M.V. Kuruvila Vs State of Kerala and Another

Court: High Court Of Kerala

Date of Decision: Oct. 3, 1980

Acts Referred: Kerala State and Subordinate Services Rules, 1958 â€" Rule 27

Hon'ble Judges: Khalid, J

Bench: Single Bench

Advocate: George Varghese Kannanthanam, P.C. Joseph and Abraham Vadakkel, for the Appellant; Government Pleader for Respondent Nos. 1, 2 and 14, V. Sivaraman Nair and K. Kanakachandran for Respondent No. 4, P.N.K. Achan, K. Vijayan and N.N. Sugunapalan, for the Respondent

Judgement

Khalid, J.
The seniority struggle among the Rangers recruited from four sources forms the subject-matter of this writ petition. Though the

briefs are big, the papers voluminous and the fight bitter, the factual matrix and the legal conflicts can be profitably condensed. In Travancore-

Cochin, Rangers were appointed only by direct recruitment. The rule in Madras was to appoint Rangers from four sources: Forest Apprentices,

trained foresters, untrained foresters and trained ministerial staff. The quota fixed for these four groups was in the ratio of 10:5:4:1. The Madras

Rule was found more beneficial and was made applicable to the Kerala Forest Department.

2. The Petitioner who started service in the Travancore-Cochin State in 1961 was appointed as a Ranger on 1st November 1961 along with one

Sundarasan. Respondents 3 to 8 are direct recruits. 3rd Respondent was appointed on 1st November 1961. Respondents 4 to 8 were appointed

in November 1962. Respondents 9 to 13 were Foresters undergoing training in Rangers'' Course Respondents 9 to 12 were appointed with effect

from 1st November 1962 and the 13th Respondent on 28th January 1964.

3. Though the Petitioner has raided various contentions in the Original Petition and the reply affidavit''s filed by him, the short question highlighted

before me now is that since he was posted to a substantive vacancy on 1st November 1961, his seniority should be reckoned from that date.

4. The State in its counter-affidavit takes the stand that Sundaresan, who was admittedly senior to the Petitioner, was appointed on 1st November

1951 to the substantive vacancy for the seat reserved for the ministerial staff. The Petitioner cannot as of right claim seniority from 1st November

1961 on which date he was only accommodated by a temporary promotion since direct recruits were not available at that time.

5. The founding document on which both sides rely is EXt. P-2 and the relevant clause is Clause (iv) therein, which reads:

(iv) Out of the existing 22 vacancies of Rangers, 60 percent will be reserved for Forest Apprentices or direct recruits. 8 candidates are expected

to return after Rangers'' training in June, 1958. These 8 persons will be absorbed. The remaining three places out of 60 per cent allotted to Forest

Apprentices will for the present, be provisionally filled up from trained Foresters pending availability of Forest Apprentices or direct recruits. 25

per cent of the existing vacancies will b. filled up with trained Foresters. Out of the remaining 25 per cent, 20 per cent will be filled up by untrained

Foresters and 5 per cent by train d Ministerial staff, if available or that 5 per cent will be allowed to untrained Foresters.

The above clause lays down the quota. If there are 20 vacancies available, ten should go to direct recruits, five to trained Foresters, five to

untrained Foresters and one to the trained In ministerial staff. Going by this quota, the group to which the Petitioner belongs gets a right to be

promoted fur every 20th vacancy that arises. In other words, once a candidate from that group is appointed, he has to wait till 19 others are

appointed. The mere accident of a person from this group being appointed to a vacancy allottted to the other three groups will not by itself confer

any right on such a person to claim fixity and the consequent seniority. If a twentieth place is available, the candidate from the Petitioner''s group

gets into that place by right.

6. The pivotal point involved in this case is as to how seniority inter se between those groups is to be determined. Seniority is measured normally

by the length of continuous officiating service. A different rule can be prescribed disturbing the normal rule if constitutionality tests are satisfied. In

cases where a quota system is fixed, it is not necessary on the part of the Government to keep unfilled all vacancies allocable to one group. The

Government can fill them for administrative purposes. When candidates from the groups to whom these places are allotted come, the encroachers

will have to yield places to them. In such cases it could justifiably be argued, importing a sort of legal fiction, that the rightful candidates could count

service from the date when vacancies in their groups arose. In Ext. P-2, there is no specific mention as to how seniority is to be reckoned.

Therefore, the normal rule should apply. The only point that has to be borne in mind is that a person who by exigencies of circumstances enters

service in a place allocated to another group cannot as of right claim seniority from the date of such entry for the simple reason that his entry was

not to his rightful place. On the other hand, if he enters a place available to him strictly in accordance with the quota system, the non-availability of

candidates to fill up vacancies in the other three groups cannot and should not delay his entry into that place. His seniority should be counted from

the date of such entry. This, in short, is the principle to govern in this case.

7. From the materials available in this case, it is seen that in November 1961 there were only 22 vacancies. If this be true, then with the

appointment of A.R. Sundaresan as a Manager, the twentieth vacancy allocated to the trained ministerial staff gets exhausted, and the posting of

the Petitioner on the same date can only be a temporary posting not in a substantive vacancy. The Petitioner is not justified in claiming seniority

over the 3rd Respondent who was also appointed on the same date because he belongs to a different group. If there were only 22 vacancies, the

petition has only to be dismissed.

8. At the time of hearing, there was a development. The Petitioner''s counsel submitted that in November 1961 there were a little more than 80

vacancies. The Government Pleader did not concede that there were 80 vacancies. The impression that I get from his submission at the bar is that

the number of vacancies is more, at any rate forty. If his is correct, then the Petitioner''s case assumes an entirely different complexion from the one

that he had put forward in the writ petition and other connected papers. It there were 60 vacancies in November 1961, the trained ministerial staff

automatically should get entry to three places, the twentieth, the fortieth and sixtieth as of right. If there were qualified persons on 1st November

1961, they get a berth in these three places, not out of generosity from anyone but in exercise of their right recognised in Ext. P-2. The

Government will have to consider the case afresh if there were at least 40 vacancies.

9. Both sides relied upon the decision reported in AIR 1977 251 (SC) . The discussion in the Judgment is useful but the facts of that case cannot

apply to the case on hand, for, though the quota of 1:1 for the purpose of Deputy Collectors from direct recruits and Mamlatdars was fixed, the

use of the expression ''as far as practicable'' clothed the Government with a discretion to make appointments from other categories if the original

claimants were not available. The Gujerat Government had issued an explanation insulating the appointments made on or after 1st May 1960 from

attack when the Gujerat State came into force. These facts are peculiar to that case. The guiding principle to work the quota system is seen

explained in paragraph 32, Clause 2 of the judgment which reads:

If any promotions have been made in excess of the quota set apart for the mamlatdats after rules in 1966 were made, the direct recruits have a

legitimate right to claim that the appointees in excess of the allowable ratio from among mamlatdars will have to be pushed down to later yea''s

when their promotions can be regularised by being absorbed in their lawful quota for those years. To simplify, by illustration, if 10 Deputy

Collector s'' substantive vacancies exist in 1967 but 8 promotes were appointed and two direct recruits alone were secured, there is a clear

transgression of the 50:50 rule. The redundancy of 3 hands from among promotes cannot claim to be regularly appointed on a permanent basis.

For the time being they occupy the posts and the only official grade that can be Extended to them is to absorb them in the subsequent vacancies

allocable to promotees. This will have to be worked out down the line whenever there has been excessive representation of promotees in the

annual intake. Sri Parekh counsel for the Appellants has fairly conceded this position.

The other discussions proceed on the peculiar facts of that case.

10. The 4th Respondent''s counsel Sri Sivaraman Nair forcefully contended that the petition has to be dismissed since the Petitioner did not

challenge Ext. P-7 which rejected Ext. P-6. To accept this case would be to accept a very technical plea and will be denying justice to both the

parties. The Petitioner prays for a declaration that he is senior to Respondents 3 to 13 and for other consequential reliefs. This relief can be given

only if he satisfies the authorities that on 1st November 1961 there was a vacancy available to the trained ministerial staff who can claim that post

as of right on the quota fixed in Ext. P-2. Otherwise, the petition has to fail. The authorities will have to consider this question afresh in the light of

the discussion made above, and fix the seniority accordingly, I make it clear that such consideration will be necessary only if the number of

vacancies in 1961 is as stated by the Petitioner. If the number of vacancies was less than 40 in 1951, the Petitioner''s claim shall stand rejected.

11. The 4th Respondent''s counsel submitted that the Petitioner is not entitled to claim seniority by the mere fact that he has longer service basing

on Rule 27 of the Kerala Subordinate Service Rules. The Petitioner has not disclosed the date of his appointment as a Ranger on a regular basis

which is within his knowledge. The rule that is applicable to the Petitioner is Rule 27 as it then stood and not Rule 27 which came into force on 6th

June 1977. I do not think it proper to decide this petition on this ground without giving an opportunity to the Petitioner to clarify this position since

this is a point not highlighted in the counter-affidavit. Besides, how far this question is relevant in the context of the ''quota'' principle, is also a

matter to be considered by the Respondents.

12. In the result, this writ petition is disposed of with a direction to Respondents 1 to 3 to reconsider the case of Petitioner in the light of the

observations made above regarding Ext. P-2 and refix the seniority accordingly if in November 1961 there were at least 40 vacancies to the post

of Rangers. The Petitioner''s case need not be considered if on 1st November 1961 there were only 22 vacancies. The authorities are directed to

dispose of the matter as expeditiously as possible as the matter has been pending for a long time. No costs.