

(1986) 10 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 10074 of 1985-J

N. Sukumaran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Oct. 17, 1986**Acts Referred:**

- Kerala State and Subordinate Services Rules, 1958 - Rule 27, 27(1), 31, 9

Hon'ble Judges: Sivaraman Nair, J**Bench:** Single Bench**Advocate:** P.H. Sankaranarayana Iyer, for the Appellant; Government Pleader, for the Respondent**Final Decision:** Dismissed

Judgement

Sivaraman Nair, J.

A very short and interesting question arises for consideration in this Original Petition, in spite of the bulk of the pleadings. The question is whether the Petitioner, who was provisionally appointed as Village Assistant on 20th January 1971 and whose service was regularised with effect from 23rd December 1973, is entitled to count the period between those two dates for purposes of seniority and consequently for promotion to the higher category. Another question, which incidentally arises, is as to whether a rank wrongly assigned to a Government employee is liable to be altered with notice to him when the error is realised by the competent authorities. The answer to both the questions must be against the Petitioner in accordance with law as it stands at present.

2. Petitioner was appointed as Village Assistant by Ext. P-1 order dated 20th January 1971. The order itself stated that the appointment was purely provisional and would not confer on the appointee any preferential claim for regular appointment in Government service. He was also cautioned that the appointment would be terminated without notice when the vacancy ceased to exist or at the end of three

months when candidates of the K.P.S.G. join duty, whichever was earlier. However, his service was not terminated. He continued in service like many other provisional appointees; but, his service was not regularised. Regularisation came only under Ext. P-3 order dated 7th February 1974. That was consequent upon G.O. (Ms.) No. 121/74/RD, dated 16th January 1974 to the effect that Village Assistants who had two years of service or more on the date of G.O. (P) No. 321/73/PD (Service-D), dated 22nd December 1973 and who were fully qualified would be absorbed into regular service. Since the Petitioner had such service on 22nd December 1973, he was absorbed into regular service with immediate effect. He was required to be on probation for a period of two years on duty within a continuous period of three years from the date of the order. However, in Ext. P-2 order of the District Collector, Quilon, publishing a tentative seniority list of Village Assistants as on 1st October 1977, Petitioner was assigned rank No. 331, with the date of commencement of service as Village Assistant as 21st July 1971. That was preceded by Ext. P-3 proceedings of the District Collector dated 7th February 1974. That list was not finalised immediately. In the meantime, Pathanamthitta District was formed with effect from 1st November 1982". Tentative seniority list of Village Assistants of Pathanamthitta District as on 1st July 1983 was published along with Ext. P-4 inviting objections. In Ext. P-4(a), extract of the seniority list, Petitioner was ranked as No. 21 with date of commencement of services as 21st January 1971, whereas the additional fifth Respondent was ranked as No. 22 with date of commencement of service as 5th February 1971. He was a promotee from last grade service. His service in the feeder category commenced on 7th March 1963. The name of the fourth Respondent, who was a Village Assistant formerly and was enlisted in the Army thereafter, was not included in Ext. P-4(a) list. The fourth Respondent was, however, promoted by Ext. P-5 order dated 14th October 1985. Cancellation of the promotion of the fourth Respondent was sought in Exts. P-6 and P-7 representations. It was at that stage that this Original Petition was filed seeking the issue of a writ of certiorari to quash Ext. P-5 order dated 14th October 1985 promoting the fourth Respondent as Village Officer. The Original Petition was amended subsequently to incorporate additional documents and additional reliefs. Ext. P-8 notice dated 21st October 1985 was issued by the District Collector, Quilon informing him that the date of his regularisation in service as Village Assistant was proposed to be altered from 21st January 1971 to 22nd December 1973. He was required to submit his objections within 15 days thereafter. Petitioner submitted his objections on 14th November 1985. In C.M.P. No. 31939 of 1985, this Court passed an order on 20th November 1985 to the effect that furl her promotions to the rank of Village Officers would be made only in accordance with Ext. P-4(a) list. Objections to the tentative list of Village Assistants of Pathanamthitta District published in Ext. P-4 and P-4(a) were disposed of in Ext. P-12 order dated 11th October 1985 of the District Collector, Pathanamthitta. It was specifically stated in that order that-

The provisional seniority list of Village Assistants of . Pathanamthitta District on 1st July 1983 prepared based on the provisional seniority lists of Village Assistants of Quilon and Alleppey Districts is hereby finalised incorporating the above changes and modifications. The final seniority list so prepared is appended. The list is liable for revision in case (he district list of Quilon and Alleppey undergo changes in relative seniority when the provisional lists are finalised.

In Ext. P-12 (a) attached to those proceedings, Petitioner was ranked as No. 22 with date of commencement of service as 21st January 1971. The fifth Respondent was ranked as No. 23, whereas the fourth Respondent was ranked as No. 1, with date of commencement of service as 12th June 1964. Petitioner naturally challenges the assignment of rank No. 1 to the fourth Respondent and relies upon the lower rank given to the fifth Respondent. The fifth Respondent was also promoted as Village Officer. Petitioner submitted Ext. P-13 representation objecting to that. In Ext. P-14 the District Collector stated that the fourth Respondent being the first rank holder in the final seniority list, his promotion was regular. However, the fourth Respondent was reverted in Ext. P-15 order dated 8th May 1986 for fear that his continuance in the promotion post might be interpreted as contrary to the directions contained in Ext. P-10, whereas, as a matter of fact, he was entitled to continue since he was ranked far above the Petitioner in Ext. P-12(a) list. Tentative list of Village Assistants of Quilon District was finalised by order dated 10th July 1986. In that order, the date of commencement of set vice for purposes of seniority in the case of the Petitioner was altered as 22nd December 1973, with the result that his rank was reduced from 21 to 52a). This alteration in seniority was carried into effect when Ext. P-17 order dated 25th July 1986 was issued by the District Collector, Pathanamthitta. In the meantime, by order dated 19th July 1986, the fourth Respondent was again promoted to the category of Village Officer. The complaint of the Petitioner is that the alteration of his rank in the final gradation list of Village Assistants of Pathanamthitta and Quilon Districts and the ranks and promotion assigned to Respondents 4 and 5 are illegal and arbitrary.

3. In Ext. R-1 (a) order G.O. (P) 462/Public (SS) Department, dated 25th October, 1963 Government stated that the candidates who . were selected on the result of competitive examinations and who had taken up military service during the then existing emergency before joining their appointment would be appointed to the civil posts to which they would have been appointed had they not proceeded on military service. It was also provided that their seniority would be determined in the order of their original selection appointment to the posts/services concerned. The fourth Respondent, Gopinayakam, had already been selected for appointment under Ext. R-1(c) as Village Assistant by the Public Service Commission and was advised for appointment on 17th April 1964. He did not join the service pursuant thereto, since he was called to Army Service in the emergency. He rejoined the post of Village Assistant in Pathanamthitta District pursuant to Government letter No. 77859/D2/83/RD, dated 21st May 1984 and proceedings of the District Collector,

Pathanamthitta, No. E2-5327/83, dated 12th June 1984. His name was not naturally included in Ext. P-4(a) list because he was not in service on 1st July 1983. But, in Ext. P-12(a) list, his name had to be included as No. 1 since all the Village Assistants in Pathanamthitta District were juniors to him with, reference to the date of first effective advice for appointment. Persons who were included as item Nos. 1 to 20 in Ext. P-4(a) list had been promoted as Village Officers by 10th October 1985. Soon after the publication of Ext. P-12(a) list on 11th October 1985, the fourth Respondent was promoted as Village Officer, since he had acquired all the necessary qualifications for such promotion, in the meantime. Some of the Village Assistants had objected to the date 21st January 1971 assigned to the Petitioner in the seniority list of both Quilon District and Pathanamthitta District. The District Collector, Pathanamthitta in his letter, dated 10th October 1985, took up the matter with the District Collector, Quilon. In his reply-A7-73666/85, dated 21st October 1985, the District Collector, Quilon intimated the District Collector, Pathanamthitta that seniority of the Petitioner could be assigned only with effect from the date of regularisation as per G.O. (P) 324/73/RD, dated 22nd December 1973 and G.O., (Ms.) 121/74/RD, dated 16th January 1974. The position was later clarified in Ext. R-I(b), G.O. (Ms) No. 321/74/RD, dated 15th March 1974. It was in pursuance of this that Ext. P-8 notice was issued to the Petitioner on 21st October 1985 on behalf of the District Collector, Quilon. It was also in pursuance thereof that the District Collector finalised the provisional gradation list of Village Assistants of Quilon District in his proceedings, dated 10th July 1986 after due consideration of Ext. P-14 reply given by the Petitioner in answer to Ext. P-8 notice. The first Respondent submits that the date 21st January 1971 was erroneously mentioned in the District gradation lists Exts. P-2(a), P-4(a) and P-12(a) and correction thereof which was effected after due notice to the Petitioner by the District Collector, Quilon is not liable to be challenged by the Petitioner. As far as the fifth Respondent is concerned, the first Respondent maintains that he was promoted on 13th November 1985, a week prior to the order of this Court in C.M.P. No. 31939 of 1985, and on the basis of the intimation of the District Collector, Quilon, dated 21st October 1985, the date of commencement of regular service and the consequent rank assigned to the Petitioner were erroneous.

4. Separate counter-affidavit has been filed by the fourth Respondent. Counsel for the fourth Respondent submits that the Original Petition was filed without impleading him as a party. Reference was made to the fact that though notice was ordered in C.M.P. No. 30659 of 1984 on 6th November 1985, process was not paid and therefore notice was not sent till 13th November 1985, the date on which Ext. R-1(d) order was issued promoting the fifth Respondent. Counsel submits that even when C.M.P. No. 31939 of 1985 was filed on 19th November 1985, Petitioner was fully aware of the promotion of the fifth Respondent. He was sought to be impleaded for the first time in C.M.P. No. 31938 of 1985, which was filed on 19th November 1985. Notice thereon was issued on 20th November 1985. Even at that stage when the fifth Respondent was not impleaded as a party, C.M.P. No. 1132 of

1986 was filed on 13th January 1986 seeking that this Court may direct that the Petitioner should be promoted as Village Officer in the ensuing vacancy. C.M.P. No. 3122 of 1986 was filed on 3rd February 1986 incorporating Exts. P-11 and P-12. C.M.P. No. 11168 of 1986 was filed on 26th May 1986 seeking promotion as Village Officer when the fourth Respondent was reverted. C.M.P. No. 3627 of 1986 was filed on 10th February 1986 for a direction to order Respondents 1 to 3 not to tamper with or alter in any manner the entries in the ranked lists contained in Exts.P-2(a) and P-4(a) or final rank list in Ext. P-11. In C.M.P. No. 18877 of 1986, Petitioner prayed for cancellation of Ext. P-15 order dated 25th July 1986, whereby the fourth Respondent was promoted again as Village Officer, and P-12 order where under, his rank was altered from 22 to 52(a). The fifth Respondent has filed a counter affidavit substantially supporting the contentions raised by the first Respondent. He proceeded one step further and submitted that the date of regularisation of service of the Petitioner should be 7th February 1974 the date on which Ext. P-2 order was passed.

5. Counsel for the Petitioner submits that the Petitioner was entitled to retention of his rank as stated in Ext. P-2(a) P-4(a) and P-12(a) since his appointment on 20th January 1971 was regular. He maintains that any provisional appointee who overstayed the period of provisional appointment is liable to be treated as regularised with effect from the date of commencement of provisional service. According to him, Rule 27(1) of the Kerala State and Subordinate Services Rules supports his submission, since the date of first appointment has to be counted for purposes of seniority. He assails the first rank assigned to the fourth Respondent since he had not been in service as Village Assistant till Ext. P-1(c) order was passed on 12th June 1984. He also maintains that the fifth Respondent, who had raised any objection to Ext. P-4(a) provisional gradation list of Village Assistants of Pathanamthitta District, as is evident from Ext. P-12, could not have been promoted earlier than the Petitioner. Nor could he urge that the Petitioner was not entitled to assignment of 20th January 1971 as the date of regularisation. He further submits that a mistake which was continued for a long period of time is not liable to be corrected. Counsel relies on the decisions reported in [Narender Chadha and Others Vs. Union of India and Others](#), and AIR 1986 S.C. 1455 in support of this proposition. He also relies on the decision of a Full Bench of this Court reported in 1973 KLT 151 to the effect that Government employees are entitled to proceed on the assumption that their ranks would not be altered after an unduly long time even if ranks and consequent promotions were found later to be erroneously assigned.

6. The first submission of the Petitioner, that a provisional appointee who over-stays the period specified in rule or in the order of appointment issued under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules has only to be stated to be rejected in view of the decision of this Court reported in 1974 KLT 215. The second submission that the Petitioner is entitled to count the period of service which he rendered pursuant to the appointment under Rule 9(a)(i) for the purpose of

reckoning his seniority under Rule 27 is also liable to be rejected in view of the decision of a Division Bench of this Court reported in 1973 K.L.J. 541. Ordinarily, a person appointed under Rule 9(a)(i) of the rules would have had no claim for any right for continuance in service or for regularisation in view of the specific provision contained in Clause (iv) of Rule 9(a) of the Kerala State and Subordinate Services Rules, which is to the following effect:

A person appointed under Clause (i) or (ii) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category.

Petitioner could obtain the benefit of regularisation only by reason of the introduction of Sub-rule (e) of Rule 9 by G.O. (P) 324/73/RD, dated 22nd December 1973 and G.O. (Ms.) 121/74/RD, dated 16th January 1974 to the following effect:

notwithstanding anything contained in these rules the Government may by order regularise the services of any person appointed under Clause (i) of Sub-rule (a), provided that such person shall have two years continuous service on 22nd December 1973 in one category of post in the same Department.

But for Sub-rule (e) so added to Rule 9 of the Kerala State and Subordinate Services Rules, Petitioner would have had no fight at all, either to continue in service or to obtain regularisation, notwithstanding the fact that he had overstayed the initial period of appointment. It is obvious that such a person, who obtained the benefit of regularisation by virtue of Sub-rule (e), which was introduced by an amendment with effect from 16th January 1974, cannot obtain seniority over persons who were either regularly appointed through the Public Service Commission prior to that date like the fourth Respondent or persons who were promoted from the last grade service prior thereto like the fifth Respondent.

7. Rule 27 of the Kerala State and Subordinate Service Rules provides that seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category or grade, The explanation thereto is to the effect that "for the purposes of this Sub-rule, "appointment" shall not include appointment under Rule 9 or "appointment" by promotion under Rule 31". The amendment incorporating the explanation has retrospective effect from 17th December 1958. Obviously, therefore, Petitioner cannot claim seniority on the basis of his provisional appointment under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules. His service which counts for seniority shall commence only from the date of regular appointment and that is undoubtedly with effect from 22nd December 1973, at the earliest. This is clear from Ext. P-3 order, read with Ext. R-1 (b) order, if any further clarification than the specific terms of Rule 9(a)(iv) and Explanation to Rule 27 be necessary.

8. As far as the fourth Respondent is concerned, he was assigned rank on the basis of Ext. R-1 (a) order-G.O. (P) No. 462/Public (SS) Department, dated 25th October 1963, Government letter No. 77859/D2/83, dated 21st May 1984 and Ext. R-1(c) proceedings of the District Collector, Pathanamthitta, No. E-2-5327/83, dated 12th June 1984. None of these three orders are challenged by the Petitioner in these proceedings. Unless these orders are effectively avoided, Petitioner will not be entitled to challenge the rank assigned to the fourth Respondent.

9. The decisions of the Supreme Court to which reference was made by the Petitioner- [Narender Chadha and Others Vs. Union of India and Others](#), and 1455 cannot be understood as laying down that even when an error was committed in assigning ranks of ordering promotions and such error did cause manifest injustice to Ors. , the latter shall not be granted relief by the departmental authorities concerned. It may also be relevant to note that in those cases the rank which was sought to be altered were those resulting from regular appointments/ promotions and settled seniority was sought to be altered after a long period of time. In the present case, it is evident from Exts. P-2, P-2(a), P-4, P-4(a), P-12, P-12(a) and P-8, that the seniority of the Petitioner had not been finally settled. In Ext. P-12 proceedings finalising the provisional seniority list of Village Assistants as on 1st July 1983, it was specifically mentioned, that "the list is liable for revision in case the district lists of Quilon/Alleppey undergo changes in relative seniority when the provisional lists are finalised." Petitioner has no case that the tentative seniority list of Village Assistants of Quilon as on 1st October 1977, which was published on 4th October 1978, was finalised before the formation of Pathanamthitta District. Ext. P-4 published a tentative seniority list of Village Assistants of Pathanamthitta District as on 1st July 1983. That was the list which was finalised in Ext P-12 with a caution that that list was liable to be revised consequent on changes, if any, made in Quilon/Alleppey Districts. It was in relation to Ext. P-2(a) that Ext. P-8 notice was issued to the Petitioner. He submitted Ext. P-14 representations and that list was finalised by the District Collector, Quilon on 10th July 1986 altering the rank of the Petitioner. In this state of affairs, I do not think that either of the two decisions of the Supreme Court or the decision of this Court can be applied to the facts of the present case.

10. The only complaint which the Petitioner could possibly have raised was that his rank was altered without notice to him. That does not avail the Petitioner, because Ext. P-8 notice was issued on behalf of the District Collector, Quilon requiring the Petitioner to submit his explanations to the proposal from altering the date of commencement of service from 20th January 1971 to 22nd December 1973. That proposal was based on Rule 9(e), Government Orders incorporating that into the rules, and Ext. R-1 (b) clarification issued by Government in that regard. Alteration of rank of the Petitioner with due notice to him and after considering Ext. P-14 objections submitted by him cannot, therefore, be faulted. I do not, therefore, find any justification for the complaint of the Petitioner that the alteration of his rank in the category of Village Assistants consequent on change of the date of

commencement of service is either illegal or unjust. Nor can I find that the ranks and promotions assigned to the fourth and fifth Respondents consequent thereon are unsustainable. The rank of the Petitioner was altered to be in compliance with Rule 9(e) of the Kerala State and Subordinate Services Rules, the benefit of which he enjoyed and but for which he would not possibly have obtained regularisation of service at all. The rank assigned to the fourth Respondent cannot be successfully assailed, unless the Petitioner challenges Exts. R-1(a) order and R-1(c) proceedings of the District Collector, Pathanamthitta. He has done neither. The rank and promotion given to the fifth Respondent can be assailed only if the Petitioner was entitled, in accordance with the rules, to retention of 20th January 1971 as the date of commencement of service. Rule 9(a)(iv) and explanation to Rule 27 of the Kerala State and Subordinate Services Rules do not entitle him to that benefit. Since the rank was altered after due notice and on a proper consideration of his objections thereto, the relief sought by the Petitioner, cannot, therefore, be granted.

In the result, the Original Petition is dismissed. Petitioner shall pay the costs of Respondents 4 and 5 with Advocate's fee of Rs. 200.