

PETITIONER:
P. CHITHARANJA MENON & ORS.

Vs.

RESPONDENT:
A. BALAKRISHNAN & ORS

DATE OF JUDGMENT 25/04/1977

BENCH:
KAILASAM, P.S.
BENCH:
KAILASAM, P.S.
BEG, M. HAMEEDULLAH (CJ)
GUPTA, A.C.

CITATION:
1977 AIR 1720 1977 SCR (3) 687
1977 SCC (3) 255

ACT:
Service matter--Promotions made in 1962--Writ petitions
filed in 1972--If could be entertained.

HEADNOTE:
On May 15, 1961 the State Government passed orders (Ex. PI) that all Panchayat Officers functioning under the Travancore Cochin Panchayats Act, 1950 and Panchayat Executive Officers functioning under the Madras Village Panchayats Act, 1951 as on December 31, 1961 who continue to hold their appointments when the Kerala Panchayat Act, 1960 came into force would be absorbed as Panchayat Executive Officers under the new Panchayats. The order also provided that the staff of the Malabar District Board shall be absorbed as Panchayat Executive Officers in suitable grades.
On the recommendation of the State Public Service Commission the State Government appointed 17 Panchayat Officers in a higher grade by an order dated December 28, 1961 (Ex. P8) and the officer joined their posts between December 30, 1961 and January 2, 1962. To fill up the resulting vacancies 17 of this Panchayat Executive Officers who were in Grade II (respondents 3 to 18) were appointed. The appellants were appointed as Executive Officers on the Grade I, as and from January 1, 1962. The respondents' representation to the Government that they should be appointed with effect from December 28, 1961, that is, the date on which the public Service Commission communicated their appointment was rejected by the State Government (Ex. P10) on the ground that the vacancies arose only on the dates stated in that order commencing from December 30, 1961 and ending with January 2, 1962 and that the appointments can only be on the occurrence of the vacancies. In a petition under Art. 226 of the Constitution the High Court directed that fresh lists be prepared.

Allowing the appeal,

HELD: The respondents are not entitled to the reliefs prayed for by them in the writ petitions. [691 F]

The appellants were promoted to a higher post before the respondents were integrated into the Government service on January 1, 1962. Throughout, the appellants have been treated as occupying a higher post and respondents much

lower post. Though the promotion of the appellants was before January 1, 1962 and was confirmed by various orders of the Government the respondents did not choose to challenge the orders till 1972. [689 G]

There is no ground for challenging Ex. P10 order. It refers to the G.O. of February 13, 1962 by which 16 respondents in the writ petition were promoted as Executive Officers Grade I on the advice of the State Public Service Commission. Their promotion having been ordered on February 13, 1962, without challenging that order a subsequent order which determined the date of their commencement of service cannot be challenged. [689 E-F]

There is no merit in the respondents' contention that if the vacancies in which the appellants and other Panchayat Executive Officers were absorbed arose after January 1, 1962 the respondents would be entitled to be integrated along with the Panchayat Executive Officers and since they were drawing the same pay they ought to have been given an equal ranking. The appointments of the appellants and other Panchayat Executive Officers were made before December 31, 1961 and as the integration was to take effect from January 1

688

1962 they cannot have any grievance. Further, the respondents were not equated with the appellants and other Panchayat Executive Officers when they were integrated from the District Board Service. [690 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: C.A. No. 1547 of 1975.

(Appeal by Special Leave from the Judgment and Order dated the 24-1-1974 of the Kerala High Court in O.P. No. 5566/72)

Y.S. Chitale, A. S. Nambiar, for the appellant.

K, T. Harindranath, K.R. Nambiar, for respondents Nos. 1 3 and 4.

T.S. Krishnamoorthy Iyer, N. Sudhakaran, for respondents Nos. 5 & 6.

The Judgment of the Court was delivered by

KAILASAM, J. This appeal is by special leave granted by this Court against the judgment of the High Court of Kerala in O.P. No. 5566 of 1972 by respondents 4 to 8 and 13 before the High Court.

The respondents herein filed the writ petition for the issue of the Writ of Certiorari calling for records relating to Ex. P-10, GO Rt. No. 3386/69/DD dated 23rd October, 1969, Ex. P12 and Ex. P15 and quash the same and to issue a writ of mandamus directing the respondents 1 and 2 who are the State of Kerala represented by the Chief Secretary, Government of Kerala, and the Director of Panchayats to forbear the implementation of Ex. P12 and further direct them to implement Ex. P-8 grading-3 list or in the, alternative to issue a writ of mandamus directing the State of Kerala to consider and dispose of Ex. P13 and similar representations by respondents 3 and 4 on merits. It was also prayed that a writ of certiorari quashing Ex. P17 in so far as it related to the petitioners and respondents 3 to 18 in the writ petition be issued and also to issue a writ of mandamus compelling the respondents 1 and 2, State of Kerala and the Director of Panchayats, to assign the writ petitioners the appropriate ranks in the cadre of Executive Officers in the Panchayat Services. The High Court allowed the writ petition and set aside the list Ex. P17, the order Ex. P12

and the order Ex. P15 dismissing the appeal petition Ex. P14 and directed that a fresh list be prepared in accordance with the principles laid down in Ex. P16 in the light of the judgment of the High Court. Aggrieved by the decision of the High Court the appellants have preferred this appeal.

The writ petition was contested by 18 respondents. Respondents 3 to 10 were Panchayat executive officers of the Malabar area functioning under the Madras Village Panchayat Act, 1951, on 31st December, 1961. Respondents 11 to 18 were Panchayat Officers functioning as such on 31st December, 1961 under the Travancore Cochin Panchayats Act, 1950. The Kerala Panchayats Act, 1960, Act 32 of 1960 received the assent of the Governor on 8th December, 1960, and was published in Kerala Gazette Extraordinary No. 119 dated 9th December, 1960. It is common ground that the respondents became Government servants on and from 1st January, 1962.

689

On 15th May, 1961, under Ex. P1 the Government passed an order that all Panchayat Officers/executive officers who continue to hold their appointments at the time when the Act came into force will be absorbed as Panchayat executive officers in the new Panchayats. The same order provided that the staff of the Malabar District Board shall be absorbed as Panchayat executive officers in suitable grades according to their qualifications, grades and suitability.

In December, 1961, 17 Panchayat officers were to be appointed on a scale of pay higher than the scale applicable to the Panchayat executive officers. The Public Service Commission selected 17 Panchayat executive officers who were on the scale of pay Rs. 80-150 and drew up a list on 27th December, 1961. They were appointed as Panchayat Inspectors under Ex. P8 on 28th December, 1961. To fill up these vacancies 17 of the Panchayat executive officers who were in Grade H on the scale of pay Rs. 40-120, the respondents 3 to 18 were appointed. The 5 appellants before us were appointed as executive officers on the grade I Rs. 80-250 as and from 1st January, 1962.

The respondents who were the petitioners in the writ petition were integrated in the service. The Government passed orders laying down the principles of integration of the District Board employees and the Panchayat executive officers and Panchayat Officers. The impugned orders under the writ petition are Ex. P10, Ex. P12 and Ex. P15. It is also prayed that Ex. P17 may be quashed. The Government in Ex. P10 came to the conclusion that the vacancies on the advice of the Public Service Commission and the appointment of those that had been advised on 28th December, 1961, arose only on the dates enumerated in the order Ex. P10 commencing from 30th December, 1961, and ending with 2nd January, 1962 and that the appointment can only be on occurrence of the vacancies. We do not see on what basis Ex. P10 could be challenged. Ex. P10 refers to G.O. MS No. 93/62 dated 13th February, 1962. By the G.O. of 1962, 16 respondents in the writ petition were promoted as executive officers Grade I on the advice of the Public Service Commission. The promotion of the respondents in the writ petition having been ordered as early as 13th February, 1962, without challenging that order a subsequent order which determined the date of their commencement service cannot be challenged. In fact, the respondents were appointed to the higher posts on 28th December, 1961, and they took charge on 30th December, 1961, 31st December, 1961, 1st January, 1962 and 2nd January, 1962. The respondents in this petition were integrated into the service only on 1st January, 1962. Their position in the service was to be determined by the Government later.

If the respondents were aggrieved at the posting to the higher post of the present appellants and others they ought to have even challenged promotion which was made on 1st January, 1962. Not having questioned the legality of the promotion or the G.O. of 1962 it is 'too late for them to question the validity of the G.O. of 1969 filing a writ petition in the year 1972.

Apart from this insurmountable objection even on merits the respondents have no claim. The Government passed Ex. R1 dated 31st January, 1965, laying down the principles of integration of the District

690

Board employees and the Panchayat executing officers and Panchayat Officers. It provided that the integration must be based on functional parity. Ex. P12 is a G.O. dated 5th May, 1970- The G.O. refers to the earlier G. O. dated 13th February, 1962, and 24th June, 1969, and states that the names of the 17 executive officers, the appellants and others, are given rank under executive officers Grade I as on 6th January, 1962. The gradation list is P-17 dated 22nd July, 1972. After referring to the earlier G. O. the Director of Panchayats approved a final gradation list of Executive Officers of Panchayats as on 6th January, 1962. The appellants are ranked as 58, 59, 60, 61, 62 etc. The respondents made representations against Ex. P12 but these representations were not accepted and a list Ex. P8 was drawn up. The respondents again objected to the list and subsequently Ex. P12 was prepared. Objections(P14) were raised to Ex. P12 but they were rejected by order Ex. P15 and final list Ex. P17 was published in accordance with the suggestions made in Ex. P12.

The contention on behalf of the respondents is that the order under Ex. P12 is against the position taken by the Government in Ex. P10) and Pl0(a) and the Director had no authority to prepare a list in contravention of Exs. P10 and Pl0(a). Ex. P12 was challenged on the ground that it is not in accordance with Ex. P-16 which settled the principles to govern the integration. It was therefore submitted that Ex. P12 and P17 must be quashed. Strong reliance was placed on the order of the Government dated 15th May, 1961, which while it provided that Panchayat Officers Executive Officers who continue to hold their appointments at the time when the Act comes into force will be absorbed as Panchayat Executive Officers in the new Panchayats, secured the right of the staff of the District Board by providing that the staff of the Malabar District Board shall be absorbed as Panchayat Executive Officers in suitable Grades according to their qualifications, grades and suitability. On the basis of the principle of integration above cited it was submitted that if the vacancies in which the appellants and other Panchayat Executive Officers were absorbed arose after 1st January, 1962, the respondents would be entitled to be integrated along with the Panchayat Executive Officers and as they were drawing the same pay they ought to have been given an equal ranking. We have already pointed out that these appointments were made before 31st December, 1961, and as such the respondents cannot have any claim. The appointments of the appellants and other Panchayat Executive Officers were made before 31st December, 1961, and as the integration was to take effect from 1st January, 1962, they cannot have any grievance. Further, it will be seen from G.O. MS.97/67/A & RDD dated 18th March, 1967, which refers to absorption of various categories of staff of the defunct Malabar District Board in the Department of Local Bodies, it is stated in Paragraph 3 that while 9 U.D. Clerks will be equated to the

posts of Panchayat Executive Officers, 2nd Grade, 21 Lower Division Clerks and 8 Revenue Inspectors and 4 clerical attenders will be equated to the posts of the Panchayat Executive Officers 3rd grade. It is stated that respondents 1 to 4 come under this category and are only 3rd Grade Executive Officers. It will thus be seen that the respondents were not equated with the appellants and other Panchayat Executive Officers when they were integrated from the District Board service.

691

The persons similarly situated as the respondents herein who were integrated from the District Board services filed writ petitions before the High Court impleading the present appellants challenging the gradation and failed in their attempt. The earliest petition is in O.P. No. 1431 of 1970. Justice Isaac who heard the petition observed that the petitioners came in the integrated service as 3rd Grade Executive -Officers and were promoted to 2nd Grade with effect from 6th February, 1968, while respondents 3 to 10 (some of whom are appellants before us) have been promoted as early as 16th February, 1962, as 1st grade officers. The learned Judge further observed, "Even ignoring this, respondents 3 to 10 were I Grade Executive Officers from 16-2-1962, while the Petitioner has become even II Grade Executive Officer only with effect from 6-2-1966." As the petitioner before the learned Judge was holding a post much inferior to the posts held by respondents 3 to 10 from 1st February, 1962, onwards, he dismissed the petition being devoid of any merit on 24th May, 1972.. Another writ petition No. O.P. No. 6423 filed by one of the persons integrated from the District Board Services, against the present appellants and others was also dismissed by Justice Isaac on 27th June, 1973. A writ appeal filed against the order of Justice Isaac in O.P. No- 1431 of 1970 was summarily dismissed by the Bench of the Kerala High Court.

While the earlier judgments were all decided against the respondents, the Kerala High Court in the judgment under appeal took a different view. The decision under appeal proceeds on the basis that a regrettable mistake crept into the judgment in O.P. No. 1431 of 1970 and the earlier decision proceeded on the basis that there was a III Grade mentioned in G.O. 814 dated 17th November, 1962. The High Court was of the view that there was a III Grade under the G.O. above referred to the earlier decision missed the fact that these Grades were not applicable on 1st January, 1962. Though G.O. 814 of 1962 was, not placed before us we are not sure whether there was any mistake in the earlier judgment for the G.O. MS 97/67 dated 18th March, 1967, refers to persons being transferred from the Malabar District Board as Panchayat Executive Officers III Grade. Be that as it may we are satisfied that the respondents are not entitled to the reliefs prayed for by them in the writ petitions. As the appellants were promoted to a higher post before the respondents were integrated into the Government service on 1st January, 1962. Further throughout the appellants have been treated as occupying a higher post and respondents much lower post. Though the promotion of the appellants was before 1st January, 1962, and was confirmed by various orders of the Government the respondents herein did not choose to challenge the orders till the year, 1974. In the circumstances, we are satisfied that the order of the Kerala High Court has to be set aside and the appeal is allowed with costs.

P.B.R.

Appeal allowed.

5--707SCI/77
692

JUDIS