

KERALA HIGH COURT

P.V. Parameswaran

Vs

State of Kerala

O.P. No. 4522 of 1969

(T.C. Raghavan, C.J., V.P. Gopalan Nambiyar and G. Viswanatha Iyer, JJ.)

06.07.1972

JUDGMENT

T.C. Raghavan, C.J.

1. The writ petition was referred to a Division Bench by a single Judge, who thought that an earlier Division Bench in *M.B. Koyakutty v. Narayanan Kutty Nambiyar*¹, accepted the contention of the appellant therein that, once he had been granted exemption by the Madras Government from the minimum educational qualification at the time of his appointment as a lower division clerk, the exemption enured to him even for promotion to the upper division cadre. And the Division Bench, when the writ petition came before it, agreed with the single Judge and said that the decision in Koyakutty's case required reconsideration. The writ petition was consequently referred to a Full Bench.

2. In Koyakutty's case, Koyakutty did not have the minimum educational qualification (S.S.L.C.); but he was given exemption by the Madras Government by an order dated 15th April, 1954. The order stated that "Koyakutty was exempted from the minimum general educational qualification so as to enable him to be appointed as a lower division clerk in the Registration Department". This appears in paragraph 1 of the order; and the same language appears in paragraph 2 too. After the formation of the Kerala State and after the coming into force of the Kerala State and Subordinate Services Rules, Koyakutty claimed promotion to the upper division cadre, which prayer was rejected. Then, he filed a writ petition before this Court; and a single Judge held that, in view of the language of the order exempting Koyakutty from the minimum educational qualification, the exemption enured only for enabling him to be in the lower division cadre : in other words, the single Judge held that the exemption did not enure for promotion to the upper division cadre. This was questioned in W.A. No. 167 of 1967 by Koyakutty ; and a Division Bench reversed the decision of the single Judge The Division Bench, however, made it clear that it was "unnecessary to consider the question whether the exemption granted to the

appellant by the Madras Government as per Ext. P-2 would entitle him to promotion as an upper division clerk": in other words, the Division Bench did not consider that question.

¹ Writ Appeal No. 167 of 1967

3. The Division Bench considered the effect of some rules in the Kerala State and Subordinate Services Rules, and held that, in the light of those rules, Koyakutty was entitled to be promoted to the upper division cadre. The Division Bench referred to, in particular, Rules 1, 2 and 28(b)(ii); and it was on the strength of these rules that the Division Bench reversed the decision of the single Judge.

4. In the case before us, the petitioner, like Koyakutty, did not have the minimum general educational qualification (S.S.L.C.). In an order of exemption, exactly similarly worded like the order of exemption in Koyakutty's case, the petitioner was given exemption to enable him to be a lower division clerk. And he was appointed a lower division clerk too. But, when he claimed promotion to the upper division cadre and also claimed that he should be appointed as a Sub-Registrar, Grade II, by transfer from the upper division cadre, the request was turned down. The petitioner pointed out to the Government the decision in Koyakutty's case; but the Government said that that decision was applicable only to Sri Koyakutty and not to others (vide Ext. P-4). The petitioner then filed the present writ petition.

5. If we proceed on the language of the order of exemption, it is clear that the order was only to enable the petitioner to be appointed as a lower division clerk in the Registration Department. But the position appears to be different after the Kerala Public Services Act of 1968. By Section 3 of the Act, the Kerala State and Subordinate Services Rules of 1958 framed by the Governor under the proviso to Article 309 of the Constitution were deemed to have been made under the Act and were continued until superseded by rules made under the Act. Part II of the Rules contains the General Rules and Part III is to contain the Special Rules. Admittedly, no Special Rules relating to upper division clerks have been framed.

6. Now, the preamble of the rules states that the rules are framed "in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and of all other powers hereunto enabling and in supersession of the rules on the subject". Rule 1 of the General Rules in Part II, dealing with the scope of the General Rules, states:

"The rules in this Part shall apply to all States and subordinate services and the holders of all posts, whether temporary or permanent in any such service, appointed thereto before, or after the date on which these rules come into force.."

And Rule 2 in Part II provides:

"If any provision in the General Rules contained in this Part is repugnant to a provision in

the Special Rules applicable to any particular service contained in Part III, the latter shall, in respect of that service, prevail over the provision in the General Rules in this Part."

The only other rule which has to be noted in this case is Rule 28 (a)(ii), which reads:-

"Promotion and appointment by transfer to higher posts according to seniority All other promotions or appointments by transfer to higher posts shall, subject, to the provisions of these rules and the Special Rules, be made in accordance with seniority subject to the person being considered suitable for the post..

No minimum educational qualification is insisted upon or prescribed. The preamble to the rules and Rule 1 in Part II mentioned above indicate that all the previous rules have been superseded. The result is that there are no Special Rules for the upper division clerks and the General Rules do not provide for any minimum general educational qualification for promotion to the upper division from the lower division. In other words, the contention of the State that the Madras Special Rules are still in force cannot be accepted. It must then follow, as was held in Koyakutty's case, that, under Rule 28 (b)(ii), the petitioner is entitled to be promoted to the upper division cadre, since he is senior and since there is no case that he is not a suitable person to be promoted to that cadre, his only disqualification is that he does not possess the minimum general educational qualification (S.S.L.C.).

7. But, the prayer in the writ petition is that the petitioner should not only be promoted to the upper division but should also be appointed as Sub-Registrar, Grade II. This part of the prayer cannot be granted, because the Special Rules for the Kerala Registration Subordinate Service were framed on 1 st June, 1968 and Rule 4 (b) of these Rules provides that, for appointment of Sub-Registrar Grade II by promotion, the minimum general educational qualification of S.S.L.C. standard is essential. Since the petitioner does not possess this, he cannot claim to be promoted as a Sub-Registrar, Grade II.

8. In the result, we allow the writ petition in part and direct that the petitioner be promoted to the upper division cadre, where his seniority will also be fixed in the light of this judgment. The other part of the prayer for promotion as Sub-Registrar, Grade II, we disallow and we dismiss the writ petition to this extent. No cost.

Order accordingly.