

## M. Shahul Hameed Vs State of Kerala and Others

**Court:** High Court Of Kerala

**Date of Decision:** July 11, 1978

**Acts Referred:** Kerala State and Subordinate Services Rules, 1958 & Rule 28(8), 29

**Hon'ble Judges:** K. Bhaskaran, J

**Bench:** Single Bench

**Advocate:** Pirappancode V. Sreedharan Nair and V.N. Achutha Kurup, for the Appellant; Government Pleader, for the Respondent

### Judgement

K. Bhaskaran, J.

This writ petition is for the issue of a writ of certiorari quashing Ext. P-4 notification No. DC (1) 5-12316/74, dated 18th

June 1976 published in Part III of the Kerala Gazette dated 26th June 1976. There is also a prayer for the issue of a writ of mandamus to the

second Respondent, the Board of Revenue, Kerala State, Trivandrum, to include the name of the Petitioner also in the select list Ext. P-4 assigning

him proper rank among the Assistant Sales Tax Officers/Sales Tax inspectors.

2. The writ Petitioner, while he was working as head clerk in the Revenue Department, was included by the Departmental Promotion Committee in

the select list published on 2nd March 1974 for appointment to the post of Assistant Sales Tax Officers for the year 1973-74. Thereafter, by Ext.

P-2 order dated 14th March 1974 he was provisionally promoted and posted as Assistant Sales Tax Officer. Ext. P-1 is the final select list

published on 31st December 1974 after obtaining the approval of the Government.

3. It is the publication of Ext. P-4 notification dated 18th June 1976 in the Gazette dated 26th June 1976 that has given rise to the dispute in this

matter and to the ultimate filing of this writ petition. It would appear that the Board of Revenue in the light of the decision of this Court in O.P. No.

4590 of 1972 felt the need for preparing fresh seniority list of the upper division clerks in the Revenue Department which necessarily was bound to

have some changes in the ranking given previously. Because of this changed circumstances it would also appear that the Revenue Board felt it

necessary that the select list for appointment to the post of Assistant Sales Tax Officers drawn up by the Departmental Promotion Committee for

the year 1974-75 also should be reviewed. The Departmental Promotion Committee thereafter met and prepared select list for the appointment of

Assistant Sales Tax Officers for the years 1967-68 to 1974-75. It is the admitted case that in the revised select list for the year 1973-74 or 1974-

75 the Petitioner's name was not included, though in both the years his name was included in the field of choice but was not selected as the

Departmental Promotion Committee found him to be unsuitable.

4. The counsel for the Petitioner, Sri Pirappancode V. Sreedharan Nair, submitted that the action of the Departmental Promotion Committee in

reviewing the select list for the year 1973-74. which was published provisionally and thereafter finally after the approval of the Government as early

as 31st December 1974, was not justified and was in effect without jurisdiction. The submission of the counsel is that the Kerala State and

Subordinate Service Rules do not empower the Departmental Promotion Committee to review or revise a select list except in the special

circumstances mentioned in Rule 28(8) of the said rules, and that such circumstances do not exist in the present case. It is also submitted that the

failure on the part of the Government to exercise jurisdiction under Rule 29 of the rules shows that it was without any direction from the

Government or without the Government's approval that the Departmental Promotion Committee has proceeded to revise or review the select list

already Published finally with the approval of the Government. On a careful consideration of the provisions contained in Rule 28(8) of the Kerala

State and Subordinate Service Rules I am of the view that except for the special circumstances mentioned in the said sub-rule there is no power for

the Departmental Promotion Committee to review or revise the select list. When that is the position, the contingency of a person placed in the

position as that of the writ Petitioner being included in the field of choice for consideration again by the Departmental Promotion Committee also

could not arise.

5. The Government Pleader appearing for the State submitted that the Departmental Promotion Committee must be presumed to have the right and

the power to correct the mistake, if any, crept in the course of the preparation of the select list, though there might not be any specific provision in

the Kerala State and Subordinate Service Rules in that behalf. He also submitted that under Ext. P-2 the Petitioner was appointed only

provisionally to the post of Assistant Sales Tax Officer and his probation in that cadre has not so far been declared. He also submitted that in Ext.

A-1 proceedings No. A2-59201/75/TX, dated 5th December 1975, the second Respondent, the Board of Revenue, had made it clear that all the

promotions and seniority of Assistant Sales Tax Officers appointed by transfer from 1967 onwards were subject to review by the Departmental

Promotion Committee, which had to draw up year-wise select lists from 1967-68 onwards. The counsel for the Petitioner has a case that the

Petitioner had already completed the maximum period required for the declaration of his probation and as such, even in the absence of a formal

declaration that he had completed the period of probation, he should be deemed to have become a full member of the service in the cadre of

Assistant Sales Tax Officer. I do not think that it is necessary to go into this minor question at present. The main question to be considered and

answered is whether the Departmental Promotion Committee is competent in law to review or revise a select list provisionally published and later

finally published after obtaining the approval of the Government. In the absence of any enabling provision, except for those mentioned in Rule

28(8) of the Kerala State and Subordinate Service Rules, I am of the view that it has to be ruled that the Departmental Promotion Committee has

no such power, and therefore Ext. P-4 select list was prepared without competence in that behalf. Inasmuch as the Petitioner's name is not

included in Ext. P-4 select list, I do not think that there is any need for quashing Ext. P-4. The purpose would be served if it is declared that the

inclusion of the Petitioner's name in the final select list published on 31st December 1974 shall remain and the appointment or promotion granted

to him on that basis shall remain without being altered by Ext. P-4 select list; and I do so.

The writ petition is disposed of as above. There will be no order as to costs.