

Supreme Court of India

Dalilah Sojah vs State Of Kerala And Ors. on 3 December, 1997

Equivalent citations: AIR 1999 SC 1529, 1998 (1) KLT 567 SC, (1998) 9 SCC 641

Bench: K Venkataswami, B Kirpal

ORDER

1. Special leave granted.

2. The only question which survives for consideration in these appeals relates to the seniority of the appellant vis-a-vis respondent as Legal Assistant in the Department of Law under the Kerala Government.

3. The selection for the said post of Legal Assistant took place and a select list was issued on 23-6-1971. The name of the appellant was included therein. In view of the fact that there were some reservations which have been made for the OBCs and there was a likelihood that if the appellant had been appointed there would have been a disturbance of the 50% reservation which was permitted, the appointment of the appellant was not made and she was passed over. It is an admitted fact that the appellant was entitled to be appointed against the future vacancy as and when it arose.

4. On 6-10-1972, two vacancies were reported and requisition was made for the selection to these posts. Even though the appellant was entitled to be appointed against one of these posts, no appointment was in fact made. Thereafter, a fresh selection was made which resulted in a new list being prepared on 22-3-1974. The respondents in both these appeals were included in the said list but the name of the appellant was placed at Serial No. 1 inasmuch as she had been passed over from the earlier list which had been prepared on 23-6-1971.

5. The respondents in Civil Appeal No. 2967 of 1984 filed a writ petition in the High Court of Kerala, inter alia, challenging the appointment of the appellant herein and her being placed at Serial No. 1 in the select list. The High Court came to the conclusion that the select list of 23-6-1971 in which the name of the appellant had been included had come to an end on 14-6-1973 and, therefore, when the second list was prepared on 22-3-1974, the appellant herein could not have been included in that list. The High Court did not disturb the appointment of the appellant but observed that the writ petitioners before it would rank senior to the appellant. It appears that subsequent to the aforesaid decision, the Government issued an administrative order granting seniority to the respondents in the second appeal on applying the same ratio which had been applied by the High Court. On challenge to that order by the appellant being unsuccessful, appeal by special leave has been filed in this Court.

6. It appears to us that the appellant has been made to suffer for no fault of hers. From the facts enumerated hereinabove, it is quite clear that when two vacancies arose on 6-10-1972, the appellant had a right to be appointed against one of the said vacancies. At that point of time none of the respondents had even been selected for appointment to the said post, their selection having been notified only on the second list which was prepared on 22-3-1974. The right which had, therefore, accrued to the appellant for appointment against a vacancy after she had been duly selected could

not have been taken away merely because of the delay or inaction on the part of the Government in notifying her appointment. The High Court, in our opinion, fell in error in observing that the appellant's name could not be placed at Serial No. 1 in the second select list. What was in fact done was that the appellant was being appointed against the vacancy which had arisen on 6-10-1972 when, admittedly, the select list was still alive. We see no reason under these circumstances when the appointment of the appellant has not been set aside, as to why she should be deprived of the seniority. She was selected earlier in point of time than the respondents and her selection should have resulted, as it must now, with her filling the vacancy which had arisen on 6-10-1972.

7. The conclusion of the High Court and the decision of the Government in treating her to be junior than the respondents was obviously not correct. We, therefore, allow these appeals and set aside the impugned judgments of the High Court. Consequently, we dismiss OP No. 5588 of 1975 and allow OP No. 480 of 1981 making it clear that the appellant will be placed at No. 1 in seniority above Respondents 3 to 7 in CA No. 2967 of 1984.

8. No order as to costs.