

Kerala High Court

S. Mukundan Menon, Manager, City ... vs The State Of Kerala And Ors. on 4 March, 1970

Equivalent citations: (1970) IILLJ 346 Ker

Author: M Isaac

Bench: M Isaac

JUDGMENT M.U. Isaac, J.

1. The petitioner joined service in 1948 in the erstwhile State of Cochin as an Assistant Guest House Superintendent. That post happened to be abolished; and he was then recruited as an Assistant Depot Officer in the Civil Supplies Department of the State on 18.5.1949 in the grade of Rs. 80-125. Now he is the manager of the City Rationing Office, Ernakulam in the grade of Rs. 190-300. AH these years, he has been in the Civil Supplies Department, occupying various posts at different parts of the State, except for a short period from June 1955 to September 1957, when consequent on a reorganisation of that Department, he was posted as Sales Tax Officer. His official career appears to have been very disappointing. His seniority and claim for promotion have been overlooked invariably on all occasions. According to the gradation list of the non-gazetted officers of the Civil Supplies Department as on 1.6.1954, published in the Government Gazette dated 22nd February, 1955, the petitioner was senior to respondents 3 to 13, 15, 16, 18, 20 and 23. Some of them were holding only clerical posts; and respondent No. 20 was a head-clerk under the petitioner, when he was a Depot Officer. Respondent No. 14 was then holding a lower division post in the Revenue Department. Respondents 17, 21 and 22 are allotted persons from Madras State on the integration of the State; and at that time they were holding posts of much lower grade than that of the petitioner. The petitioner claims that he is senior to respondent No. 19 also; but this is disputed by the Government. Admittedly all others were juniors to the petitioner. There is no case that respondent No. 19 was superseded by his juniors on any ground. He was promoted only along with respondent 15 very much after respondents 3 to 17 were promoted. He has not himself claimed any seniority over the petitioner. It has therefore to be held that the petitioner is senior to respondent 19 also. All the above respondents are now holding posts of Taluk Supply Officers or equivalent posts in Civil Supplies Department in the Grade of Rs. 200-400. Respondents 3 to 14 were promoted by the Board of Revenue by its order, Ext. P-3 dated 16.9.1964. On 18.1.1965, the petitioner submitted a representation, Ext. P-4, to the Board of Revenue through the proper channel, complaining against the appointments made as per Ext. P-3 overlooking his seniority. There was no reply to Ext. P-4 for a long time. On 8.11.1965, the Collector of Cannanore sent a memorandum, Ext. P-5, to the petitioner stating that Ext. P-4 had not been received in this office and the Board has called for a copy of the and asking the petitioner to submit a same copy of Ext. P-4. He immediately furnished a copy of Ext. P-4 to the Collector; and yet there was no reply to the said representation. In the meanwhile, respondent No. 20 filed O.P. No. 460 of 1965, to quash some of the appointments made as per Ext. P-3, alleging discrimination. While this writ petition was pending, the Board of Revenue by its order dated 18.2.1965 promoted respondents 15, 16 and 17 is Taluk Supply Officers. Again respondents 18 and 19 were promoted in June 1965. By that time O.P. No. 460 of 1965 was decided by this Court in favour of respondent No. 20. Accordingly he was promoted and declared as senior to respondent No. 11. On 3.4.1967, the petitioner made another representation, Ext. P-6 reiterating his grievances and urging his claim for promotion prior to respondent No. 3 and all others junior to him. Respondents 20 to 23 were also subsequently promoted as Taluk Supply Officers; and yet the

petitioner did not receive any reply to his representations. So this Original Petition has been filed for a declaration that the petitioner is senior to respondents 3 to 23 and entitled to seniority in service and promotion over them, and for a writ of mandamus or other appropriate writ or order directing the State Government and the Board of Revenue (respondents 1 and 2) to accord to the petitioner his legitimate promotion and rank according to service rules.

2. The first respondent has filed a counter-affidavit, justifying the promotion of respondents 3 to 23 over the petitioner. Respondents 3 to 23 have not entered appearance. As already stated, respondents 3 to 14 were promoted in September 1964; respondents 15, 16 and 17 were promoted in February 1965; and respondents 18 and 19 were promoted in June 1965. Respondents 21, 22 and 23 were promoted immediately before or after filing this writ petition. The date is not disclosed. Respondent 20 was promoted with retrospective effect, recognising his seniority, pursuant to the decision of this Court in O.P. 460 of 1965. According to the first respondent, the petitioner's claim was duly considered on all the above occasions; but he was superseded for the following reasons. At the time of the first promotion, a disciplinary enquiry was pending against him, which subsequently ended by a punishment of censure awarded by the District Collector, Trichur. At the time of the second promotions, it was found that the record of his service was very unsatisfactory. He was superseded on the third occasion "because of his poor record of service". On the fourth occasion, a report had been received from the District Collector, Cannanore "that the petitioner was also responsible for certain grave irregularities committed by certain retailers" and that case is said to be still pending investigation. It is strange that the first respondent has not produced in court any papers to support any of the above allegations against the petitioner. The learned Government Pleader confessed his inability even to make available for my scrutiny any files which would substantiate these allegations. The petitioner has stated in his representations, Exts. P-4 and P-6, that he has served in the Civil Supplies Department in various capacities at the most critical times to the entire satisfaction of the Government, that he has passed all the departmental tests and in addition all food tests, that even clerks and tally clerks who were working under him were promoted over him causing him great disappointment, discouragement and frustration in service; and he complains that these representations have not yet been examined either by the Government or the Board of Revenue. The counter-affidavit of the first respondent states vaguely that "the representation put in by the petitioner regarding his claims for seniority was duly considered, when promotion to Taluk Supply Officer's cadre was ordered again in June 1965". Exhibit P-6 is dated 3.4.1967. The petitioner is certainly entitled to reply to these representations; and there is no case that the decision, if any, on the above representations was communicated to the petitioner. No documents whatsoever have been produced in this case, nor any file has been placed for my scrutiny to show that these representations were ever considered by the Government or the Board of Revenue.

3. The petitioner has filed a reply affidavit stating, among other things, that, at the time of the promotions in 1954, there was no order of censure against him; that censure was not a ground for denying promotion according to seniority as the post of Taluk Supply Officers is not a selection post, that the allegation that the petitioner's record of service was unsatisfactory was not correct; that he had a good record of service all through, that he has never been told of any bad record of service, that he has not so far received any notice about the report said to have been submitted by the

Cannanore Collector regarding the alleged irregularities committed by the retail dealers; and that he does not know whether there are any allegations against him in the said report. Even after the filing of the above reply affidavit, respondents 1 and 2 have not produced any documents to support any of the statements contained in the first respondent's counter-affidavit, or to discredit any of the averments made in the reply affidavit. I am, therefore, constrained to deal with this case on the assumption that the petitioner's allegations are true.

4. Rule 28 of the General Rules in Part II of the Kerala State and Subordinate Services Rules, 1958 contains the statutory provision relating to promotion of members of the State and Subordinate Services. Clause (b) alone is relevant for the purpose of this case; and it reads as follows:

"28. (a) \* \* \*

(b)(i) Promotion and appointment by transfer according to merit.-Appointments to a selection ca

Note : Claims of officers superseded previously shall be considered wherever new select lists a

(ii) Promotion and appointment by transfer according to seniority-All other promotions or appo  
\* \* \*

5. There is no case in the counter-affidavit filed by the first respondent that the Taluk Supply Officer's post is a selection post. A post may be declared as a selection post by any statutory rule or order, and even by an executive order. Admittedly, there is no rule or order declaring the post of Taluk Supply Officers as a selection post. Realising that the assertions contained in the counter-affidavit that the petitioner's claim for promotion was duly considered on all occasions, when promotions were made overlooking his seniority, cannot furnish a legal defence to the petitioner's complaint, if the said post is not a selection post, the learned Government Pleader made a strenuous and desperate effort to make out that it is a selection post. The Government have not made any special rules in respect of service in the Civil Supplies Department. At any rate, nothing has been brought to my notice. The learned Government Pleader invited my attention to the Special Rules relating to the Kerala Revenue Service, according to which the post of Tahsildars in that service is a selection post. Then he showed me copy of a Government order dated 1.8.1964, which according to him would show that a Taluk Supply Officer's post is equivalent to that of a Tahsildar. That may be so; but it does not amount to a declaration that a Taluk Supply Officer's post is a selection post. Revenue and Civil Supplies are two of the different Departments under the Board of Revenue. The Kerala Revenue Service Special Rules are not obviously applicable to the Civil Supplies Service. I find no merit in the contention of the learned Government Pleader that the post of Taluk Supply Officers is a selection post.

6. Even on the assumption that it is a selection post, the denial of promotions to the petitioner cannot be justified. In the first place, as already held, there is nothing to show that the Government

considered the petitioner's claim at any time, when his juniors were repeatedly promoted. Secondly there is nothing to show that a selection was ever made and a select list of the candidates was prepared on the basis of merit and ability as enjoined by Rule 28(b)(i) of the Kerala State and Subordinate Service Rules, 1958. The Government have no case that any such thing was done on any occasion. On 19.10.1959 the Government after considering the recommendations of the Administrative Reforms Committee, issued G.O. (Ms.) No. 903 laying down the principles to be observed in the matter of promotions in public service. The above order has been subsequently modified in certain respects by various orders issued from time to time; and on 29.12.1967, the Government issued revised orders, G.O. (P) No. 424, incorporating operative portions of the various orders issued so far on the subject, and with an appendix containing all the said previous orders. The principles laid down in the above orders are binding on the Government. According to these principles, civil posts are divided into three categories, namely :

(a) Selection posts for which merit alone will count and not seniority,

(b) posts to which promotions will be given according to seniority subject to a person's fitness for promotion; and

(c) posts to which promotions will be given on the basis of seniority alone.

G.O. (P.) No. 420 dated 28.12.1967 as well as G.O. (Ms.) 903 require a Department Promotion Committee to be constituted in respect of every Department to prepare a "select list" for promotion; and the above orders also lay down the procedure to be followed by the Committee in preparing the said list. There is no case that any such procedure was followed in the promotion of respondents 3 to 23. This also strengthens my conclusion that the post of Taluk Supply Officers is not a selection post. Both the above Government Orders also state that posts to which promotions may be given according to seniority subject to fitness will generally be posts in the subordinate service, and that posts for promotion, to which seniority will alone count, will be those in the last grade service. Therefore, the post of Taluk Supply Officers falls under Clause (ii) of Rule 28(b) of Part II of the Kerala State and Subordinate Services Rules, and also under category (b) above referred to.

7. I have already referred to the reasons stated in the counter-affidavit of the first respondent for denying promotion to the petitioner on all occasions, when his juniors were promoted; and I have also held that respondents 1 and 2 have not placed any papers to substantiate the said reasons, or to discredit the petitioner's claim that he has got a long and satisfactory record of service in the Department. All that has been made out in this case is that a punishment of censure has been awarded to the petitioner by the District Collector, Trichur by his order dated 21.5.1965. The fact that there has been such an order is not denied. But censure by itself is not a ground for overlooking seniority in the matter of promotion; and the Government have no case that the petitioner was denied promotion on the several occasions when his juniors were promoted on account of the above punishment. In fact respondents 3 to 14 were promoted several months before the said punishment was awarded; and the Government have no case that promotions were denied to him, as he was unfit for appointment to the post of Taluk Supply Officers. It follows that the petitioner was entitled to be promoted as Taluk Supply Officer in accordance with his seniority before respondents 3 to 23.

8. In the result, I declare that the petitioner is entitled to seniority in service and promotion over respondents 3 to 3. Accordingly I direct respondents 1 and 2 to promote the petitioner forthwith as Taluk Supply Officer and to assign to him seniority in the said cadre over respondents 3 to 23. He is entitled to salary and all other benefits including benefits of pension on the basis that he was promoted as Taluk Supply Officer with effect from 16.9.1964, namely the date on which respondents 3 to 14 were promoted over the petitioner. I direct respondents 1 and 2 to fix his salary accordingly. The petitioner will be paid salary on the above basis with effect from this date. The question of payment of the difference between the salary that he would have got on the above basis and the salary already drawn by him till date is left to the Government for decision in accordance with the rules, if any, on the subject and as they consider just and proper on the facts and circumstances of this case, The petitioner will get his cost from respondent No. 1. Counsel's fee is fixed at Rs. 200.