

(2004) 09 KL CK 0045

High Court Of Kerala

Case No: O.P. No. 4996 of 2000

Kerala Community Development
Extension Officers Association

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Sept. 17, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2005) 104 FLR 275 : (2004) 3 KLT 940

Hon'ble Judges: K.K. Denesan, J

Bench: Single Bench

Advocate: P. Chandrasekhar, for the Appellant; P. Deepthi, Government Pleader, T.R. Ramachandran Nair and N.N. Sugunapalan, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Denesan, J.

First petitioner is a recognised service organisation of employees working in the Kerala Community Development as Extension Officers. Petitioners 2 and 3 belong to the category of Extension Officers. Petitioner No. 4 belongs to the category of Village Extension Officer in the Community Development of Village Extension Officer in the Community Development Department. Respondents 3 to 9 who got themselves impleaded belong to the very same categories to which the petitioner belong. They support the petitioners and are interested in securing reliefs prayed for in this O.P.

2. Petitioners have sought for a declaration that the Rule providing filling up of the posts of Block Development Officers (B.D.O's.) in the Community Development Department exceeding 20% of the total sanctioned posts of B.D.O's by direct recruitment or transfer is arbitrary, discriminatory and violative of Arts. 14 and 16 of the Constitution of India. They have also sought for the issuance of a direction to the

respondents not to fill up more than 20% of the total sanctioned posts of B.D.O's and equivalent posts in the Community Development Department by direct recruitment and/or by transfer. Alternatively, petitioners have sought for a declaration that 80% of the post of Block Development Officers and equivalent posts shall be filled up by promotion from the feeder categories. Consequential directions in terms of the above declaration also have been prayed for.

3. Petitioners belong to the Subordinate Service in the Community Development Department. They aspire for appointment by transfer or by promotion to the post of Block Development Officer which is a gazetted post borne on the State Service and included as category No. 5 in the Special Rules. The method of appointment to the post of Block Development Officers (excluding Block Development Officers of Tribal Development) is as follows:

"2. (c) Appointment to category 5 shall be made as follows:

I. By appointment by transfer from among Junior Lecturers in the Extension Training Centres, Village Extension Officers (General Extension Officers and Grade I Village Extension Officers) and Extension Officers (Women's Welfare) and Lady Village Extension Officers Grade I, based on the select list prepared by the Departmental Promotion Committee. Appointment from the categories of Village Extension Officers (General Extension Officers and Grade Village Extension Officers (General Extension Officers and Grade I Village Extension Officers and others namely Extension Officers (Women's Welfare), Junior Lecturers in the Extension Training Centres and Lady Village Extension Officers Grade I shall be in the ratio of 9:1.

Note:-- Extension Officers (Women's Welfare) who have put in a minimum of 3 years and Village Extension Officers (General Extension Officer and Grade I Village Extension Officers) and Lady Village Extension Officers Grade I who have put in a minimum of 8 years service in the respective categories alone will be considered for appointment by transfer.

II. By recruitment by transfer from among the following categories namely:-

(i) Senior Grade and Grade I Assistant in the Government Secretariat including Finance Department and Legislature Secretariat and Grade I and Grade II Legal Assistants in the Law Secretariat.

(ii) Extension Officers or their equivalents in the Department of Agriculture, Animal Husbandry, Panchayat and Industries.

(iii) Senior Inspectors of the Department of Co-operation.

(iv) Junior Statistical Inspectors.

(v) Deputy Tahsildars of the Revenue Department.

Note:- In the case of Extension Officers of Departments where there are more than one grade of Extension .Officers, only persons who are in the Grade immediately below that of Block Development Officers shall be eligible for appointment as Block Development Officers. A minimum service of three years in the Blocks on the date of application will be insisted on in the case of Junior Statistical Inspectors.

III. By direct recruitment.

Note 1:- A ratio of 1:1:1 shall be maintained in the matter of appointment by the three methods specified above.

Note 2:- Selection for appointment to the post of Block Development Officer by recruitment by transfer under item II and direct recruitment under Hem III of this Sub-rule shall be made by the Public Service Commission, the appointing authority being associated with this selection."

Thus it can be seen that the vacancies in the post of Block Development Officers are filled up from three sources. The first source is Junior Lecturers in the Extension Training Centres, Village Extension Officers, Extension Officers (Women's Welfare) and Lady Village Extension Officers Gr. 1. Appointments from the above source are by transfer of Officers from the select list prepared by the D.P.C. This method of transfer of appointment has to be done on the basis of an internal ratio of 9:1 between officers belonging to the first wing and officers belonging to the second wing. The first wing consists of Village Extension Officers and others who include Extension Officers (Women Welfare Fund), Junior Lecturers in the Extension Training Centres and Lady Village Extension Officers Gr.1. The second source is members of the service who belong to various other departments under the State Government. The method is recruitment by transfer. Those departments include the Government Secretariat including Finance Department, the Legislature Secretariat including Finance Department, the Legislature Secretariat and the Law Secretariat, Extension Officers and members belonging to other equivalent categories in the Department of Agriculture Animal Husbandry, Panchayath Department and Industries Department are also brought within the above second source Senior Inspectors of the Department of Co-operation, Junior Statistical Inspectors and Deputy Tahsildars of Revenue Department also are eligible to seek reeruitment by transfer under the above source. The third source of appointment is by direct recruitment from open market.

4. The rule has prescribed a ratio of 1:1:1 to be maintained in the matter of appointment from the above three source. Therefore, the Village Extension Officers and the Extension Officers who belong to the first category are entitled to be considered for transfer appointment to the post of Block Development Officers against 1/3rd of the cadre strength of Block Development Officers. Petitioners would contend that 1/3rd share is too inadequate as to stasis"s the needs of the feeder category members in the Community Development Department and it had given

rise to discontentment among those categories of employees. It is in this context the petitioners would pray that atleast 80% of the vacancies in the post of Block Development Officers be earmarked to be filled up by promotion/transfer from the feeder category members belonging to the Development Department itself. In order to highlight the grievance of the petitioners and to show that there is glaring inequality in the way in which Rule 2(c) has been framed, petitioners have made mention of categories of posts which, according to the petitioners, carry the same scales of pay and are comparable with the post of Block Development Officer. It is contended that the rules or orders prescribing the method of appointment for the higher posts in those departments provide a larger slice of the cadre strength to be filled up by feeder category members of the respective departments.

5. First respondent has filed a counter affidavit wherein it is stated that the comparison attempted to be made by the petitioners pointing out the Special Rules for other Departments has no merit. According to the respondents the validity of the rule has to be examined in the context of the factual situation prevailing in each department which varies from post to post and from service to service. The method of appointment prescribed under the various Special Rules cannot be a guideline for fixing the ratio between the three sources referred to in Rule 2(c), from which appointment is to be made to the post of Block Development Officers in the Community Development Department, Before proceeding further in the matter, I must say that I am inclined to uphold the above contention advanced on behalf of the first respondent. It is well known that rules relating to-appointment are made taking into account the purpose for which the various categories of posts are created in the Department concerned and having regard to the needs of the concerned section of the public for whose benefit the Department has come into existence, the interest of administration and the exigencies of service. Posts in the higher categories cannot be directed to be filled up solely for accelerating the promotion chances of the employees belonging to the feeder categories. It is true that the rule making authority should bear in mind that satisfaction of the employees belonging to the feeder categories is also a relevant consideration. At the same time, it cannot be disputed that the prime consideration and object is to service the members of the public for whose benefit the posts are created and maintained by the Executive spending money from the public exchequer. Government has got the duty to ensure proper discharge of duties and functions attached to the various posts. How and in what manner that can be achieved is primarily a matter for the administration to consider, decide and execute. Therefore the Government which is empowered to create the posts should be conceded the power to frame rules regulating the method of appointment and the qualifications for the post taking into account the factual situations and the needs of the service. The first contention of the petitioners does not appear well founded and the same is rejected.

6. The next contention is that the fundamental right for equality of opportunity in matters relating to employment guaranteed under Art. 16 of the Constitution is violated. According to the petitioners the apportionment of vacancies and fixation of percentage set apart for members belonging to the self same service should have correlation with the cadre strength in the lower categories and the higher category. It is true that such correlation cannot be said to be an irrelevant factor. However, it is difficult to agree with the contention that should be the sole consideration in framing a rule relating to the recruitment to the higher category. No member of the feeder category can claim any vested right or fundamental right that there should be a rule which guarantees promotion to a" major chunk of the higher posts. The Constitution of India guarantees the right to be considered for appointment in public service which consideration has necessarily to be on the basis of the method of recruitment, qualifications etc. laid down in the Rules or Orders issued by the appropriate Government or instrumentality. As already stated, the considerations which may weigh with the rule making authority in laying down a rule of recruitment including the percentage of vacancies to be apportioned to various categories, is a matter which should be left to be worked out by the competent body in accordance with the legislative policy, and this Court in the exercise of its power of judicial review will not dictate that the rule should be rewritten so as to accelerate the promotion chances of the feeder category members of the service. Whether or not the petitioner are entitled to a higher percentage of posts in the category of B.D.O"s. is a matter to be considered by the Government. It follows that the reliefs prayed for cannot be granted by this Court in exercise of the power under Art.226 of the Constitution of India.

7. Petitioners contend that Rule 2(c) of the Rules for "Posts in the Development Department" in the State service is unconstitutional. But inspite of the persuasive arguments made by Sri. P. Chandrasekhar, I am not able to find anything unconstitutional in the rule which provides that 1/3rd of the cadre strength in the higher post of Block Development Officers shall be filled up by transfer appointment by feeder category members of the same department, viz. the Community Development Department, and the next 1/3rd to be filled up by qualified members belonging to other departments, and the balance 1/3rd to be filled up by direct recruitment of qualified candidates from open market. Respondents justify the direct recruitment from open market on the ground that the department needs qualified young and energetic persons also to work as Block Development Officers. Such candidates are selected by the Public Service Commission. There is rationale for allotting the next 1/3rd to members belonging to other departments because the duties to be performed by the B.D.O"s. in the Development Department are so multifarious the Officers from different sources having rich and varied experience are required to man such posts. That being so, no member of the service can legitimately say that a major share of the vacancies in the post of Block Development Officers should go to them. Learned counsel for the petitioners, Shri

Chandrasekhar who emphatically prosecuted the cause of the petitioners, cited before me the decision of the Supreme Court in [Union of India and Others Vs. Anil Kumar and Others](#), in support of the contention that promotional avenues cannot be curtailed unreasonably. Learned counsel read out from paragraph 25 of the above decision of the following passage:

"Security of tenure and the service conditions of the employees is of paramount consideration to achieve the goals for having an effective and vibrant civil service in the society. No Government can resort to actions depriving the benefits to a section of the service en bloc which admittedly is to their disadvantage. Such en bloc deprivation of the promotional avenues and service benefits cannot be sustained when no cogent reasons are assigned by the administrative set up."

It is obvious that the above decision has no application to the facts of this case since admittedly out of the total cadre strength, 1/3rd has been apportioned to be filled up from the feeder category to which the petitioners belong. In other words, it is not a case where the petitioners can complain that the Government has resorted to en bloc deprivation of the promotional avenues and service benefits to the members of the lower categories. Therefore the prayer for striking down the rule is rejected. It follows that the other reliefs which are only consequential cannot be granted. In the result, the Original Petition is dismissed without any order as to costs.