

GOVERNMENT OF KERALA

(Services D) Department

No.7435/SD3/75/PD.

Dated, Trivandrum, 29th November 1975.

From

The Special Secretary to Government.

To

All Heads of Departments

Sir,

Sub:- O.P. Nos.3880, 4487 of 1974 etc. of the High Court – Judgment – Observation of the High Court – regarding confirmation.

An extract of paras 11 to 13 of the judgement dated 3-7-1975 of the High Court of Kerala in the above O.Ps is given below:-

11. The principles we have stated in paragraphs 8, 9 and 10 will be applied uniformly till the State-wise seniority list is prepared. This must be done urgently and the provisional list will be sent to all the persons concerned and after considering their representations, if any, the list must be finalised without any delay. One point which we would like to emphasise and draw the attention of the State Government is that there is no justification whatever in not confirming people who have been promoted several years ago into the cadre of U.D. Clerk even in relation to those who were governed by the principles of the G.O. dated 7-5-1951. The Government order and the clarifications themselves make it clear that the right of the senior to regain his seniority in the U.D. cadre will not be available if the junior has been in the meantime confirmed. More than a reasonable time having elapsed after most of the temporary promotees were promoted there is no justice or fairness in reverting a junior who has been functioning for along number of years as an U.D.C. The harshness can be illustrated with reference to the example given in para 8 of the counter affidavit.

“A, B, C, D and E are L.D. Clerks in the alphabetical order of seniority in the L.D. grade. A, B and C were recruited into service prior to 17-12-1958, and D & E after 17-12-1958.

The dates of their promotion to U.D. Grade after acquiring the test qualification are noted below:

C 1-1-1961  
D 1-1-1964  
E 1-1-1965  
B 1-1-1969  
A 1-1-1974

By the application of the principle of the G.O. dated 7-5-1951 and the principle of the decision in Sivaramakrishnan Nair and another V State of Kerala ILR.1975 (1) Kerala 445 the following would be the result and not what is stated in paragraph 8 of the counter affidavit.

12. When B is promoted on 1-1-1969 B being senior to C in the lower division cadre and C not having been confirmed will have to give his seniority to B. This can be done by exchanging the dates of their respective promotions, for D and E who had been promoted should not be affected at all as they were not governed by the G.O. of 7-5-1951. So B will take the date 1-1-1961 and C that of B viz., 1-1-1969. When A is promoted on 1-1-1974 A being senior to C and B will have to be above C and B. So A will take B's date 1-1-1961 and B the date C was holding on the date of promotion of A (1-1-1974) viz., 1-1-1969. C will get A's date 1-1-1974. The resulting position would be as follows:-

A 1-1-1961  
D 1-1-1964  
E 1-1-1965  
B 1-1-1969  
C 1-1-1974

The C becomes junior to D and E as well though they were promoted later than 1-1-1961. This could have been avoided if early confirmation orders had been passed. It is therefore imperative that the question of confirmation of those who have been promoted say, at least 2 years before this date is immediately taken up and confirmation orders passed without waiting for the seniors in their own time to pass the test qualification.

13. The third group of cases have come up before us, it is contended by counsel for the petitioners, as a result of the mis-understanding of the decision of this court in Sivaramakrishnan Nair and another V. State of Kerala H.R.1975 (1) Kerala 445. We decided therein that the principle of the G.O. dated 7-5-1951 cannot be applied to those who were not governed by it. In other words the G.O. cannot be applied unless all the persons affected by the application of the G.O. dated 7-5-1951 are governed by it. How the seniority will have to be worked out among A, B, C, D and E in the example given in para 8 of the counter affidavit we have obliged to surrender their dates to anybody and they cannot become juniors to any person who has been appointed after the dates on which they were promoted. Normally A who has been promoted

only on 1-1-1974 will be junior to them. But A is entitled to the date which C had being the seniormost among A, B and C, D and E are not affected by this because C would have been above them in any case. It does not matter to them whether C or A is above them. B will have to be junior to A and will therefore get only the date 1-1-1969 and not C's date 1-1-1961 and C will take A's date of promotion, 1-1-1974. Such a result is no doubt harsh and will have to be rectified. This can be rectified to a large extent if confirmations are not unduly delayed. We hope that the Government would take immediate steps to confirm those people who were appointed earlier in the U.D. Cadre without waiting any longer. This should in fairness be done forthwith."

According to the directions in the judgement I am to request you to take immediately necessary steps for confirmation of those who have been promoted to the U.D. Cadre before 3-7-1975 (date of judgement) and issue orders without waiting for the seniors in their own time to acquire the test qualification.

Yours faithfully,

C. RANGASWAMY,  
Under Secretary,  
For Special Secretary.

Copy to: All Departments (all sections) of the Secretariat including Law, Legislature & Finance  
Department for information and necessary action.  
The Stock File.