

PETITIONER:
V.A.RAMAN

Vs.

RESPONDENT:
K.V.JOHN & ORS.

DATE OF JUDGMENT: 12/02/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
THE 12TH DAY OF FEBRUARY, 1998

Present:

Hon'ble. Mrs. Justice Sujata V. Manohar

Hon'ble. Mr. Justice D.P.Wadhwa

K. John Mathew, Sr, Adv., N. Sudhakaran, Ms. Prasantha Prasad, Advs. with him for the appellant

A.S.Nambiar, Sr.adv., P.K. Manohar, Adv. with his for the Respondent No.1-5

P.Krishnamurthy, Sr.Adv., T.G.N.Nair, Adv. with his for intervenors.

O R D E R

The following Order of Court was delivered:

The applications for impleadment are rejected.

By Notification dated 2.2.1971, the Kerala State Public Service Commission invited applications for appointment to the posts of Junior Engineers in the Kerala State Electricity Board. This Notification was issued pursuant to the request received from the Kerala State Electricity Board for making selections by direct recruitment to the posts of Junior Engineers. It is an accepted position that the posts of junior Engineers are to be filled in the following manner: 50% by promotion and 50% by direct recruitment. 40% were to be filled by inviting applications from the open market while 10% were to be filled by inviting applications from departmental candidates who may be qualified for that post. Accordingly the said Notification was issued inviting applications for the posts of junior Engineers by direct recruitment. By subsequent Notification of 22.3.1971 issued by the Kerala Public Service Commission, it was clarified that departmental candidates who are competing for the 10% posts in the direct recruitment category will also have to make applications as per the earlier Notification.

The Kerala State Electricity Board addressed a letter to the Public Service Commission explaining its urgent need for filling the posts of junior Engineers and requested the Public Service Commission that since the applications from the open market were over 900, the Public Service Commission could select the departmental candidates first so that some posts of Junior Engineers could be manned in a shorter time. Acceeding to this request, the Public Service Commission

prepared on the basis of interview the select list of departmental candidates in the 10% quota. The advice letter dated 4th of June, 1971 from the Public Service Commission to the Secretary, Kerala State Electricity Board after giving a list of the selected candidates states, inter alia, in paragraph 2:-

"The advice of these 12 candidates will be provisional and their inter se seniority vis-a-vis the open market candidates will be fixed only after the finalisation of the ranked list of open market candidates and after advising them against the 40% vacancies allotted to them."

In the body of the said letter also, the Public Service Commission has referred to the fact that each candidate named in the letter has been informed of the selection to the Kerala State Electricity Board. Accordingly the appointment letters were issued to the departmental candidates so selected. A sample letter which was issued to the original Petitioner No. 5 and the present Respondent No.1 dated 17.6.1971 clearly states that he is appointed as Action junior Engineer (Electrical) in pursuance of the advice dated 4.6.1971 of the Kerala Public Service Commission.

The open category candidates were selected by the Kerala Public Service Commission after conducting the written examination and the interview. Their list was prepared by the Kerala Public Service Commission on 15.10.1971. In their case also, the Public Service Commission issued a letter dated 23.10.1971 addressed to the Kerala State Electricity Board forwarding the names and stating that their appointments were provisional and their inter se seniority vis-a-vis departmental candidates will be fixed thereafter. After the finalisation of the list of candidates, the Public Service Commission prepared a seniority list of all the candidates so selected. In preparing this list, the Public Service Commission was also required to take into account reservations in favour of Scheduled Castes, Scheduled Tribes and backward classes and other reserved category candidates under Rules 14 to 17 of the Kerala State and Subordinate Service Rules. As between the open category candidates and the departmental candidates, since the ratio was 1:4, their inter se seniority was fixed by the Public Service Commission by putting the departmental candidate at Serial No.1 followed by four open category candidates and thereafter again by a departmental candidate and so on. The final advice of the Public Service Commission to the Kerala State Electricity Board is their letter of 18.1.1973 by which the Kerala Public Service Commission forwarded the combined list of candidates in their order of seniority from the open market and from the department to the posts of Junior Engineer (Electrical) after taking care of reservations prescribed.

Thereupon the present respondent nos. 1-5 filed a writ petition before the Kerala High Court challenging the fixation of their seniority as advised by the Kerala Public Service Commission. They contended that they were senior to the open market candidates and other reserved category candidates in view of the fact that their appointments were made earlier. The Writ Petition was dismissed by a learned Single judge of the Kerala High Court has upheld their contention. Hence, the present appeal has been filed.

The Division Bench of the Kerala High Court, has placed

emphasis on Rule 27 (c) of the Kerala State and Subordinate Services Rules. The material part of Rule 27 (c) is as follows:

"Notwithstanding anything contained in clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice, made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list.

.....
.....
.....
.....

Note :- The date of effective advice in this Rule means the date to the letter of the Commission on the basis of which the candidate was appointed."

Rule 27 (c) requires the seniority to be determined by the date of the first effective advice made for his appointment by the Public Service Commission and when two or more persons are included in such effective advice, their seniority is to be fixed according to the order in which their names are arranged in the advice list. The Note clarifies the date of effective advice as being the date of the letter of Commission on the basis of which the candidate was appointed. The letter, in the present case, of 4.6.1971 cannot be construed as the letter giving effective advice when the letter in terms states that the advice is only provisional and the inter se seniority of these candidates vis-a-vis the open marking list of open market candidates and after advice of 40% vacancies allotted to them. The effective advice in this context can only be by the letter of 18.1.1973 which is the final and effective advice. It also contains the final advice list as per Rule 27 (c). The seniority, therefore, has to be determined with reference to the advice list forwarded by the Kerala Public Service Commission by its letter of 18.1.1973.

The fact that the earlier letters issued by the Public Service Commission were only provisional advice, is also borne out by the appointment letters issued which are only acting appointments and not regular appointments although the candidates were regularly selected. This is because the final advice has yet to come. The Division Bench of the High Court, therefore, was not right in holding that the seniority of the departmental candidates who were before it would depend upon the date of that provisional appointment.

It is contended by learned counsel for respondent nos. 1-5 that they were never informed that they were appointed pursuant to the provisional advice issued by the Public Service Commission and hence they are not bound by such advice received by the Electricity Board from the Public Service Commission. This contention has no merit. The letter of appointment issued to each of the respondents 1-5 clearly

states that his appointment is an acting appointment and it is in pursuance of the advice dated 4.6.1971 of the Kerala Public Service Commission. The Kerala Public Service Commission had also filed an affidavit before the High Court in which it stated that such advice was also forwarded by the Kerala Public Service Commission to each of the candidates.

It was next contended by learned counsel for respondent nos 1-5 that the Kerala State Electricity Board framed Rules fixing seniority as between the departmental and open market candidates recruited directly only in 1975. It is nobody's case that the Public Service Commission had fixed the seniority under the Rules which came into force in 1975. The seniority was fixed by the Public Service Commission is the body which is entrusted with the task of selecting candidates and the seniority of the candidates depends upon the order in which their names appear in the list prepared by the Public Service Commission. The Public Service Commission has taken into account valid and relevant considerations in preparing the list in the order of seniority while forwarding its effective advice. Therefore, the seniority list so prepared by the Kerala Public Service Commission cannot be rejected.

The appeal is, therefore, allowed. The impugned judgment and order of the Division Bench of the High Court is set aside and the judgment and order of the learned single judge dismissing the writ petition is upheld. There will, however, be no order as to costs.