service Commission would have nothing to do with it, the list having lapsed on 25th January 1981, and also for the reason that no requisition for advice was received from the 2nd Respondent. Is the Court helpless in this matter in the situation stated? Having considered the magnitude and complexity of the problem in its depth, I am of the view that the Court has not only the right but also the duty to ensure that the appointing authority does not circumvent its statutory obligation under Rule 31 (a) (i) of the Kerala State and Subordinate Services Rules by delaying and defeating the rights of the selected candidates to get appointed to the posts which fall to their lot. Procedure, after all, is meant to further justice, not to frustrate it.

With great respect, we find it difficult to agree with the above observations, for firstly giving such a direction will be clearly violating the statutory rules and secondly the mere fact that a person's name has been included in a ranked list does not give him any right to the post or to be appointed to that post. See *Shankarsan Dash Vs. Union of India*, . If no request is made by the State to the P.S.C. for advising candidates during the currency of a list, the Court cannot compel the P.S.C. to advise candidates after the expiry of the list.

23. As stated earlier, in this case the direction given by the learned Single Judge was stayed by the Division Bench. The subsequent direction was only to report 7 vacancies and that too before 30th October 1987. Petitioners did not take any steps to get the stay order modified. The 7 candidates stand on a different footing, for they had obtained a direction from this Court to report 7 vacancies to

the P.S.C. before 30th October 1987. So far as the review Petitioners are concerned, there was no such direction. The list expired in the meantime and this Court cannot now direct the Commission to advise the Petitioners or direct the State to appoint the Petitioners, for it will be a clear violation of the statutory rules which this Court is not entitled to do.

24. The next contention raised by Counsel for the Petitioners is that the benefit of the order of this Court is obtained by persons who have not come to this Court. This is inevitable, for this Court can direct appointments to be made only in accordance with the ranking in the list. The mere fact that certain persons came to this Court cannot be a ground for this Court to overlook the ranking given by the Public Service Commission in the list. The appointments can be made only in accordance with the ranking and in that view of the matter this Court only directed the vacancies to be filled up in accordance with the ranking in the list and there is no infirmity in that direction.

25. In view of what is stated above, we do not find any reason to modify the judgment in this case and accordingly the Review Petition is dismissed, but, in the circumstances, without any order as to costs.