

(2010) 03 KL CK 0080
In the High Court Of Kerala
Case No : W.A. No. 467 of 2010

Dr. Jayakumar R., Civil Surgeon

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 03 KL CK 0080

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K.R.B. Kaimal, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The writ petitioner is the appellant. The Writ Petition was filed by him, feeling aggrieved by certain provisions in the Appendix to Ext.P1 Special Rules for the Kerala Health Services (Medical Officers). The Special Rules, inter alia, deal with the placement in the speciality cadre. The norms for placement of Medical Officers, who are already in service, are contained in the Appendix to the Special Rules. The appellant's grievance is mainly concerning paragraphs 5-D and 5-E of the said Appendix. The Appendix provides for point system to identify the incumbents for placement. That is, points are awarded to the Medical Officers, having regard to the various parameters mentioned therein. For example, a Post Graduate Diploma holder in the opted specialty or super specialty will be awarded one point for each completed year of service, whereas a Post Graduate Degree holder in the opted specialty or super specialty will be awarded 2 points for each completed year of service. The maximum points that could be awarded to an incumbent are 50. The grievance of the appellant is that in view of the above stipulations, the Post Graduate Diploma Holders will steal a march over the Post Graduate Degree holders, if the former have longer years of service. According to the appellant, this results from the capping of the maximum points at 50, provided under

Clause 5-D. Clause 5-E provides that the placement will be according to seniority from among the persons, who have obtained 50 points. It is submitted that the appellant, who is a Post Graduate Degree Holder in the speciality opted is being superseded by the senior Post Graduate Diploma Holders in that speciality.

2. The above stipulations were challenged by the appellant, raising the contention that they are arbitrary and irrational and therefore, violate his fundamental rights, guaranteed under Article 14 of the Constitution of India.

3. The learned Single Judge repelled the contentions of the appellant, relying on the decision of the Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and also the Division Bench decision of this Court in Pankajakshy and Ors. v. George Mathew and Ors. 1987 (2) KLT 723, and dismissed the Writ Petition. Therefore, the aggrieved writ petitioner has preferred this Writ Appeal.

4. The Special Rules reflect the policy of the Government that after a few years' service, the Post Graduate Diploma holders can be treated as equivalent to the Post Graduate Degree Holders. Of course, the rule-making authority has treated the Post Graduate Degree holders as superior hands, as for each completed year of service, they are awarded 2 points, whereas Post Graduate Diploma holders are awarded only one point. But, a capping at 50 points is made to ensure that the Diploma holders with longer years of service also get a chance for placement in the speciality cadre opted. We find it difficult to subscribe to the view canvassed by the appellant that the above stipulations are arbitrary and therefore, violate his fundamental rights guaranteed under Article 14 of the Constitution of India. A difference of opinion for this Court is not a ground to interfere with a statutory provision. There are several options before the administrator. One of the options has been adopted and the same is reflected in the Special Rules. The same cannot be described as beyond the powers of the rule-making authority or ultra vires. We fully agree with the view taken by the learned Single Judge, on the validity of the Special Rules. Accordingly, the Writ Appeal fails and it is, accordingly, dismissed.