

SUPREME COURT OF INDIA

K. Haridas

Vs.

High Court of Kerala

(V.N. Khare and Y.K. Sabharwal JJ.)

04.04.2000

ORDER

V.N. KHARE, J.

1. Appellant herein was recruited as Judicial Magistrate, IInd Class and joined the said post on 4.12.1981. On 30th May, 1983 he was temporarily promoted to the post of Magistrate, 1st Class. Rule 12 of Criminal Judicial Service Rules (hereinafter referred to as Judicial Service Rules') provides that every person appointed to the service either by direct recruitment or by transfer would be placed on probation for a total period of two years on duty within a continuous period of 3 years and if appointed according to terms of appointment such officers like the appellant were required to pass an examination during the period of probation. In the test held in December, 1984 the appellant was unsuccessful. As a result of the examination, a panel of successful officers was prepared for promotion to the post of Magistrate, Ist Class. The officers on the said panel were junior to the appellant. Since the appellant could not pass the examination his period of probation was extended from 9.5.84 to 9.5.85. By an order dated 30th March, 1985 the appellant was reverted to the post of Judicial Magistrate, 11th Class. Subsequently, the petitioner passed the examination and the result was declared on 20th May, 1985. Thus; the appellant passed the examination during the extended period probation. After the appellant passed the examination he was shown as junior to respondent nos. 4 to 22 who were promoted on the basis of panel prepared in December, 1984. It is at this stage the petitioner filed a petition under Article 226 of the Constitution challenging his reversion and seniority list. The said writ petition was dismissed and the writ appeal filed against the judgment of the Single Judge, was also dismissed. It is in this way the appellant is in appeal before us.

2. Learned Counsel for the appellant urged that the appellant having passed the examination within the probation period of three years, his seniority could not have been assigned below to respondents 4 to 22 and his fixation of seniority is contrary to Rule 28(a) of Kerala State Service Rules (hereinafter referred to as State Service Rules'). No doubt the argument is attractive. Rule 12 of Judicial Service Rules runs as under:

12. Probation - (1) every person appointed to any category shall, from the date on which he joins duty, be on probation, if he is recruited direct or by transfer for a total period of two years on duty within a continuous period of three years and if appointed by promotion, for a total period of one year on duty within a continuous period of two years.

(2) The authority competent to extend the period of probation and to declare the satisfactory completion of the period of probation shall be the High Court.

3. A plain reading of Rule 12 shows that the period of probation is for two years which can be extended by another year and this is also the stand of High Court in the counter affidavit filed in this Court.

4. Relevant portion of Rule 28(a) of State Service Rules reads as under: