
(1990) 11 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 12 of 1986

V.N. Divakaran and Others

APPELLANT

Vs

State of Kerala and Others.

RESPONDENT

Date of Decision : 07-11-1990

Acts Referred:

Citation : (1990) 2 KLJ 875

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : G. Krishnakumari, for the Appellant; V.I. Joseph, Govt. Pleader and P. Santhosh Kumar, for the Respondent

Judgement

K.P. Radhakrishna Menon, J.—The case of the petitioners is that the authority concerned while drawing up the seniority list has given the go bye to the quota rule resulting in the assignment of ranks in such a way that many of the juniors of the petitioners have gone above them. I shall in this connection extract the relevant pleading contained in the O. P.

In fact the 1st petitioner, though shown as rank No. 36 in the existing seniority list, is eligible for rank No. 21 if the ratio of 1:1 between direct recruitees and promotees are strictly adhered to. The other petitioners also will get same benefit as submitted above.

That means, in the absence of anything to show that the quota rule has been relaxed the ranking assigned to those included in the seniority list requires a reshuffling and therefore the reliefs sought for in the O. P., the counsel submits, require to be granted. It is by now well established that when once a person is appointed to a post according to the rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Some other principles well established and relevant in the context can be stated thus: When appointments are made from more than one source, it is permissible to fix a ratio for recruitment from the different sources, and if rules are framed in

this regard they must ordinarily be followed strictly. If it becomes impossible to adhere to the said quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule. (See the decision of the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, .

2. The question therefore is do the facts and the circumstances of the case warrant the strict observance of the quota rule while preparing the seniority list. A reference in this connection to the case pleaded by the State is relevant:

The Cadre strength prior to the date of the above Circular is 12 in the Department six for direct recruitment and 6 for promotees. The appointment to the direct recruitment have been made only from 13-8-1968 due to the delay in getting direct recruits by Public Service Commission. The vacancies of the candidates under promotion quota to higher cadre were also filled up by promotions. That is why the variations between the total number of promotees and direct recruits in the seniority lists till 3-6-1975. But the appointment made after the issue of the Government Circulars were in accordance with the assignment of alternative vacancies in the ratio 1:1 by direct recruitment and promotion/transfer. The total number of vacancies that arose on 3-6-1975 is 37 and out of these 19 vacancies are for direct recruitment and 18 for promotions. It is submitted that the entire vacancies reserved for direct recruitment could not be filled up due to the non-availability of candidates from the P. S. C. as on 31-3-1983. 6 vacancies were left to be filled up by P.S.C. candidates. The details regarding the number of persons promoted are given below:-

No. of persons Promoted from 3-6-1975 to 31-3-1983.

No. of persons recruited directly from 3-6-1975 to 31-3-1983.

18.

Total No. of candidates advised by the

P. S, C. for appointment : 21.

No. of candidates appointed : 21.

No. of candidates reported for duty. :13.

The P. S. C. has not advised substitutes for the candidates nor reported for duty

as the rank list for the post has been cancelled and informed the

Chief Town Planning to wait till new select list prepared and finalised by the Commission.

That is the reason for the variations in the total No. of persons appointed under Direct Recruitment and promotions - as per the seniority list published as on 31.3.1983.

From these statements it can be inferred without fear of contradiction that the quota rule had broken down. If that be the position the argument of the learned counsel for the petitioners that the seniority list was prepared ignoring the quota rule prescribed by the special rules, is liable to be rejected. No other question arises for consideration in the Q. P.

The O. P. fails. Accordingly the same is dismissed. No costs.