(1977) 06 KL CK 0035

High Court Of Kerala

Case No: W.A. No. 37 of 1974

Ramakrishna Pillai		APPELLANT
	Vs	
Gopinathan Nair and Others		RESPONDENT

Date of Decision: June 27, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: V.P. Gopalan Nambiyar, C.J; George Abraham Vadakkel, J

Bench: Division Bench

Advocate: P. Kesavan Nair, for the Appellant; K. Sreedharan and Government Pleader for Respondent Nos. 2 to 4, for the Respondent

Judgement

Gopalan Nambiyar, C.J.
The appeal raises a question of seniority as between the Appellant and the 1st Respondent. The 1st Respondent was the writ Petitioner before the learned Judge. His writ Petition was allowed and quashing Ext. P-11 order of the Government, he was declared to be senior to the Appellant.

2. The Appellant and the 4th Respondent both entered as Lower Division Clerks in the service of the Travancore University on 26th April 1954. After the Kerala University Act of 1957 they were both transferred to the Department of Collegiate Education in the service of the Government of Kerala. Ext. P-1, dated 2nd June 1959 is a communication from the Registrar of the University to the Director of Collegiate Education, Trivandrum, regarding fixation of seniority and rank of clerks in the University. It stated that the files on the subject were not forthcoming, and regarding the fixation of rank of Clerks, the position was to be taken as follows:

If the persons are absorbed in the regular establishment on the same date, then their seniority will be fixed with reference to the date of their appointment under contingencies. In case their appointment under contingencies were also on the same date, then their seniority will be determined according to the age of the

persons, the older person being given seniority over the younger.

On this basis, the Appellant should have the question of seniority decided in his favour as he is admitted by senior in age to the 4th Respondent. The Appellant seems to have filed some representation in regard to deciding seniority on the said basis which resulted in further communications, Exts. P-2 and P-3, the former from the Registrar to the Director and the latter from the Registrar to the Secretary to the Government, Education Department. Ext. P-2 pointed out that the procedure followed for determining seniority was not based on any Government Orders; and Ext. P-3 dated 6th March 1961 stated with respect to the appointment of the Appellant and the 4th Respondent that they were both appointed from approved panels and appended a statement showing the names of the persons arranged in an order of priority together with a copy of the order appointing them as Clerks. Ext. P-4 is a copy of the order of" appointment of the 4th Respondent which shows that the same was communicated to five others, all of whom are put down below the name of the 4th Respondent. By Ext. P-5 Memo of the Government addressed to the Director of Collegiate Education, the 4th Respondent was declared to be senior to the Appellant. Thereafter, on 22nd November, 1965 the integrated provisional gradation list of Lower Division Clerks as on 1st October 1957 and 1st May 1965 was published; and that shows the 4th Respondent as senior to the Petitioner. The Appellant filed a representation (Ext. P-6) against the same which was summarily rejected by Ext. P-7 order on the ground that his request had already been considered once by the Government and declined, and that no reconsideration was called for. The reference apparently was to Ext, P-5 order of the Government; and in that sense, Ext. P-7 was based on a misconception, as Ext. P-5 was not based on any representation of the Appellant. A final integrated gradation list was drawn up, and the Petitioner intervened with Ext. R-5 representation. The 4th Respondent filed Exts. P-9 and P-10 representations. These were disposed of by Ext. P-11 order. In disposing of the representations and passing Ext. P-11 order, the Government had before it the statements made by the University as a result of enquiries made with the University. It was pointed out that the University had stated that there was no approved panel of candidates for recruitment as Lower Division Clerks indicating the order of priority when an appointment to the post was made, and the ranking at the time of the appointment was not on the basis of any test or interview, and the panel cannot be accepted as the basis for fixing the seniority. In the light of these statements of the University and the representations of the parties, the Government examined the case. They were of the opinion that of the two representations of the University viz., the one given in 1961 (Ext. P-3) and the other in 1970, the latter was more acceptable, and therefore the Appellant had to be ranked above the 1st Respondent. The Government accepted the principle stated in Ext. P-1 that where the dates of appointment were the same, seniority in age should determine seniority in service.

3. We are not in the region of statutory rules or regulations governing the question of seniority as between the parties, but essentially in the region of certain ad hoc instructions or directions such as what was formulated in Ext. P-1. Counsel for the 1st Respondent stressed that in the list drawn up at the time of selection and arranged according to priority, his client had a higher rank than the Appellant and that this should govern his seniority. There are certain hurdles to surmount before accepting this position. Ext. P-11 found, on the basis of the statements of the University that such a panel of names had not been drawn up or prepared. Even if it had been, where two persons from the panel have been appointed on the same date, and we are left with the rule (Or instruction) that in such cases seniority in age should determine seniority in service, we see no warrant to split seconds over the appointment or search for ranking in the panel drawn up for selection. The principle stated in Ext. P-1 is quite different, and that was accepted by Ext. P-11.

4. We are of the view that in this region there was no ground for interference by the learned Judge under Article 226 of the Constitution. We are further of the view that the learned Judge was wrong in interfering with Ext. P-11 in exercise of his writ jurisdiction. We allow this appeal, set aside the order of the learned Judge, and direct that O.P. No. 125 of 1971 will stand dismissed. We make no order as to costs.