

SUPREME COURT OF INDIA

B.Rugmini Amma

Vs.

B.S.Nirmala Kumari

C.A.No.1919 of 2008

(H.L.Gokhale and Ranjan Gogoi JJ.)

06.05.2013

JUDGMENT

RANJAN GOGOI, J.

1. An appellate order dated 01.02.2006 of the Kerala High Court affirming the order dated 09.02.2005 of the learned Single Judge passed in a writ petition has been put to challenge in this appeal. The aforesaid two orders having somewhat circumscribed the perceived avenues for promotion of Graduate Typists/Confidential Assistants to the post of Section Officer in the Administrative Secretariat, two affected Graduate Typists, who have since been promoted to even higher post in the Secretariat, have instituted the present appeal.

2. To unravel the controversy between the parties, a brief narration of the essential facts would be required. Initially, a Government Order (for short "G.O.") dated 10.1.1977 governed the method of promotions to the post of Section Officer in the Administrative Secretariat and also laid down the essential qualifications of the incumbents in the feeder category to be eligible for consideration for such promotion. The aforesaid G.O. dated 10.1.1977 was superseded by another order dated 5.6.1989 under which G.O. three categories of incumbents in the ratio of 15:1:1 (in a cluster of 17 posts) were made eligible for promotion to the post of Section Officer. Senior Grade Assistants, Typists and Confidential Assistants (in that order) formed the feeder categories eligible for consideration for promotion. Insofar as Typists and Confidential Assistants are concerned, the requirement spelt out by the G.O. dated 5.6.1989 is that they should have passed the Secondary School Leaving Certificate (S.S.L.C.) examination besides passing a suitability test conducted by the Kerala Public Service Commission. Such an incumbent should

also have satisfactorily completed training as Assistant for a minimum period of one year. It would be necessary to specifically notice that by the G.O. dated 5.6.1989, Graduate Typists and Confidential Assistants were continued to be exempted from passing the suitability test for promotion to the post of Section Officer in terms of an earlier G.O. dated 17.6.1988. The aforesaid G.O. dated 17.6.1988 exempted the Graduate Typists and Confidential Assistants in the Administrative Secretariat from passing the qualifying examination subject to the conditions mentioned in the several clauses thereto. Clause (d) being the relevant clause may be usefully noticed at this stage. “The graduate typists/confidential assistants will not be appointed as Section Officer in preference to the typists/confidential assistants who have already passed the suitability test and who are awaiting appointment as Section Officer. However, qualified and eligible graduate typists/confidential assistants will be appointed as Section Officers if eligible suitability test passed trained typists/confidential assistants are not available in their turn for appointment as Section Officer.”

3. Clause (d) contained in the G.O. dated 17.6.1988 came to be subjected to different interpretations and understandings unravelling several ambiguities. The core of the controversy was with regard to the purport and effect of the exemption, namely, whether it gave a preferential right to Graduate Typists/Confidential Assistants for consideration for promotion and, if so, was the said right available in perpetuity after the date of coming into force of the G.O. w.e.f. 17.6.1988. The aforesaid controversy between the Graduate and Non-graduate aspirants for the promotional post was attempted to be resolved by several court orders until the Government thought it appropriate to clarify the matter by issuing a subsequent G.O. almost a decade later, i.e., on 19.3.1998. The aforesaid G.O. dated 19.3.1998 which is on record goes on to recite that, “The Typists/Confidential Assistants who had passed the Suitability Test and completed the training for one year as Assistant and became qualified for appointment as Section Officer in the Administrative Secretariat as on 17.06.1988 alone would be eligible for preference over the Graduate Typists/Confidential Assistants”.

4. The private respondents in the appeal, who are Non-graduates, moved the High Court of Kerala under Article 226 challenging what they contended to be their belated promotion to the post of Section Officer and the accelerated promotions given to the present appellants (impleaded as respondents in the writ petition) notwithstanding the fact that the respondent-writ petitioners were available for consideration for promotion, having passed the suitability test and also having undergone the requisite period of training of one year. The learned Single Judge upheld the contentions made by the Non-graduates in the writ petitions filed and

took the view that the G.O. dated 17.3.1998, if read to contain a preference in favour of the Graduates would amount to virtually setting at naught the effect of the initial orders which merely provided an exemption to the graduate typists/confidential assistants. The writ petition, therefore, was allowed with consequential directions to the State to give due benefits to the petitioners (respondents herein) and scale down the undue benefits that had already been conferred on the Graduates. Aggrieved, the Graduate Section Officers moved the High Court in its Letters Patent jurisdiction. The Division Bench by its order dated 01.02.2006 having affirmed the view taken by the learned Single Judge, the Graduate Section Officers have filed this appeal.

5. Efflux of time has resulted in a virtual erosion of the substantive rights of the parties before us, as admittedly most of them, if not all, have in the meantime retired and such of them who may still be in service could possibly be on the verge of completion of their tenure. Nevertheless as the legal issue(s) survive, an analysis thereof and a resolution must be made.

6. Under the initial G.O. dated 10.01.1977 Typists and Confidential Assistants were required to pass a qualifying examination to be conducted by the Public Service Commission and thereafter to complete one year of training as Assistant in order to be eligible for promotion to the post of Section Officer. The second requirement i.e. completion of a period of one year of training is not in issue in the present proceedings. In order to provide some kind of incentive to the Graduates who were working as Typists/Confidential Assistants (a somewhat unusual feature at that point of time), an exemption was granted to these Graduates from the requirement of passing the qualifying/ suitability test by the G.O. dated 17.6.1988. However, the aforesaid G.O. in clause (d) had made it clear that Graduates/Confidential Assistants will not be appointed in preference to the Non-graduates who have already passed the suitability test and were awaiting promotion as Section Officer. The aforesaid clause (d) also made it clear that Graduate Typists/Confidential Assistants will be considered for promotion only if eligible Non-graduates were not available. Properly read, the G.O. dated 17.6.1988 merely exempted Graduate Typists/ Confidential Assistants from the requirement of passing the qualifying examination. The said G.O. did not give any priority/preference in the matter of promotion to the Graduates over the qualified Undergraduates/Non- graduates. The clarificatory G.O. dated 19.3.1998, though seeking to clarify and throw light on the confusion caused by reading the date of the G.O. i.e. 17.6.1988 as a cut off date for working out a preference in favour of the Graduates, had gone beyond the terms of the main G.O. dated 17.6.1988 by stating that it is only those Typists and Confidential Assistants who had passed the

qualifying examination before 17.6.1988 who will be entitled to have priority over Graduate Typists/Confidential Assistants. How the clarification sought to be made by the G.O. dated 19.3.1998 could have the effect of giving priority to either of the 2 groups of incumbents when no such priority or preference was contemplated by the initial G.O. dated 17.6.1988 defies logic. The above stated effect of the clarification, if accepted, would occasion a corollary that after 17.6.1988, Graduate Typists/Confidential Assistants will always have priority over Non-graduates though such Non-graduates may have passed the qualifying examination and are otherwise eligible for promotion. If the above meaning is to be attributed to the clarificatory G.O. the same would surpass the main G.O. dated 17.6.1988. The effect of the clarificatory G.O. cannot, by any means, supersede or override the terms of the main order. This is an elementary principle of interpretation. This is precisely how the High Court has understood the issue before it and has held that the original G.O. dated 17.6.1988 merely exempts Graduate Typists/ Confidential Assistants from passing the suitability test and no further. If that is the true purport and effect of the G.O. dated 17.6.1988, on which we have no doubt, naturally, the clarificatory G.O. has to be restricted in its meaning as has been done by the High Court and cannot be allowed to work to the undue advantage of the Graduates and to the detriment of the non-Graduates.

7. For the aforesaid reasons, we do not find any merit in this appeal. We accordingly dismiss the same and affirm the judgment and order dated 01.02.2006 of the Division Bench of the High Court.