(1991) 04 KL CK 0014

In the High Court Of Kerala

Case No : O.P. 6372/88

V.M. Ramamoorthy and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Constitution of India, 1950 — Article 16(4), 335, 46
Kerala State and Subordinate Services Rules, 1958 — Rule 13A, 13A(A), 13A(B)

Citation : (1991) 04 KL CK 0014

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.P.R. Nair, for the Appellant; Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—The short question that arises for consideration in these petitions is whether the members of Scheduled Caste and Scheduled Tribe who are having exemption from passing the test under Rule 13A of the Kerala State and Subordinate Service Rules and extended under rules 13AA and 13AB can avail of that benefit for the purpose of getting their probation also declared. In other words, the question is whether the exemption granted under Rule 13A of the General Rules which were extended under Rules 13AA and 13AB gives benefit to the members of Scheduled Caste and Scheduled Tribe to claim promotion as also to get probation declared.

2. Since the above common issue arises for consideration in all these Original Petitions, I consider it advantageous to dispose of them by a common judgment.

3. Petitioners in these Original Petitions are members of the S.C./S.T. communities. They entered service as Lower Division Clerks in the Kerala State Road Transport Corporation. For promotion to the post of Upper Division Clerk, they were to pass Account Test. They did not pass that test. But by virtue of exemption granted to them under rules 13A, 13AA and 13AB of the Kerala State and Subordinate Service Rules, Petitioner were promoted as U.D. Clerks with

effect from 13th January 1972. Petitioner passed the Account Test during the period of exemption originally granted which was being extended from time to time. Their services were regularised in the post of U.D. Clerk with effect from the dates of their eligibility. Their due ranks in the cadre of Upper Division Clerks Were accordingly fixed. They were granted the benefit of further promotion as Special Grade U.D. Clerks, Special Assistants and Superintendents.

4. By Ext. P-l memorandum dated 2nd August 1985, the ranks assigned to the Petitioners in the post of U.D. Clerk were sought to be revised and refixed with effect from the date of passing of the M.O.P. Test. According to the Respondents, the exemption from the passing the test as per rules 13A, 13AA and 13AB will apply only in respect of tests required for the purpose of promotion and not to those required for completion of probation. This was based on Government Memorandum No. 2501/Rules/73/PD, dated 17th August 1973 which took the view that temporary exemption would enure only in respect of tests for promotion and not in relation to tests for completion of probation.

5. The position taken by the Government in the memorandum dated 17th August 1973 was that notwithstanding the exemption granted under Rule 13A of the General Rules and extension of the period of exemption in exercise of the powers under rules 13AA and 13AB, exemption in favour of Scheduled Castes would enure only for the purpose of enabling them to be considered for promotion provided they pass the special or departmental tests which are prescribed for completion of probation. In other words where tests are prescribed for two purposes, both of which are necessary for enabling a person to obtain promotion or appointment to a higher post in a different service, the exemption under the statutory rules will be deemed to be limited to only one of the two purposes. The correctness of this stand taken by the Government by issuing the memorandum dated 17th August 1973 came up for decision before this Court in O.P. 3555/80. This Court disposed of that petition observing:

The temporary exemption which is provided under Rule 13A and the extension of validity of which can be made by Government under Rule 13AA and 13AB is from special qualifications and tests prescribed by the special rules, be they for purposes of promotion or for completion of probation, which is obligatory for enabling regular promotions to be granted. In this view of the matter, the interpretation given to the exemption by Ext. P-4 circular memorandum does not appear to be in consonance with the spirit of the exemptions granted by Rule 13A, nor is it in conformity with the constitutional guarantees and safeguards as adumbrated by Article 16(4), 46 and 335 of the Constitution of India. It cannot be urged with any amount of success that the exemption from promotion tests without such exemption from the probation tests is for the purpose of maintaining administrative efficiency as is enabled to be considered even while safeguarding the interests of the Scheduled Castes and Scheduled Tribes under Article 335 of the Constitution. Such a two fold distinction is not permitted by Rule 13A; such a distinction is not maintained in the orders issued under Rule

13A and if that be the position, such a distinction cannot be authorised by a circular memorandum, which is not capable of amending the provisions of a statutory rule or even the order issued under Rule 13A. I have no hesitation therefore to hold that Ext. P-3 order denying the right of the Petitioner on the basis of Ext. P-4 order, that he had not completed the period of probation and that there was no exemption available from passing the test prescribed for completion of probation, was not correct, nor justified. I therefore hold that the order Ext. P-73 is liable to be set aside. 1 also hold that Ext. P-4 circular memorandum in so far as it is not in consonance with Rule 13A or the Government Order issued pursuant there to, is not capable of altering the terms of Rule 13A. The claims of the Petitioner for appointment as Assistant Executive Engineer by virtue of the temporary exemption shall be considered without reference to the restrictive interpretation contained in Ext. P-4. I-am informed that the Petitioner has been promoted during the pendency of these proceedings. What has been wrongly withheld from him consequent on the denial of promotion it the appropriate time will be given to him by way of difference in the salary which he had actually drawn and what he would have drawn had he been promoted in his turn. He will also be entitled to consequent refixation of his salary and other emoluments.

After the said decision Government issued Ext. P-3 order dated 30th April 1986 stating that the exemption granted to S.C./S.T. employees is applicable to promotion test as well as probation test with effect from 13th April 1983. The date 13th April 1983 is the date of the judgment in O.P. 3555/80. This means the Government accepted the legal position that the exemption applies to tests for declaration of probation as also for grant of promotion. After having accepted this legal position was the Government justified in fixing the date 13th April 1983 until which the earlier circular dated 17th August 1973 to be treated to be in force. Circular dated 17th August 1973 was held to be against Rule 13A of the General Rules. It is true that this Court did not quash the circular dated 17th August 1973. By that the circular cannot be treated as valid till the date of the judgment and to be against the Rules thereafter. The circular should be taken to be invalid from the very inspection because it was against the rules. This view was taken by this Court in O.P. 8764 of 1986. This Court observed:

While implementing the said judgment (O.P. 3555/80), Government fixed the date 13th April 1983 until which the earlier circular Ext. P-l was treated to be in force. If a circular was found to be not in consonance with Rule 13A, the Government while implementing the judgment cannot treat the circular to be valid till the date of judgment and invalid thereafter.

The effect of this statement of law is that the order granting exemption from passing the test under Rule 13A of the General Rules must be in respect of the tests for promotion as also that relating to probation. There cannot be a dichotomy in the two set of tests. Consequently the order passed by the 2nd Respondent, Ext. P-5 dated 24th March 1988, adopting the principles stated by

Government in its order dated 30th April 1986 has to be quashed. I do so. It therefore follows that Petitioner in these Original Petitions were rightly assigned the rank in the Upper Division Cadre earlier. That rank and the consequent promotion to the higher cadres are not to be interfered with. Therefore I quash Ext. P-I order dated 2nd August 1985 and Ext. P-7 order dated 18th January 1989 in O.P. 756/89 and O.P. 1207/89 and Ext. P-6 in O.P. 6372/88. I direct the Respondent not to alter the seniority of the Petitioner in the cadres of U.D. Clerks and in higher cadres upto Superintendents.

Original Petitions are allowed in the above terms. I make not order as to costs.