PETITIONER:
R. SUSEELA DEVI

Vs.

RESPONDENT:
KERALA PUBLIC SERVICE COMMISSION & ORS.

DATE OF JUDGMENT: 12/02/1998

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

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The appellant was appointed as Assistant Grade-II in the General Secretariat Service with the Public Service Commission by an advice dated 29.6.71. The Public Service Commission thereafter issued two further advice lists dated 4.7.71 and 14.7.71. Pursuant to these advice lists, respondents 2 to 9 were also appointed as Assistants Grade-II. The dates of actual joining of various persons shown in these advice lists varied depending upon exigencies of the situation. However, in the seniority list of Assistants Grade-II, admittedly, the appellant was senior to respondents 2 to 9.

The next promotional post for Assistant Grade-II is Assistant Grade-I. The promotion is purely by seniority subject to fitness. To qualify for promotion, Assistants Grade-II are required to have completed satisfactorily their two years' period of probation. On 3.7.73 a number of posts of Assistants Grade I were vacant. Since none of the Assistants Grade II were qualified on that date for promotion because they had not then completed their probation period, they were given provisional promotions by an order of that date. The appellant as well as respondents 2 to 9 were thus provisionally promoted as Assistants Grade I by the order of 3.7.73. In this list also the appellant is shown senior to respondents 2 to 9. On 29.12.73, the respondent - Kerala Public Service Commission, issued an order giving regular promotion to 45 Assistants Grade II as Assistants Grade I. In the order of 29.12.73 respondents 2 to 9 are given the date of promotion which is prior to the date of promotion given to the appellant, thus making the appellant was junior to respondents 2 to 9. The respondents contend that this was done because although the appellant was senior to respondents 2 to 9 in the cadre of Assistants Grade II, her actual date of joining that cadre was later than the actual date of joining of respondents 2 to 9. As a result, respondents 2 to 9 completed their period of probation earlier than the appellant and hence they became eligible for promotion earlier than the appellant. That is why the appellant is shown as junior to respondents 2 to 9 in the cadre of Assistants Grade I.

This contention of the respondents has been upheld by the High Court relying upon a full bench decision of that Court in the case of Verghese v. State of Kerala (1981 KLT 458).

The promotion in the present case was dependant entirely upon the seniority of the person concerned in the cadre of Assistants Grade II. The seniority in the cadre of Assistants Grade II was dependant upon the date of advice received from the Public Service Commission, since candidates were directly recruited as Assistants Grade II. This seniority did not depend upon the date of completion of probation of the direct recruits so appointed. This is because the date of completion of probation will depend upon other fortuitous circumstances. The date of joining may also depend upon various fortuitous circumstances. Seniority does not depend upon these fortuitous circumstances.

Therefore, when promotions are made to the next higher post, the seniormost in the lower cadre will normally be promoted, when promotions are by seniority subject to fitness. In the present casae, however, when the vacancies were first sought to be filled in the higher post on the 3rd July, 1973, nobody was eligible because nobody had completed the period of probation. We do not know when the vacancies actually arose. We only have the first date when promotions were made to the existing vacancies provisionally which is 3rd of July, 1973. In the provisional promotion list inter se seniority of Assistants Grade II was preserved.

The order for regular promotions was issued on 29.12.73. By this date all eligible persons holding the substantive post of Assistants Grade II were qualified for promotion and were actually provisionally promoted on 3rd of July, 1973. Therefore, their inter se seniority on the date of regular promotion was required to be preserved in order to give effect to the principle of seniority being the criterion for promotion to Assistants Grade I when seniority was the only criterion for such promotion.

We are concerned with the case where an order for regular promotion was issued at a time when appellant as well as respondents 2 to 9 were qualified for promotion. Therefore, in making such a promotion, the principle of seniority should not have been departed from when it had been adhered to up to that date. We may add that the respondents had very fairly waited till all concerned Assistants Grade II had completed their probation period before issuing the order of regular appointment. This was correctly done so as to give effect to the principle of seniority in granting promotion to Assistants Grade I. Subsequently, by amendment of Rule 28(a) this principle has been clarified by providing that a probationer in a grade shall not be superseded for promotion to a higher grade by his junior if the vacancy arises within the period of completion of probation and if he has passed the test or tests prescribed for successful completion of probation and is otherwise eligible and suitable for promotion; but his promotion shall be subject to the condition that he satisfactorily completes the probation in the grade from which he was promoted within the period as prescribed and for this purpose the period of service put in by him in the higher grade shall be reckoned towards probation in the grade from which she was promoted.

The appeal is, therefore, allowed and the impugned judgment and order of the High Court is set aside. The writ petition filed by the appellant in the High Court is allowed. There will, however, be no order as to costs.

JUDIS