

(1984) 11 KL CK 0027

High Court Of Kerala

Case No: O.P. No. 4263 of 1984

V.H. Abdul Salam

APPELLANT

Vs

G.C.D.A. and Others

RESPONDENT

Date of Decision: Nov. 29, 1984**Acts Referred:**

- Kerala Development Authorities Rules, 1984 - Rule 24, 31

Citation: (1984) KLJ 868**Hon'ble Judges:** K. Bhaskaran, Acting C.J.; M.P. Menon, J**Bench:** Division Bench**Advocate:** M.A. Manhu, for the Appellant; K.A. Nayar, K. Vijayan, V.P. Mohankumar, P. Santhoshkumar and L.G. Poti, for the Respondent

Judgement

M.P. Menon, J.

The petitioner had commenced service as a Junior Engineer of the Greater Cochin Development Authority ("G.C.D.A") from 1977. He was promoted as Assistant Executive Engineer in 1979. The promotion was regularised in 1980; and by 1984, he was eligible for further promotion as Executive Engineer in accordance with the Special Rules for the Kerala Engineering Service, as adopted by the G.C.D.A. But instead of promoting him, or the 3rd respondent who was similarly situated, G.C.D.A. extended the deputation of respondents 4 and 5 by Ext. P9 order dated 21-4-1984. These respondents were employees of the Cochin Shipyard Ltd. and were working as Executive Engineers in the G.C.D.A. on deputation. The extension of the deputation was designed to thwart the promotion claims of the petitioner and the 3rd respondent. It was in this background that the Original Petition was filed on 14-5-1984 for quashing Ext. P9. An interim stay of the operation of the said order was also obtained, but in the meanwhile, Government issued Ext. P10 approving a proposal of the G.C.D.A. to fix a ratio of 1:1 between direct recruits and deputationists in its service. The result was that "deputation" became an approved method of recruitment to the services of the G.C.D.A. and in as much as there were

only four posts of Executive Engineers in operation, the combined effect of Exts. P9 and P10 was to deny promotion to persons like the petitioner for ever. The Original Petition was therefore amended to include a challenge to Ext. P10 also. What Ext. P10 says is that

the ratio between the direct recruits and deputationists under the Greater Cochin Development Authority in the matter of appointments to various posts, excluding posts of heads of departments, will be 1:1.

Strictly interpreted, Ext. P10 means that if there are only four posts of Executive Engineers under the Authority, two will be filled up by direct recruitment and two by deputation. There will be no promotion at all to the post of Executive Engineer, from the lower cadre of Assistant Executive Engineers in accordance with the Engineering Service Rules. But counsel for the G.C.D.A. submitted that the intention behind the fixation of the ratio was only to ensure that 50% of the vacancies in a cadre were filled up by deputation; there could be no objection to filling up the remaining 50% by promotion in accordance with the Rules. It is however obvious that if Ext. P10 is to operate as a prescription of the method of recruitment, only two methods, direct recruitment and deputation, are contemplated. Short of rewriting the Government order, claimed to have been issued in exercise of power under statutory rules, there is no scope for accepting such an interpretation.

2. The case of the G.C.D.A. is this. Its man-power requirements fluctuate from time to time, depending upon the funds available, the schemes on hand and other factors. Additional hands may be required in connection with a particular work, but they will have to be sent out when the work is completed. Some flexibility in the method of recruitment is thus called for. If all the manpower requirements are to be met in the normal course by direct recruitment and promotion, retrenchment and reversions will become the order of the day. On the other hand, people taken on deputation for a particular work can be repatriated to their parent establishments when the work is over. The Authority had therefore considered the matter and taken a decision in November, 1982 to have a ratio of 1:1 between direct recruits (meaning, apparently, both direct recruits and promotees) and deputationists. Exts. R1 (a) to Ext. R1 (d) will show that the matter was under correspondence with the Government, before Ext. P10 order was passed on 16-5-1984.

3. We will assume that the G.C.D.A. has a special problem, though we fail to see how it can be different from similar problems tackled by the PWD and other departments of the Government, under the normal rules. It is common knowledge that many departments of the Government undertake development works under financial assistance from the Centre, from Plan allotments, from the World Bank and other agencies. What they do is to sanction temporary additions to the cadre and fill up the posts under the normal rules. The incumbents are not confirmed; they are either retrenched or reverted when the posts are abolished in the exigencies of work. As a matter of fact, the PWD had originally a separate work-charged establishment,

distinct from the regular establishment. But the present trend is to abolish all such distinctions and work out the man-power requirements within the normal rules. That may be a matter of policy, and the G.C.D.A. should be presumed to know what is good for it. The question however remains whether in the face of the statutory rules admittedly applicable to employment under the Authority, orders like Exts. P9 and P10 could be held valid in law.

4. Rule 24 of the Kerala Development Authorities Rules, 1984 provides that the Authority shall fix the qualifications and method of recruitment to the various posts under it, with the prior approval of the Government. It also provides that where qualifications are not so fixed, those prescribed for similar posts under the Government shall be followed. Had these provisions stood alone, it would probably have been possible to accept the Authority's contention that qualifications for the post of Executive Engineer should be found in the Engineering Service Rules (i.e., qualifications fixed for similar post under Government) and that methods of recruitment should be found in Ext. P10 approval granted by the Government. But Rule 31 provides that the Kerala State and Subordinate Services Rules, 1958 "shall apply mutatis mutandis to the employees of the Authority". The K.S.S.R. is in three parts: Part I "Preliminary", Part II "General Rules" and Part III "Special Rules". Under Rule 2(16), "Special Rules" means the rules in Part III applicable to each service or class of service. The Special Rules for Engineering Service is thus part of the K.S.S.R. in so far as they relate to Asst. Engineers, Executive Engineers etc. And these rules prescribe that the method of appointment to the post of Executive Engineer shall be by promotion from among Asst. Executive Engineers. By virtue of Rule 31 of the Development Authorities Rules, therefore, there is a statutory prescription of the method of recruitment to the post; and can the G.C.D.A. and the Government prescribe a different method therefor, in exercise of power under Rule 24. We think not, because the two rules have to be read together: the power under Rule 24 cannot be exercised so as to conflict with the mandate of Rule 31.

5. In so far as the K.S.S.R. is applicable to the Authority, appointment by deputation can only be in accordance with Rule 9B in Part II, reading as follows:

9B. Notwithstanding anything contained in these Rules or in the Special Rules, the Government may, in" public interest and for reasons to be recorded in writing, depute or transfer officers from one service to another or from one department to another within the same service or send to or take in officers from other Governments or statutory bodies subject to such conditions as the Government may in each case impose:

Provided that in the case of transfers in the interest of security of State, the reasons need not be recorded if Government are satisfied that it is not expedient to disclose the reasons for such transfer:

Provided further that the Commission shall be consulted in respect of such deputations and transfers whenever such consultation has not been specifically excluded by the provisions of the Kerala Public Service Commission (Consultation) Regulations, 1957.

In its application to the G.C.D.A., what this rule lays down is that a person working elsewhere can be appointed to the services of the Authority by deputation "in the public interest and for reasons to be recorded in writing", subject to such conditions as the Government may impose "in each case". Clearly, this is a reserve power enabling departure from the normal method of recruitment, and not a power to prescribe a regular method of appointment, different from those specified in the Special Rules. The words "notwithstanding anything contained in the Special Rules" indicate that the normal method of appointment shall be the one prescribed by those rules. Occasions may arise where a person with special talents and equipment may be found necessary to man a post, and such a person is not available in the service. In such a case, if public interest requires it, and if sufficient reasons can be recorded for departing from the usual method, a deputationist can be appointed, subject to conditions imposed "in each case". The power under Rule 9B is therefore one to be exercised sparingly, with due advertence to public interest and the facts and circumstances of each case, and not a power for converting deputation as a regular method of recruitment, as attempted in Ext. P10. The power of the G.C.D.A. to arrange for appointment by deputation is thus circumscribed by Rule 9B as understood above, and it cannot be enlarged by grant of approval by the Government under Rule 21 of the Development Authorities Rules. In other words, neither the G.C.D.A. nor the Government had the power to prescribe deputation itself as a normal and regular method of recruitment, contrary or supplemental to the method prescribed by the Special Rules.

6. Turning to Ext. P9 the Authority has no case that it was issued in the public interest, with recorded reasons, to meet the special needs of two particular vacancies requiring special skill or qualification. On the other hand, their definite case is that deputation should be a permanent feature, irrespective of considerations relevant under Rule 9B. In this view of the matter we should hold that Ext. P9 is also invalid. In the result Exts. P9 and P10 are quashed, and the 1st respondent is directed to examine the claim of the petitioner and the 3rd respondent for promotion to the post of Executive Engineer, in accordance with law.

No costs.