
(1987) 03 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 2288 of 1987-V

V.P. Jose

APPELLANT

Vs

Kerala Khadi and Village Industry Board and Others

RESPONDENT

Date of Decision : 20-03-1987

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 14, 27

Citation : (1987) 03 KL CK 0002

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : C.S. Rajan, Thomas Rajan and P. Sankarankutty Nair, for the Appellant; T.P. Kelu Nambiar, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Sreedharan, J.—Petitioner is working as Supervisor on daily wages under the first Respondent. Three vacancies of Supervisors were notified in the Hand Made Paper Industries. For filling up those vacancies, the Public Service Commission invited applications. The Petitioner put in his application. He was interviewed. In the rank list published by the Commission he figured as No. 3 Ext. P-1 is the copy of the rank list. Now the Petitioner understands that rank numbers 1, 2 and 4 have been advised. The 3rd Respondent, who was assigned rank No. 4, was advised against the rules. If he had not been advised, the Petitioner ought to have been advised and consequently appointed. Hence this Original Petition.

2. When this petition came up for admission on 13th March 1987, a copy of the same was served on Sri T.P. Kelu Nambiar, learned Standing Counsel representing the Public Service Commission. On getting instruction he submits that the advice was made strictly in compliance with the 3rd proviso to Rule 14(c) of the Kerala State and Subordinate Services Rules. According to him this selection of persons ranked as 1, 2 and 4 is perfectly legal and it calls for no interference.

3. As per Ext. P-1 rank list 5 persons were assigned ranks 1 to 5. The 2nd and 4th candidates belong to Ezhava Community. The arguments advanced by the learned Counsel appearing for the Petitioner is that rank No. 1 got the advice on the basis of his merit. The person ranked No. 2 being an Ezhava, should be taken to have got the advice on the basis of the reservation available to that community. If the 2nd candidate did not belong to Ezhava Community then a person belonging to that community ranked just below must get that post. The 3rd vacancy must go to a candidate on the basis of merit. The Petitioner, who has been ranked No. 3 ought to have been advised. According to the Counsel, since the person ranked No. 2 happen to be a member of the Ezhava Community, the reservation available to that community is satisfied by advising that person ranked No. 2. I am not in a position to accept this because the rule lays down a principle just contrary to the one submitted by the learned Counsel. The 3rd proviso to Rule 14(c), Kerala State and Subordinate Services Rules, reads as follows:

Provided also that in preparing the list of eligible candidates to be appointed under this rule applying the rotations specified above in every cycle of 20 vacancies, the candidates eligible to be selected on open competitions basis, that is, turns 1, 3, 5, 7, 9, 11, 13, 15, 17 and 19 shall be selected first and then the candidates for the reservation turns, out of those selected first and then the candidates for the reservation turns, out of those available in the ranked list in the particular groups having regard to their ranks. In finalising the select list any candidate of the same community selected on open competition turns, if found to be below in the order of the candidates selected from the same community on the basis of reservation, for the fixation of ranks as per Rule 27 of these rules, candidates of the same community obtaining higher marks shall be interchanged with the candidates of the same community in the reservation turn for the purpose of ranking.

As per this Rule when a cycle of 20 vacancies are taken first 10 candidates ranked in the list are to be placed as 1, 3, 5, 7, 9 etc. This placement is without reference to the community to which they belong. These persons get the 1st, 3rd, 5th, 7th etc. vacancies on the basis of merit. 2nd, 4th, 6th etc. posts will be taken by members of the communities to which they are to be assigned depending on the principles of communal rotation. This view has been accepted by this Court in *Pulomaja Devi v. Gopinathan Nair and Ors.* 1975 KLT 111 . By working out that principle rank No. 1 continue to hold first rank and rank No. 2 will change his position as No. 3. They will get selection on the basis of merit, without reference to the communities to which they belong. The 2nd position will be taken by a member of that community which is entitled to have it as per the principles of communal rotation. In the instant case the community entitled to get the post is Ezhava. So the Ezhava candidate who was ranked 4 became No. 2 for the purpose of making advise. Thus persons ranked 1, 2 and 4 were advised, for there were only three vacancies. It is, therefore, clear that the action of the Public Service Commission was strictly legal and it calls for no interference.

4. The Petitioner has got a case that some 15 years back there was selection to the post of supervisors. Three persons appointed at that time were selected on the basis of the communal rotation and one person belonging to Ezhava Community got appointment at that time. Therefore, it is argued that on the basis of the reservation no candidate belonging to Ezhava Community could have been advised from Ext. P-1 list. The learned Counsel appearing for the Commission submits that in 1976, there was complete change of the rotation system among the communities and thereafter it was found impracticable to continue the rotation which was in vogue prior to the change and therefore the Commission started the rotation afresh. That stand of the Commission was challenged before this Court in O.P. No. 2953 of 1979. This Court by judgment dated 24th August, 1982, upheld the stand of the Commission. In these state of affairs it cannot be held that the method of communal rotation resorted to by the Public Service Commission is illegal. After the change of the communal rotation the Commission is advertising candidates for the first time by the impugned selection. In this process the first vacancy to be filled up by communal rotation must go to an Ezhava candidate. The fourth Respondent is an Ezhava and so he should get it. On this basis also I do not find any ground to up-set the actions taken by the Public Service Commission.

5. Since the advice made by the Public Service Commission of candidates ranked 1, 2 and 4 in Ext. P-1 is found to be in strict compliance with the statutory provisions, I do not find any merit in this Original Petition. It is accordingly dismissed.