

C. P. Damodaran Nayar and P. S. Menon

Vs

State of Kerala and Others

Civil Appeals Nos. 2629 and 2630

(P. Jagmohan Reddy, P. K. Goswami JJ)

20.12.1973

JUDGMENT

GOSWAMI J. -

1. These appeals by certificate are directed against the Judgment of the Kerala High Court in Several writ application filed there challenging the final integration list of judicial officers allotted to Kerala State under the State Reorganisation Act, 1956, briefly the Act. The appellant in Civil Appeal No. 2629 of 1969 which we will take first was a practising Advocate. He was recruited along with 82 others by the Madras Public Service Commission briefly the Commission, and was temporarily appointed as a District Munsiff by the Madras Government on November 25, 1950. This appointment was under Rule 7-A of the Madras State Judicial Service Rules, then in force. The madras High Court posted him for training he was posted him for training which commenced on January 16, 1951 and while undergoing training he was posted as District Munsiff at Calicut where he took charge of this post on May 26, 1951. Since then he has been in continuous service as Munsiff Subordinate Judge District Magistrate and as District Judge. One B Venkataramana who had not been selected as District Munsiff along with the appellant and others in 1950 : challenged the selection made by the Commission in a writ petition before this court. This Court allowed the petition and decision is reported in B. Venkataramana v. The State of Madras & Another. (AIR 1951 SC 229 : 1951 SCI 318) This Court held that the Communal G.O. of the Madras & Government which besides making reservation of posts for Harijan and backward Hindus as sanctioned by clause (4) of Article 16 also made reservation of posts for other communities viz. Muslim Christians. Non Brahmin Hindus and Brahmins was repugnant to the provisions of Article 16 and was as such void and illegal. The Court however did not cancel all the appointments made during the year but directed the Government to consider and dispose of the application of Venkataramana on its merits and without applying the rule of communal rotation. It may be mentioned that the appellant here and other successful candidates were jointed as respondents in the said writ petition before this court. Venkataramana was accordingly selected and appointed as District Munsiff and he took charge of his office on October 6, 1951. Consequent upon the decision in that case the Madras State Judicial Service Rules (briefly the Madras Rules) were framed on October 6, 1953 under Article 234 read with Article 309 of the Constitution. These Rules came into effect retrospectively from March 22, 1951. It is s thus under Rule 11(2) of the Madras Rules. On November 2, 1953, the Madras Government directed that the services of the appellant along with other candidate be regularised w.e.f. October 6, 1951 the same date from which Venkataramana's appointment has been so done (vide Ext. P-7). It is also mentioned in this order that the 82 officers mentioned in the schedule to the order including Venkataramana (Serial No. 27) and the appellant (Serial No. 72) will commence probation from that date. The Government, however, sanctioned increment in the time scale to the appellant and he other District Munsiffs appointed in 1950 and 1951 from the date of

commencement of continuous service (vide Ext. P-6). Consequent upon the passing of the States Reorganisation Act on August 31, 1956, 51 judicial officers including the appellant belonging to different cadres like District Judge, District Magistrate sub-judge, Munsiff and Sub-Magistrate were transferred from the madras State to the Kerala State on September 11, 1956. The appellant was finally allotted to Kerala w. e.f. October 24, 1956, as per order of Government of India dated August 24, 1960 under the Act. The State of Kerala was brought into being w.e.f. November 1, 1956. We may note here that the new Kerala State was formed under Section 5 of the Act comprising the territories of the existing State of Travancore-Cochin excluding the territories transferred to the State of Madras by Section 4 and the territories comprised in Malabar district, excluding the islands of Laccadive and Minicoy and Kasaragod taluk of South Kanara district.

2. The Government of Kerala passed an order (Ext. P-16) regarding reorganisation of judicial services. After the reorganisation of States, Principles were evolved and formulated by the Central Government at the conference of Chief Secretaries of the different States regarding integration of services. The Kerala Government framed principle and procedure regarding integration of service of Travancore-Cochin personnel with the personnel allotted from madras (vide Ext. P-12). The Madras Government also framed general principles for integration of services by their order dated July 17, 1957 (vide Ext. P-14). The Government of Kerala issued orders regarding equation of posts in the Judicial Department for the purpose of integration of service on May 27, 1958 (vide Ext P-17). The equation was as follows :

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"TRAVANCORE - COCHIN MADRAS

(i) District Judges I Grade District Judges II GradeRs. 800-1,000. Rs. 1000-1,800

(ii) District and Sessions District Magistrate (Judl)Judge, II Grade Rs. 500-800 Rs. 500-700 plus Spl. pay Rs. 50.

(iii) District Magistrate Rs. Sub - Judges on Rs. 550-700500-800 Addl. District andSessions Judges and Sub-JudgesRs. 450-600.

(iv) Sub-Divisional magistrates I District Munsiff and Sub-Grade Rs. 450-600. Munsiffs and Divisional Magistrate Rs.Sub-Divisional Magistrates Grade II 300-700.on Rs. 250-500.(v) Sub-Magistrate Rs. 200-300. Sub-Magistrates Rs. 200-300."##

The appellant preferred an appeal against this order through the Kerala High Court and the Government of Kerala to the Advisory Committee constituted by the Central Government under Section 115(5) of the Act challenging amount other things that the principles evolved for the equation of posts were illegal and unjust. Meanwhile the Government of Kerala on September 24, 1959, order that it would not be proper to equate the District Magistrates and the Sub-Divisional Magistrate of Grade I and II of 'executive origin' belonging to the erstwhile Travancore Cochin State with the Civil Judicial Officers and that the same should be kept separate until the Magisterial Officer were induced into the Civil Judiciary in the manner prescribed under Article 234 of the Constitution. By the same order it was provided that the three posts of the District Magistrates (actually four since one was omitted through mistake) and eight posts of Sub-Divisional Magistrate of Travancore-Cochin area would be constituted as a Separate service outside the Civil Judiciary so

as to enable the incumbents to continue in their posts (vide Ext. p-21). On the same date, the Government of Kerala passed an order under Art. 234 of the Constitution by which the salaried Magisterial Officers of the former Travancore- Cochin State in the categories of District Munsiffs and Sub-Divisional Magistrate were made eligible for appointment to the categories of Subordinate Judges and Munsiffs respectively (vide Ext. p-27). The appellant preferred an appeal against the order (Ext P-21) on October 20, 1959 (vide Ext. P-22). He pointed out that if the aforesaid order (Ext. P-21) was implemented there was likelihood of the Sub-Divisional Magistrates who had got far less service than that of the Munsiffs securing promotion over such Munsiffs. The Kerala Government passed a final order regarding the equation of posts in the Judiciary on July 24, 1961 (vide Ext P-23) and informed the appellant that appeal had been rejected by the Government of India., The Government of Kerala published the preliminary integrated list of Judicial Officers on April 24, 1962 (vide Ext. P-25). Other Officers also filed representations and appeals against the same. In the preliminary integrated gradation list of the Travancore-Cochin and Madras personnel as on November 1, 1956, the appellant was shown against serial No. 44 and his date of commencement of continuous service as well as the date of appointment to the post of equated category was shown as May 26, 1951. Respondents 6 and 7 were shown below him against serial Nos. 46 and 47 respectively in the list. Their dates of commencement of continuous service are July 20, 1951 and October 1, 1951 respectively and the same are the date of appointment of the post of equated category in the list. After publication of the preliminary integrated list the Government of Kerala issued two orders on May 16, 1962 and May 10, 1963 (vide Exts. P-1 and P-2) respectively. P-2 has superseded the earlier order P-1 and some other orders. We may quote the relevant portion of the order in Ext. P-2 which runs as follows :

"The Government of India have considered the representation of the officers and have decided as follows :

(i) The officers allotted to Kerala from Madras may be allowed the benefit of emergency service towards seniority in the equated category if such service would have been regularised from the date of their emergency appointed and counted for inter-State seniority in integration in Madras on 1.11.1956 had they remained in Madras.

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This Decision of the Government of India was accepted by the Kerala Government. On the subject of taking into account the emergency Service there was correspondence between the Central Government and the Government of Kerala (vide Ext. P-32 dated March 1, 1962). On the same subject-matter there were two letters from the Government of Madras addressed to the Kerala Government (vide Exts. P-34 dated dated July 20, 1963 and P-35 dated November 7, 1963) to the Secretary Allotted Agricultural Officers Association Calicut. The Kerala Government also on February 11, 1966, framed certain ad hoc rules (vide Ext. P-28) for absorption of Criminal side Judicial Officers of the Travancore Cochin Branch who were kept in a separate cadre. These rules inter alia provided that for the purpose of determining seniority date of commencement of continuous service in the post of District Magistrate shall be deemed to be the date of first appointment to the category of Sub-Judge. The appellant's appeals were ultimately rejected by the Government of India on March 26, 1956 the Government of Kerala published the final integrated list of the Travancore-Cochin and Madras personnel of Judicial Officers as on November 1, 1956.(vide Ex. P-31) showing respondents 6 and 7, who were junior to him as per the preliminary integrated list, now placed above him in the final list. In the preliminary list although his date of

commencement of continuous services shown as May 26, 1951. He was assigned in the final list October 6, 1951 being the date of his appointment to the post in the equated category as on November 1, 1956. In the above background, the appellant filed a writ application in the High Court of Kerala praying for restraining the State Government and the Registrar of the High Court from implementing Ext. P-31 the final list and to award to the appellant appropriate rank and seniority above respondents Nos. 6 and 7 amongst other prayers. His application came up before a Full Bench of the High Court and the same was rejected. The respondents were impleaded in the High Court in a representative capacity and the High Courts order under Or 1, R. 8, Civil Procedure Code were obtained and the notice was published in the newspaper.

3. Several questions were raised before the High Court but the appellant here has made two main submissions :

(1) His seniority in service in the integrated Judicial service in Kerala should be counted from May 26, 1951, the date on which he joined service and from which he has continuously been working.

(2) There is no justification in law for creation of a separate cadre for creation of a separate cadre for Magistrate of the executive origin and for reserving four posts of District Magistrates, exclusively in favour of Sub-Divisional Magistrates of executive origin.

The appellant's grievance is that he should have been assigned May 26, 1951 instead of October 6, 1951. It is clear that under Section 115(5) of the Act :

"the Central Government may be order establish one or more Advisory Committees for the purpose of assisting it in regard to -

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Section and the proper consideration of any representation made by such persons."

Under Section 117 of the Act :

"the Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions."

In accordance with the provisions of this Act, a meeting of the Chief Secretaries of the various States, that were to be affected by the reorganisation, was held on May 18-19, 1956, at the invitation of the Central Government. In this meeting certain decisions were taken as to the general principles that should be observed with regard to the integration work. The Government of India thereafter informed the State Government that they had decide that the work of integration of service should be dealt with by the State Governments in the light of general principles already decided in the meeting of the Chief Secretaries. With regard to the principle for determining equation at the of posts and relative seniority, the following conclusions were reached at the conference of the Chief

Secretaries :

"It was agreed that in determining the equation of posts, the following factors should be borne in mind :-

- (i) the nature and duties of a post :
- (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any prescribed for recruitment to the post;
- (iv) the salary of the post;

It was agreed that in determining relative seniority as between two persons holding posts declared equivalent to each other and drawn from different States, the following points should be taken into account :-

- (i) length of continuous service, whether temporary or permanent in a particular grade; this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement;
- (ii) age of the person; other factors being equal, for instance, seniority may be determined on the basis of age.

Note : It was also agreed that as far as possible, the inter se seniority officers drawn from the same State should not be disturbed."

4. This position was altered, as already noted earlier, when the Central Government after considering the representations of the officers made under Section 115(5) of the Act decided that :

"the officers allocated to Kerala State from former Madras may be allowed the benefit of emergency service towards seniority in the equated category if such service towards service (sic) would have been regularised from the date of their emergency appointment and counted for inter-State seniority in integration on November 1, 1956, had these officers remained in Madras."

(vide Ext. P-33 dated February 16, 1963 which modified Ext. P-32 dated March 1, 1962). We have also referred to a letter from the Government of Madras to the Kerala Government dated July 20, 1963 (Ext. P-34) wherefrom the following extract is relevant :

"According to sub-paragraph (2) of paragraph 1 of the said G.O. the date from which an allottee to this State from the former Travancore-Cochin State was continuously holding the corresponding post in the former Travancore-Cochin State, is taken into account for the purpose of fixing his seniority in the equated cadre in this State. Therefore, for drawing up the integrated gradation list under sub-paragraph (2) of paragraph 1 of the said G.O. only continuous service whether regular, temporary or emergency of the allottees is taken into account."

Hence the position in Madras is that continuous service of the appellant "whether regular, temporary or emergency" would have been taken into account for the purpose of seniority. It is also clear and not even disputed that the appellant has been in continuous service from May 26, 1951. That being the position, the conclusion is irresistible in view of the Government's decision (vide Ext. P-33) that the appellant was entitled to the assignment of May 26, 1951 date for the purpose of his seniority.

5. Dr. Syed Mohamad, on behalf of respondent No. 1, submits that the question has to be decided with reference to Rule 11 (2) of the Madras Rules. The same may be set out :

"11(2) : Where the appointment of a person as District Munsiff in accordance with these Rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience. The Governor may appoint any other person in the list of approved candidates. A person appointed under this Rule shall not be regarded as a probationer in the service or be entitled by reason only of such appointment to any preferential claim to future appointment to the service."

6. The High Court accepted this submission when it observed as follows :

"The appointment under Rule 11(2) is a temporary appointment and it is so stated in the Rule itself. Appointment under Rule 11(3) also is a temporary appointment though this can be even of persons who do not figure at all in any select-list prepared after the selection by the Public Service Commission. A reading of the Rule - Rule 11(3) of the Madras State Judicial Service Rules-shows that this Rule will be resorted to in cases of emergency. Suffice to say at this Stage that service rendered in a temporary capacity by virtue of appointments under Rule 11(2) or 11 (3), at any rate the whole of it, did not necessarily count for the purpose of inter se seniority among the persons who belonged to the particular service in the State of Madras. The Government of India decided that this service which did not count for inter se seniority among the Madras personnel in the State of Madras and did not count for inter-State seniority in the matter of integration of the personnel that remained in the State of Madras with those that have been allotted to the State of Madras, will not count for inter-State seniority of personnel allotted from the State of Madras to the State of Kerala, for the purpose of integration with the Travancore-Cochin personnel".

It is true that Rule 11 deals with temporary appointments. Rule 11(3) however, is not at all relevant for the purpose of the present case. The question that arises for consideration is that whether after final allotment of the appellant under the Act to the State of Kerala, the application of the Madras Rule would be at all relevant in face of a clear decision of the Government of India made under the Act. We have to hold in the negative. Apart from that, the Government of India took a decision which also the Kerala Government had accepted (vide Ext. P-2) as already set out. In this view of the matter we are unable to agree with the High Court that the appellant had been correctly assigned his date October 6, 1951 instead of May 26, 1951.

7. It is next submitted by the learned Counsel for respondent No. 1 that the appointment of the appellant was "purely stop-gap or fortuitous arrangement" as mentioned in the principles agreed at the meeting of the Chief Secretaries. He also tries to reinforce his argument by referring to Rule 11(3) which provides that "where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in the category of District Munsiffs" Assuming that Rule

11(3) may be invoked and the earlier decision of the Government of India in conformity with the agreement of the Chief Secretaries referring to "purely stop-gap or fortuitous arrangement" are applicable, we are unable to agree that the appellant's service is either filled "owing to an emergency" or that the same is held in a "purely stop-gap or fortuitous arrangement". The learned Counsel for respondent No. 1 followed by the Counsel for the Union of India has submitted that on account of the writ application by Venkataramana in the High Court the appointment of the appellant had to be made as a temporary measure as has been mentioned in the letter of appointment itself. We are, however, unable to accept this submission as correct. It is common ground that the appellant has been appointed in a regular manner through the Public Service Commission and his appointment cannot be any stretch of imagination be made to fill a "purely stop-gap or fortuitous" vacuum. As noticed earlier, the Government of India has accepted the position that an allotted employee should not suffer any disadvantage if he would not have been subjected to a like handicap in his parent State. It is clear from the position taken by the Madras Government that the appellant would have got the benefit of his continuous appointment in Madras w.e.f. May 26, 1951 (vide Ext. P-34). That being the position the submissions of the learned Counsel for the respondents are of no avail. We hold that the appellant should be given the benefit of his seniority reckoning his continuous appointment and assigning the date May 26, 1951 and substituting the same in the final list for October 6, 1951.

8. With regard to the second submission of the appellant regarding the reservation of a separate cadre for the District Magistrates and Sub-Divisional Magistrates of executive origin, we do not see any force in his contention. It is open to the State Government to constitute as many cadres as they choose according to administrative convenience and expediency. There is, therefore, no merit in the objection to the creation of a separate cadre of District Magistrates and Sub-Divisional Magistrates of executive origin. The submission of the appellant is without any force.

9. With regard to Civil Appeal No. 2630 of 1969 of P. S. Menon, Sub-Judge Quilon, the above submissions, which we have dealt with, were also advanced in his case. For the same reasons, the appellant in this appeal will be entitled to assignment of February 12, 1955 as the date of continuous employment of his service after allotment to the Kerala State for the purpose of his seniority. The learned Counsel, however, additionally contends that he should have the benefit or what is described as the K.L.M. Principle in the following circumstances.

10. One Sethu Madhavan who is admittedly junior to the appellant, was provisionally allotted to the State of Kerala along with the appellant at the initial stage when the new State was constituted. Late on, however, Sethu Madhavan arranged a mutual transfer with a judicial Officer from Madras who desired to take transfer to Kerala and for that reason his provisional allotment was cancelled and he was not finally allotted to Kerala. In the final integration list Sethu Madhavan's name, therefore, does not appear.

11. If Sethu Madhavan had remained in Kerala, the position of the appellant in the list might have been different, since Sethu Madhavan's date of continuous service is July 1, 1954. But the final list will now have to be judged without taking note of Sethu Madhavan who had already left the State. It is submitted that since the final list has been prepared on November 1, 1956, the appellant should get the benefit of his date. Since, however, Sethu Madhavan cannot be held to be in service in Kerala for the purpose of the final integrated list, the appellant is not entitled to assignment of his date.

12. We may now describe what the K.L.M. Principle is. The expression 'K.L.M. Principle' which

came into existence in the Travancore-Cochin State by an Order dated September 27, 1950, has been described in the following words by the High Court in the Judgment :

"The relative seniority of the Travancore and Cochin personnel in any class or grade in the common seniority list will be determined with reference to the date of commencement of continuous service in the same or similar class or grade of posts subject, however, to the condition that the seniority of the Travancore personnel as between themselves or of the Cochin personnel as between themselves should not thereby be disturbed".

13. Dealing with the point the High Court observed as follows :

"Though the said Sethu Madhavan commenced service earlier in the State of Madras he was admittedly Junior to the petitioner and therefore it will become necessary for settling the inter se seniority of the petitioner vis-a-vis Sethu Madhavan to assign to the petitioner in integrated gradation list a place above the said Sethu Madhavan. This is so because the principle settled as early as 29th December 1956 by G.O. of that date clearly provided that in effecting integration the inter se seniority of persons in either branch that are integrated should not be affected. The question however cannot arise when there is no need to fix the inter seniority of the petitioner vis-a-vis the said Sethu Madhavan".

14. We agree with the above observations of the High Court and reject the submission of the appellant that he is entitled to the benefit of K.L.M. Principle on the basis of the provisional allotment of Sethu Madhavan.

15. It may be mentioned that we had allowed without objection from the respondent CMP No. 9761 of 1973 and admitted the document mentioned therein.

16. In the result the appeals are partly allowed. Respondents Nos. 1 and 2 are directed to assign the appellant O.P. Damodaran Nayar, the date May 26, 1951, by substituting the same for October 6, 1951, in the final integration list and to give him the consequential benefits to which he may be entitled by virtue of the assignment. The aforesaid respondents are also directed to assign to the appellant. P. S. Menon the date February 12, 1955, in the final integration list and to give him such consequential relief as he may be entitled to in pursuance of the new assigned date. The judgment of the High Court is set aside only to the extent indicated above. The appellants are entitled to costs in this Court. Two sets only.

17. Civil Appeals Nos. 304 and 305 of 1972 are identical by the same two appellants and they stand disposed of accordingly by this judgment.

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