

(1990) 06 KL CK 0064

High Court Of Kerala

Case No: O.P. No. 4623 of 1989

K.V. Ramabhadran

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: June 20, 1990

Acts Referred:

- Kerala State and Subordinate Services Rules, 1958 - Rule 14, 15, 16, 17, 3

Hon'ble Judges: V.S. Malimath, C.J; G. Viswanatha Iyer, J

Bench: Division Bench

Advocate: Seemanthini, Government Pleader, for the Appellant; M.B. Kurup and Jose K. Kochupappu for Respondents 1 and 2 and M.C.P. Sudhakara Prasad, for Respondents 3 and 4, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Malimath C.J.

1. This case has come up before us on a reference made by Justice Sreedharan doubting the correctness of the observations made by Justice Bhat in the judgment rendered in O.P. Nos. 4085, 5043 and 6169 of 1983 to the effect that in the matter of appointment to the cadre of Assistant Public Prosecutors Grade II, Rules 14 to 17 of the Kerala State and Subordinate Services Rules have to be applied on a State-wide basis. The learned Single Judge has also adverted to an observation made by Anr. learned Judge to the contrary in the case reported in 1986 KLT 149 between P.M. Sunny v. State of Kerala and Ors. Though this decision has been, affirmed in appeal by a Division Bench, there is no consideration of this, particular question by the Division Bench in Writ Appeal Nos. 609 of 1935 and 195 of 1986.

2. Recruitment to the post of Assistant Public Prosecutors Grade II is governed by the Special Rules regarding Posts of Legal Advisor to the Vigilance Division, Additional Legal Advisor to the Vigilance Division and Assistant Public Prosecutors. Rules 3, 4 and 5 of the said Rules, which are relevant for our purpose may be

extracted as follows:

3. Appointing Authority.-The appointing authority shall be the State Government.

4. Reservation of appointment.-The rules of reservation of appointments (General Rules 14 to 17) shall apply to the appointments by direct recruitment to the posts of Additional Legal Adviser to the Vigilance Division and Assistant Public Prosecutors Grade II.

5. Unit of appointment, probation, seniority etc.-For the purpose of appointment to the category of Assistant Public Prosecutors Grade II, probation, seniority, discharge of probationers and approved probationers for want of vacancies, appointment as full members and re-appointment, the Revenue District shall be the unit. The Legal Adviser to the Vigilance Division, the Additional Legal Adviser to the Vigilance Division and Assistant Public Prosecutor, Grade I shall belong to the State cadre.

These rules make it clear that so far as the post of Assistant Public Prosecutors Grade II are concerned, the unit for appointment, probation and seniority etc, is the Revenue District, even though the appointing authority is the State Government. Recruitment to the post of Assistant Public Prosecutors Grade II is therefore required to be made having regard to the requirements of each District for filling up the vacancies of Assistant Public Prosecutors Grade II that occur in the particular Revenue District. When appointments to the post of Assistant Public Prosecutors Grade II are made, the rules of reservation for appointment, namely, General Rules 14 to 17 of the Kerala State and Subordinate Services Rules are required to be followed. As the unit of appointment is the District for the purpose of appointment to the post of Assistant Public Prosecutors Grade II, it logically follows that the general Rules 14 to 17 regarding reservation have also to be applied, in respect of the unit of appointment, which in this case is the Revenue District. The State Government has, however, taken the stand that the number of vacancies for the post of Assistant Public Prosecutors are so small that it will not be convenient to apply to it elaborately the General Rules 14 to 17 in a very satisfactory manner. It was also submitted that the authorities have in fact been applying the General Rules 14 to 17 regarding reservation treating the entire State as a unit in the matter of filling up the post of Assistant Public Prosecutors Grade II, no doubt treating the State as a unit for appointment. That the number of vacancies of the post of Assistant Public Prosecutors Grade II is small or that the authorities have been operating the Rules in a particular manner are not by themselves sufficient grounds for holding that for the purpose of applying the General Rules 14 to 17 in the matter of appointment to the post of Assistant Public Prosecutors Grade II, the entire State should be taken as a unit. This would really do violence to Rule 5 which prescribes the Revenue District as a unit for appointment to the post of Assistant Public Prosecutors Grade II. There cannot be one unit for the purpose of appointment and another unit for the purpose of applying the rules regarding reservation, namely, General Rules 14 to 17. If, as contended by the learned High

Court Government Pleader in respect of recruitment for which the district is a unit, Rules 14 to 17 of the K.S. and S.S.R. regarding reservation on State-wise basis are applied, it will lead to absurdity. We shall illustrate this with an example. Let us assume that the next turn according to the rotation prescribed by the rules is reserved for a member of the Viswakarma community. If in more than one District there are candidates elected belonging to the Viswakarma community, the question would arise as to which Viswakarma candidate among those available from different districts that should be appointed in the said vacancy. This would undoubtedly lead to a situation where the State Government without any valid basis can pick and choose the candidate from a particular district for appointment to the said vacancy. The rules do not prescribe in what manner the appointments could be made in such a situation. This illustration clearly demonstrates that the application of the reservation rules on a State-wise basis, when district is the unit of appointment becomes unworkable and impracticable. As already stated, the very concept of recruitment being on a district-wise basis, rules of reservation must necessarily be applied only on a district-wise basis and not on any other basis. The procedure followed by the State Government by applying reservation Rules 14 to 17 on State-wise basis in the matter of appointment to the cadre of Assistant Public Prosecutors Grade II is therefore clearly illegal.

3. It therefore follows that the observation made in *Sunny v. State of Kerala* 1986 KLT 149 that the rules of reservation apply to each unlit and revenue district is correct and the observation made to the contrary in O.P. Nos. 4085, 5043 and 6169/1983 to the effect that the rotation is to be applied on a State-wise basis in such cases, with respect, does not state the law correctly.

4. We have therefore to proceed to determine the merits of the case applying reservation Rules 14 to 17 on district-wise basis in regard to the appointment to the cadre of Assistant Public Prosecutors, Grade II in the Trichur District. From the counter-affidavit filed in this case it is clear that the new rotation commenced from the year 1977. It has been further stated that after the commencement of the new rotation in the year 1977, seventy three appointments have been made in the entire State. So far as the district of Trichur is concerned it is stated that four appointments have been made as on 15th November 1989. In the absence of any material placed by the Petitioner to the contrary we see no good ground for not accepting these statements made in the counter affidavit. The two impugned appointments were made in April 1989. Therefore it follows that the four appointments made in Trichur District from 1977 to 15th November 1989 include the present two appointments also. If we look at the rotation which is in operation from 1977, we find that the allocation of the first four posts is as follows:

1. Open competition.
2. Ezhava, Thiyya and

3. Open competition

4. Scheduled Caste.

If as held by us reservation Rules 14 to 17 were applied on district-wise basis from the year 1977, the third and fourth vacancies with which we are concerned in this case would go to open competition and Scheduled Caste candidates respectively. Among the candidates selected from the Trichur district, Respondent No. 3, V.A. Sunil Kumar, has been placed at serial No. 1 in the merit list. The Petitioner has been placed at serial No. 2 and the 4th Respondent has been placed at serial No. 3 in the said list. It is therefore clear that as the first vacancy is available for open competition, the third Respondent being the first among, the merit candidates, he was rightly appointed. So far as the next vacancy is concerned, it is reserved for members of the Scheduled Caste. Firstly we have to ascertain as to whether there is a suitable Scheduled Caste candidate for appointment. The 4th Respondent who is a Scheduled Caste candidate has been placed at serial No. 3 in the merit list and has been found fit and suitable for appointment. Hence as the vacancy is reserved for Scheduled Castes and as the 4th Respondent is a Scheduled Caste candidate, he is entitled for appointment in the next vacancy, even though the Petitioner is placed above the Scheduled Caste candidate in the order of merit. Hence it follows that though the State has wrongly applied reservation Rules 14 to 17 on State-wise basis, when we examine the actual result of such operation, so far as the Trichur District is concerned it has made no difference as the same persons would have been selected and appointed by applying the reservation rules on district-wise basis. We therefore uphold the contention of the Petitioner that so far as appointment to the cadre of Assistant Public Prosecutors Grade II on district-wise basis is concerned, reservation Rules 14 to 17 should be applied on district-wise basis and not on State-wise basis. Applying the said principle we find that the actual appointments made in this case being consistent with the said principle, they do not require interference. Before concluding, we should observe that the next vacancy being available for open competition, if there arises any further vacancy before the expiry of the select list, it is obvious that the Petitioner would be entitled, to be accommodated in that vacancy.

For the reasons stated above this writ petition fails and is dismissed. No costs.