K. Viswambharan

Vs

State of Kerala and Others

Civil Appeal No. 2686 of 1989

(K. Venkataswami, A. P. Mishra JJ)

11.12.1997

ORDER

1. This appeal is directed against the judgment of the Division Bench of the Kerala High Court in Writ Appeal No. 629 of 1987, dated 4-4-1989/5-4-1989. It appears that the appellant was originally selected and appointed as Teacher in the District of Calicut in the year 1961. Subsequently, he applied, pursuant to an advertisement, for the post of Teacher in the District of Quilon in the year 1963. He was selected and appointed as a Teacher in Quilon District in 1963. It is common ground that the seniority of Teachers is maintained district-wise. But for further promotion, it is on the basis of the seniority list drawn State-wise. The question that was raised before the High Court was whether the services rendered by the appellant in Calicut District in the year 1961-63 can be carried forward and counted along with the services in Quilon District from 1963. The services of the appellant, in fact, were counted for the purpose of State-wise seniority only from the year 1963 when he started serving in Quilon District. Aggrieved by that, the appellant moved the High Court and the learned Single Judge allowed the writ petition. However, the Division Bench, on appeal, reversed the judgment of the learned Single Judge on the basis of an interpretation given to Rule 38 of the Kerala State and Subordinate Service Rules.

2. Mr. P. S. Poti, learned Senior Counsel appearing for the appellant, submitted that there is a distinction between transfer from one district to another and appointment in one district in the first instance and the appointment in another district and the interpretation placed by the Division Bench on Rule 38 was not correct. According to the learned counsel, unless the appellant is shown that he has relinquished his rights in writing as required in Rule 38, the services of the appellant rendered as a Teacher in Calicut District should be taken into account and added to the services rendered by the appellant in Quilon District. The view taken by the Division Bench that the relinquishment need not always be in writing and the same can be inferred, cannot be sustained. The Division Bench, while interpreting Rule 38, observed as follows :

> "The learned Single Judge has taken the view that this is not a case of relinquishment as understood by Rule 38 of the KS & SSR. The learned High Court Government Pleader however contended that though there is no formal written request by the first respondent to relinquish the right or privilege of appointment which the first respondent had acquired in the district of Calicut, when he secured appointment in the district of Quilon, such an inference of relinquishment must be drawn taking into consideration the conduct of the first respondent and all the surrounding circumstances. Rule 38 of the KS & SSR which deals with relinquishment of rights by the government servants reads as follows :

> '38. Relinquishment of rights by members. - Any person may, in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules, if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest, and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.
>
> Explanation. - The relinquishment of the right for promotion under this rule shall entail loss of seniority and a relinquishment of the right for promotion shall not be permissible unless such relinquishment entails loss of seniority.'
>
> What is quite clear from Rule 38 is that if a relinquishment is made as contemplated by the said provision, the authorities shall not be required to recognise any right or privilege which has been relinquished. If the first respondent relinquished his right as High School Assistant in the district of Calicut and secured an appointment in the district of Quilon, he cannot claim the benefit of the service rendered by him as a High School Assistant in the district of Calicut before his appointment in the district of Quilon. But Shri Sudhakara Prasad, learned counsel for the first respondent, strenuously contended that this is not a case of relinquishment in accordance with Rule 38. He submitted that the first respondent has not given up any right in relinquishment of his appointment or any right which he had acquired in the district of Calicut. It was submitted that the relinquishment contemplated by Rule 38 which can be recognised is only that relinquishment which is made in writing. Though Rule 38 contemplates relinquishment in writing we are not inclined to agree with the contention that if the relinquishment is made otherwise than in writing, the same is not a valid relinquishment under law. The rule contemplated relinquishment in writing to avoid undue dispute and difficulties in the matter of proof regarding relinquishment. If the relinquishment is made in writing, nothing further would be required to establish the relinquishment. Relinquishment in writing is contemplated by Rule 38 only for the purpose of facilitating proof and not as an essential condition for relinquishment becoming effective. This Court has consistently taken the view in WAs Nos. 305 of 1983, 380 of 1987 etc. that inference of relinquishment can be drawn from the conduct of the government servant and the surrounding circumstances. A person holding a particular post when another post was advertised, applied for the same, offered himself as a candidate, got himself selected and accepted that post, an inference that he relinquished the post earlier held by him can reasonably and legitimately be drawn. The conduct of the party who holds a particular post, if he is attracted by another offer of appointment and accepts the same, in the absence of any other reservation specifically made at the time of accepting the new appointment, the only reasonable inference possible is that he relinquished the former job for the purpose of taking up the new appointment."

3. We are of the view that no exception can be taken to the view expressed by the Division Bench and we agree with the reasons given by the Division Bench as above. As we agree with the reasons given by the Division Bench on the interpretation of Rule 38, the consequences will be that the view taken by the Division Bench, on facts, will hold good. Accordingly, the appeal fails and is dismissed. No costs.