

(2006) 09 KL CK 0041

In the High Court Of Kerala

Case No : W.A. No. 1893 of 2002 and W.P. (C) No. 5510/04 etc.

Dr. Marykutty Joseph

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 10(ab)

Citation : (2006) 3 KLJ 696 : (2006) 4 KLT 447

Hon'ble Judges : K.S. Radhakrishnan, J;K.P. Balachandran, J;K. Padmanabhan Nair, J

Bench : Full Bench

Advocate : K.A. Abraham and S.S. Nair, for the Appellant; P. Ravindran, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Our considered view is that the following reference order passed by the Division Bench on 6-6-2006 does not satisfy the test laid down by the seven Judges bench decision of this court in Dhanalakshmi Bank Ltd. Vs. Commissioner of Income Tax, and the Full Bench decision of this court in Cochin Malabar Estates and Industries Vs. State of Kerala . Reference order is extracted below for easy reference. We feel that substantial questions of law of general interpretation of the specific rules in the Kerala State and Subordinate Services Rules and the Kerala Education Service Rules arise in this writ appeal. The seniority and promotion initially awarded to the appellant later on had been set aside by the Government, and the challenge made has been repelled by a learned single Judge.

Two issues arise for consideration, namely as to what is the meaning of the term date of occurrence of vacancy, i.e., whether it is the deemed occurrence of vacancy when promotees were given notional dates of promotion or it is actual date of occurrence of vacancy by relief of the holder of the post.

Another aspect that will have to be considered is as to whether the teaching experience, reference to as qualification, required for promotion as Assistant

Professor is to be the experience after acquisition of post graduate degree because of the presence of Rule 10(ab) of the Kerala State and Subordinate Services Rules. The counsel were not able to place before us any considered precedents on the subject. Subsidiary issues also have been raised in the appeal.

We feel that the questions require detailed consideration at the hands of the Full Bench. We therefore, adjourn the case of the said purpose.

Place the papers before the Honourable the Chief Justice for orders.

This court in Babu Premarajan Vs. Superintendent of Police, Kasaragode and Others, elaborately considered the powers of the single judge and Division Bench while referring the matter to a larger bench. Babu Premarajan's case was later followed by a Full Bench of this court in Cochin Malabar Estates & Industries' case and the court reiterated that merely because a question of law arises the Division Bench cannot refer the matter to a larger bench by an agreement between two judges unless it doubts the correctness of an earlier Division Bench decision or when conflicting views are expressed by two Division Benches and the state of law has become uncertain. No such situation arises in the instant case for a reference. Reason for reference stated to be as follows: We feel that substantial questions of law of general interpretation of the specific rules in the Kerala State and Subordinate Services Rules and the Kerala Education Service Rules arise in this writ appeal.....The counsel were not able to place before us any considered precedents on the subject. Subsidiary issues also have been raised in the appeal.

2. We are of the view, the above reasons would not satisfy the tests laid down in Babu Premarajan's case and Cochin Malabar Estates and Industries' case warranting reference to a larger Bench. Further the mere fact that substantial questions of law arose for consideration is not a ground for referring those questions to a larger Bench. The Division Bench itself will have to decide the substantial questions of law. We therefore decline to answer the reference since we are bound by the judgment in Babu Premarajan's case and fully endorse the view in Cochin Malabar Estates & Industries' case. Send back the cases to the respective benches for early disposal.