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N. MURLEEDHARAN AND ORS. ETC.

v.

THE STATE OF KERALA AND ORS.

FEBRUARY 20, 1997

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[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Service Law :*

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*Kerala Ministerial Subordinate Service—Lower Division Clerk—Promotion to Head Clerk/Head Accountant/Upper Division Clerk—G.O.(P) No. 851 dated 16.6.1980 containing special rules for the categories of Head Clerk/Head Accountant, Upper Division Clerk and Lower Division Clerk of the Kerala Land Revenue Department—Rules made operative w.e.f. 1.11.1956 prescribing special qualifications and tests to be passed for promotion to the category of Upper Division Clerks—High Court struck down the relevant Rule—New rules were framed in compliance with the directions of the High Court and promotions made accordingly—Held since the validity of the subsequent rules is not the subject matter of assailment and seniority list was prepared on the basis of the new rules and promotions were also given accordingly, they became final and the Special Rules lost their relevance—Besides, the Madras allottees and the Travancore-Cochin allottees have retired from service—In the circumstances, there is no need to go into the question of promotion of Kerala recruitees.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 166 of 1985 Etc.

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From the Judgment and Order dated 5.7.84 of the Kerala High Court in O.P. No. 3003 of 1980.

E.M.S. Anam for the Appellants.

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A.S. Nambiar, K. John Mathew, T.G.N. Nair, N. Sudhakaran for the Respondents.

The following Order of the Court was delivered :

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These appeals by special leave arise from the judgment of the Division Bench of the Kerala High Court, made on July 5, 1984 in OP No.

3003/80. In the State of Kerala, Head Clerk/Head Accountants, U.D.C.'s and L.D.S.'s - the ministerial staff consists of three groups of employees, namely, those allotted from erstwhile composite Province, (b) those similarly allotted from former Travencore-Cochin State and (c) those recruited to the State Service on or after November 1, 1956 (Kerala recruits). The appellants belong to the last category, vis., Kerala and recruits. For promotion from one ladder to the higher echelons, i.e., from LDCs to UDCs and so on, the Government in G.O. (P) No. 851, dated June 16, 1980 issued in exercise of the power under proviso to Article 309 of the Constitution, made the rules called the Special Rules for the categories of Head Clerk/head Accountant, Upper Division Clerk and Lower Division Clerk of the Kerala Land Revenue Department included in the Kerala Ministerial Subordinate Service. These rules came into force w.e.f. November 1, 1956. Rule 9 of the Rules prescribes the special qualifications and provides that for promotion to the category of Upper Division Clerk, a Lower Division Clerk shall pass the (a) Revenue Test (Travancore, Cochin or Madras) provided that passing this test shall be obligatory only from 14.1.1963; (b) Accounts Test (Lower) provided that passing the test will be obligatory only from 1.1.64; and (c) Secretariat Manual Test upto 20.2.1958 and District Officer Manual Test thereafter. All the employees from all three sources, who did not pass the test, challenged the validity of the above rule. The Division Bench had struck down the rules on the ground that since the rule issued on June 16, 1980 was given retrospective effect from November 1, 1956 and they were asked to pass the test w.e.f. January 14, 1963, it was an impossible to give effect to the prescription of Rules 4 to 6. It was also struck down on the ground that fixation of the date, i.e., January 14, 1963 is arbitrary being without any nexus. It is not in dispute that after the rule was struck down, new rules came to be made in compliance of the direction issued by the Division Bench on June 12, 1985. On its basis, seniority list was prepared and promotions were given to those found in the order of seniority. The latter rules are not subject matter of any attack nor has anyone questioned the correctness thereof. The promotions have also become final. Under these circumstances, the question arises : whether it is expedient at this distance of time to go into the correctness of the judgment of the High Court? All the Madras Allottees and Travancore-Cochin allottees have now retired from service. Only Kerala recruits, perhaps some of them, recruited on or after November 1, 1956, may be in service.

A Shri E.M.S. Anam, learned counsel for the appellants, contends that the view expressed by the High Court is not correct in law for the reason that in Travancore-Cochin State, there was a rule in operation obligating the allottees of that State to pass the required test prescribed thereunder. Equally, the Madras allottees were required to pass the test under the Madras Rules for promotion to the higher cadre/category of posts. Therefore, mere making the rule on June 16, 1980 with effect from November 1, 1956 is consequential. It is not an impossibility of performance provided the Madras or Travancore-Cochin Allottees had a will to appear for and pass the examinations. The appellants having passed the examinations are entitled to be considered and promoted to the higher posts in accordance with the rules as against those who either had appeared but failed or those who did not appear at all. Both of those unequals cannot be treated on par with equals for the purpose of seniority and promotion. Though the argument is attractive, in substance, we cannot give any relief to the appellants for two reasons, namely, the subsequent rules, as stated earlier, are not the subject matter of assailment of their validity and the seniority was prepared on the basis of the new rules and promotions were also given accordingly. They became final and all of the Madras Allottees and Travancore-Cochin allottees have since retired from service; hence there is no need to go into the question in that behalf. Questions relating to promotion of those from among Kerala recruitees who had attempted but failed or those who passed the test may be relevant to be gone into. But since the new rules have already been made and they are not being challenged, the special rules have lost their relevance. Under these circumstance, we decline to go into that question.

F The appeals are accordingly dismissed. No. costs.

R.P.

Appeal dismissed.