

(1993) 08 KL CK 0050

High Court Of Kerala

Case No: W.A. No. 989 of 1993 in O.P. 946 of 1993

C. Latha

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: Aug. 3, 1993**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16
- Kerala State and Subordinate Services Rules, 1958 - Rule 10, 9

Citation: (1993) 2 KLJ 497**Hon'ble Judges:** M. Jagannadha Rao, C.J; K. Sreedharan, J**Bench:** Division Bench**Advocate:** P. Sivan Pillai, for the Appellant;**Final Decision:** Dismissed

Judgement

Jagannadha Rao, C.J.

This appeal is preferred against the judgment of the learned Single Judge dismissing O.P. No. 9468 of 1993 on 20th July 1993. The Appellant is the writ Petitioner. She was appointed as a Lower Division Typist in the Office of the Municipal Commissioner, Kottayam (second Respondent) under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules. She was appointed on 4th February 1993 on a temporary basis on being sponsored by the Employment Exchange, Kottayam. The order of appointment, Ext. P-1 dated 4th February 1993. states that the appointment is for a period of 179 days, or till regular appointee takes charge, whichever is earlier. Regular appointment is, of course, through the Public Service Commission. While so, the Appellant continued till 179 days and her services came to an end. Subsequently, the authorities, according to the Appellant, are proceeding to make Anr. temporary appointment through the Employment Exchange. Strong reliance is placed on the decision of the Supreme Court in [State of Haryana and others Vs. Piara Singh and others etc. etc.](#), and in particular paragraph 46 of the said decision, which reads as follows:

46. Secondly, an ad hoc or temporary employee should not be replaced by Anr. ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Reliance is also placed on the observation of the Supreme Court in an earlier case relating to the Kerala Water Authority, namely, [Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others](#), .

2. A Division Bench of this Court had occasion to deal with [State of Haryana and others Vs. Piara Singh and others etc. etc.](#), in Reji Joseph v. K.S.E.B. 1993 (1) KLT 393. It was held that the above decision of the Supreme Court did not apply to the cases governed by the Kerala State and Subordinate Services Rules, wherein there is a special provision to the effect that once the appointment comes to an end at the completion of 179 days, persons so appointed should not be reappointed, but fresh appointments should be made through the Employment Exchange. The above said decision in Reji Joseph's case (3) was followed by us in W.A. No. 1338 of 1992.

3. As the matter has again been reargued, we have felt it necessary to give a further detailed judgment. Rule 9 of the K.S. and S.S.R., in so far as it is material for the purpose of this case reads as follows:

9: Temporary appointments-(a)(i) Where It is necessary in the public interest, owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may appoint a person, otherwise than in accordance with the said rules, temporarily:

Provided * * *

Provided further that a person appointed under this clause by direct recruitment to a post other than teaching post and a post covered by the proviso to Clause (Hi) to Rule 10(b) shall not be allowed to continue in such post for a period exceeding one hundred and eighty days.

* * * * *

Provided also that a person appointed under this clause by direct recruitment to a post and discharged from service after the admissible period, shall not be reappointed to the same post by the same appointing authority, except when fresh candidates are not available for appointment through Employment Exchange, and such reappointment shall be made only with the prior concurrence of the Commission.

* * * * *

It will be noticed from the above provision in the K.S. and S.S.R. that temporary appointment is made where an emergency has arisen when regular hands are not available, where it would take considerable time to make regular appointment through the Public Service Commission or other procedures prescribed for regular appointment. In such cases, temporary appointments could be resorted to. Then, such appointments will be for a period not exceeding 180 days. As to what should happen after the termination of such appointment before 180 days, the proviso last extracted above clearly mentions that a person appointed under this clause by direct recruitment to a post and discharged from service after the admissible period shall not be reappointed to the same post by the same appointing authority, except when fresh candidates are not available for appointment through Employment Exchange and such reappointment shall be made only with the prior concurrence of the Commission. In other words, there is a prohibition in the proviso last extracted stating that a person who has been appointed for a period less than 180 days by direct recruitment to a post and discharged from service after the admissible period shall not be reappointed to the same post, except when fresh candidates are not available for appointment through Employment Exchange.

4. The question is as to whether a person who has been appointed for less than 180 days is to be continued in service notwithstanding the above rule-position merely because yet Anr. person is being recruited temporarily through, the medium of Employment Exchange.

5. The decision of the Supreme Court in [State of Haryana and others Vs. Piara Singh and others etc. etc.](#), which has been relied upon by learned Counsel for the Appellant, in our view, deals with a different situation. The Supreme Court stated in paragraph 46 of the above said decision that one temporary appointee should not be replaced by Anr. temporary employee, for that would result in permitting arbitrary action. There, Their Lordships were referring to cases where fresh appointment was at the whims and fancies of the appointing authority, and was not by itself governed by a procedure of recruitment through Employment Exchange. Their Lordships were also considering the case where the first appointment was for an undefined term, and the employer having an absolute right to terminate the services of the employee at any point of time at his sweet will, and bringing in Anr. person of his choice at his sweet will.

6. It will be noticed that that is not the position in the Kerala Rules. Here the. factual and rule-position is totally different. The policy behind the rule here is that initial appointment is to be for a specified period not exceeding 180 days, and the further policy is not to permit the reappointment of the same person. It is also necessary that fresh appointment -is not to be made at the whims and fancies of the employer, but it is to be made through Employment Exchange. By this method, arbitrariness in regard to fresh appointment is totally kept out and negated.

7. In our view, the proviso to Rule 9 appears to be based upon a policy which is peculiar to the State of Kerala. Here number of jobs are limited, and the persons available are in thousands. The policy of the Government appears to be to have the post filled up by rotation from among the candidates registered in the Employment Exchange, and this is to go on till regular appointments are made through Public Service Commission or other competent authority. There is always a heavy backlog of candidates registered in the Employment Exchange. These are given temporary posting for less than 180 days by rotation. Such a policy has been adopted in the peculiar conditions prevailing in this State where jobs in private employment are few, and there is a clamour for Government employment. In such circumstances, it cannot be said that the policy behind the proviso in Rule 9 last extracted above is unreasonable. Further, there is no challenge to the last proviso as being violative of Article 14 or 16 of the Constitution of India.

8. So far as the reliance upon the decision in [Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others](#), is concerned, it will be noticed that it was there held that Rule 9(a)(i) of the K.S. and S.S.R. is not directly attracted to the case of the Kerala Water Authority, and it is only of some guidance. As to whether the proviso last extracted above which permits fresh appointment through the Employment Exchange is also applicable to the Kerala Water Authority or not in spite of the decision of the Supreme Court in [Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others](#), is now pending consideration in a batch of cases, and we do not want to express any opinion on that point in this case.

For all the aforesaid reasons, we agree with the learned Single Judge that the Appellant cannot seek any direction for continuance in service as Lower Division Typist. Writ Appeal is accordingly dismissed.