

**SUPREME COURT OF INDIA**

Dalilah Sojah

Vs.

State of Kerala

C.A.No.2967 of 1984

(K. Venkataswami and B. N. Kirpal JJ.)

03.12.1997

**ORDER**

1. Special leave granted.

2. The only question which serves for consideration in these appeals relates to the seniority of the appellant vis-a-vis respondent as Legal Assistant in the Department of Law under the Kerala Government.

3. The selection for the said post of Legal Assistant took place and a select list was issued on 23rd June, 1971. The name of the appellant was included therein. In view of the fact that there were some reservations which have been made for the OBCs and there was a likelihood that if the appellant had been appointed there would have been a disturbance of the 50% reservation which was permitted, the appointment of the appellant was not made and she was passed over. It is an admitted fact that the appellant was entitled to be appointed against the future vacancy as and when it arose.

4. On 6th October, 1972 two vacancies were reported and requisition was made for the selection to these posts. Even though the appellant was entitled to be appointed against one of these posts, no appointment was in fact made. Thereafter, a fresh selection was made which resulted in a new list being prepared on 22nd March, 1974. The respondents in both these appeals were included in the said list but the name of the appellant was placed at Serial No. 1 inasmuch as she had been passed over from the earlier list which had been prepared on 23rd June, 1971.

5. The respondents in Civil Appeal No. 2967/84 filed a writ petition in the High Court of Kerala, inter alia, challenging the appointment of the appellant herein and her being placed at Serial No. 1 in the select list. The High Court came to the conclusion that the select list of 23rd June, 1971 in which the name of the appellant had been included had come to an end on 14th June, 1973 and, therefore, when the second list was prepared on 22nd March, 1974, the appellant herein could not have been included in that list. The High Court did not disturb the appointment of the appellant but observed that the writ petitioners before it would rank senior to the appellant. It appears that subsequent to the aforesaid decision the Government issued an administrative order granting seniority to the respondents in the second appeal on applying the same ratio which had been applied by the High Court. On challenge to that order by the appellant being unsuccessful, appeal by special leave has been filed in this Court.

6. It appears to us that the appellant has been made to suffer for no fault of hers. From the facts enumerated hereinabove, it is quite clear that when two vacancies arose on 6th October, 1972, the appellant had a right to be appointed against one of the said vacancies. At that point of time none of the respondents had even been selected for appointment to the said post, their selection having been notified only on the second list which was prepared on 22nd March, 1974. The right which had, therefore, accrued to the appellant for appointment against a vacancy after she had been duly selected could not have been taken away merely because of the delay or inaction on the part of the Government in notifying her appointment. The High Court, in our opinion, fell in error in observing that the appellant's name could not be placed at Serial No. 1 in the second select list. What was in fact done was that the appellant was being appointed against the vacancy which had arisen on 6th October, 1972 when, admittedly, the select list was still alive. We see no reason, under these circumstances, when the appointment of the appellant has not been set aside, as to why she should be deprived of the seniority. She was selected earlier in point of time than the respondents and her selection should have resulted, as it must now, with her filling the vacancy which had arisen on 6th October, 1972.

7. The conclusion of the High Court and the decision of the Government in treating her to be junior than the respondents was obviously not correct. We, therefore, allow these appeals and set aside the impugned judgments of the High Court. Consequently, we dismiss O. P. No. 5588/75 and allow O. P. No. 480/81 making it clear that the appellant will be placed as No. 1 in seniority above the respondents 3 to 7 in C. A. No. 2967/84.

8. No order as to costs.

Appeal allowed.