

# SUPREME COURT OF INDIA

Abdul Jawad M.F

Vs.

R.Raj Pradeep

C.A.No.5203/2016

(Kurian Joseph and Sanjay Kishan Kaul, JJ.)

02.08.2018

## JUDGMENT

### **Kurian Joseph, J.,**

1. The issue raised in all these appeals pertains to the irregular promotions granted to 97 Upper Division Clerks in the Kerala Panchayat Department to the post of Executive Officer, Grade-I. No doubt all those promotions were ad hoc but the problem arose when the Government sought to regularize them with effect from the date of ad hoc promotion. In respect of 61 persons, the Government order dated 19.07.2012 followed by the order dated 23.08.2012 were the subject matter of challenge before the Kerala Administrative Tribunal (for short, 'the Tribunal'). There were other issues pertaining to the seniority as well. The Tribunal vide order dated 06.03.2015 held that the regularization of 61 promotions were impermissible under the law, being in excess of the eligible quota. As far as regularization granted to 36 UDCs are concerned, they had already been eliminated by Government Order dated 17.06.2010. The order passed by the Tribunal has been affirmed by the Division Bench of the High Court as per the impugned order dated 11.03.2016. The said judgment is under challenge in these appeals.

2. When these matters came up before this Court, after extensively hearing the parties, the following order was passed on 29.03.2017:-

"On 13.05.2016, this Court inter alia passed the following order:-

"Leave granted.

Status quo, obtaining as on today, shall be maintained by the parties."

The order, as above, shall stand modified as follows:

The Government is free to take steps to implement the orders passed by the Kerala Administrative Tribunal dated 6.3.2015, as affirmed by the High Court in the impugned order dated 11.3.2016. But, in case reversion of any officer is to be effected in the process, the same shall be done only after obtaining orders from this Court.

A Report on the steps thus taken shall be submitted before this Court, within three months. Post on 12.07.2017. "

3. The said order was passed taking into consideration one of the submissions that in view of efflux of time the implementation of the judgment may not cause any serious impact on the existing incumbents, as far as reversion is concerned.

4. We have heard Mr. Gopal Shankarnarayan, learned counsel appearing for the appellants, in C.A. Nos.5203/2016 & 8460/2016, Mr. Jaideep Gupta, learned senior counsel appearing for the State and learned counsel for the other contesting respondents extensively today also.

5. There cannot be any dispute on the factual scenario that all the 97 promotions were in excess of the eligible quota. There cannot also be any dispute on the fact that all the promotions given to the incumbents were ad hoc. Therefore, when a final seniority list is to be drawn up, a call has to be taken as to the fate of the ad hoc promotions. In our view, the view taken by the Tribunal, as affirmed by the High Court, cannot be faulted since 97 incumbents could not have occupied the positions on regular basis, since it was in excess of the eligible quota.

6. We have ascertained that there cannot be more than two incumbents out of 61 in office as of now. Having regard to the decades of service rendered by them, we direct that they shall not be reverted in the process of implementation of the judgment. It is also directed that the incumbents who have already retired from service shall not be disturbed as far as their pension is concerned.

7. We make it clear that in the process of implementation of the impugned judgment, in case any of the individual incumbents has any other grievance, it will be open to him/her to pursue the same in appropriate proceedings.

8. Subject to the above, these appeals are dismissed.

9. Pending applications, if any, shall stand disposed of.

10. There shall be no orders as to costs.

J.

[KURIAN JOSEPH]

J

[SANJAY KISHAN KAUL]

NEW DELHI;  
AUGUST 02, 2018.