

(2016) 07 KL CK 0004
In the High Court Of Kerala
Case No : W.P.(C). No. 25007 of 2015 (A)

Dr. V. Vinod Kumar Reader

APPELLANT

Vs

Kerala Lok Ayukta Kerala

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Kerala Lok Ayukta Act, 1999 — Section 12 to 15

Citation : (2016) 4 ILRKerala 43 : (2016) 3 KerLJ 761 : (2016) 3 KHC 945 :
(2016) 3 KLT 602 : (2016) LIC 3275

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : Sri. P.C. Sasidharan, Sri. E.S. Ashraf and Sri. P.E. Sajal, Advocates, for the Petitioners; Smt. Renu. D.P, SC, Lok Ayukta, for the Respondent No. 1; Sri. Sunil Nair Palakkat and Sri. K.N. Abhilash, Advocates, for the Respondent No. 3; Sri. P. Gopal, Advo

Final Decision : Disposed Off

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioners in this writ petition are presently working as Readers under the 2nd respondent College. The petitioners had responded to a notification issued by the respondents for appointment to the post of Reader in Community Medicine and Reader in Pathology, and the 1st and 2nd petitioners were appointed pursuant to the selection procedure conducted by the College. It is not in dispute that the appointment of the petitioners were approved and subsequently their probation in the posts declared. The 3rd respondent was an applicant to the post of Lecturer [Practise in Medicine and Community Medicine] that was notified in the notification issued by the 2nd respondent College, but was not successful in getting an appointment pursuant to the selection process that followed. It would appear that the 3rd respondent approached the 1st respondent Kerala Lok Ayukta, through Ext.P6 complaint submitted under Section 9 of the Kerala Lok Ayukta Act, 1999. The prayers sought for in the complaint are essentially for an investigation into the allegations levelled against the public servants mentioned in the complaint; for a

recommendation to the Government to cancel all the alleged illegal appointments; to recommend to the Government to recover the entire benefits received by the party respondents, who were occupying their respective posts, and for a declaration to the effect that respondents 1 to 3 in the complaint should not continue to hold the posts held by them. There are also other reliefs such as the payment of compensation to the complainant that are prayed for in the said complaint. The petitioners in the writ petition were arrayed as respondents 11 and 12 in Ext.P6 complaint. The allegations in Ext.P6 complaint with regard to the petitioners are to be found in clauses xv and xvii of paragraph 4 of the complaint, which read as under:

xv. The Next illegal appointment is the appointment of the 11th Respondent to the vacancy of Reader in the Department of Community Medicine. His teaching experience was with the Department of Organon Medicine at RVS Homoeo Medical College at Tamil Nadu. With the consent and connivance of the Principal and management of the 4th Respondent College, the 11th respondent managed to get appointment to the post of the Reader in Community medicine on the strength of a fabricated experience certificate in the field of Community Medicine. The teaching experience of the candidate should be in the same subject as per the University Rule and Regulations and as per the CCH rules. This illegality was exposed and the complainant has pointed out the same before the Respondents 1 to 3 immediately after the appointment. True photocopy of the Complaint dated 17/09/2014 filed by the Complainant to the 3rd Respondent with copy to Respondents 1 & 2 is produced herewith and marked as Exhibit P6.

xvii. The 12th Respondent is another person illegally appointed with the consent and connivance of the Management and Respondents 1 to 3. The 12th Respondent was appointed to the vacancy of Reader in the Department of Pathology. She also got appointment on the basis of a fabricated experience certificate with the consent of the authorities. She does not possess the teaching experience in the concerned Department, on the contrary she was a Lecturer in the Department of OBG Teaching facilities in the RVS Medical College, Sulur. To protect the vested interest of the Management the authorities ratified her appointment ignoring the protest raised by the Complainant. In the instant case also the complaint submitted documentary evidence before the authorities to show that the 12th Respondent does not have the experience in the concerned subject. True Photocopy of the list of teaching faculties of RVS Homeopathic Medical College, Sulur in the department of OBG Teaching Faculties, from the inspection report of Central Council For Homeopathy dated 21/11/2014 is produced here with and marked as Exhibit P8.

2. It is the case of the petitioners herein that, on receipt of the complaint from the 3rd respondent, the 1st respondent Lok Ayukta, by Ext.P8 order, issued urgent notice on the complaint, and passed an interim order directing the Secretary for Health, [AYUSH], Health and Family Welfare Department, not to regularise or approve the appointments given to respondents 12 to 19 in the

complaint [which included the 2nd petitioner in the writ petition], if such approval or regularisation had not yet been given, without obtaining permission from the Lok Ayukta. The matter then stood posted to 21.8.2015.

3. The challenge in the writ petition against Ext.P8 order of the Lok Ayukta is premised primarily on the ground of jurisdiction. It is the specific case of the petitioners that the Lok Ayukta did not have the jurisdiction to entertain a complaint, that was targeted against the appointment of the petitioners herein, since the petitioners were admittedly not "public servants" as defined under Section 2(o) of the Kerala Lok Ayukta Act, 1999, and further, the Lok Ayukta was not empowered to conduct any investigation under the Act in the case of a complaint involving a grievance in respect of any action which was specifically referred to in the Second Schedule to the Kerala Lok Ayukta Act. Referring to the provisions of the Second Schedule to the above Act, it is pointed out that the excluded types of action for the purposes of Section 8 of the Kerala Lok Ayukta Act would take in actions in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service. It is pointed out therefore that, although this was a case where the petitioners were not "public servants" for the purposes of the Act, even if the petitioners were to be treated as "public servants", for the purposes of the Act, the Lok Ayukta's jurisdiction would be excluded by virtue of the provisions of Section 8 read with the Second Schedule to the Kerala Lok Ayukta Act.

4. A counter affidavit has been filed by the 3rd respondent, wherein, he has produced a copy of the complaint filed by him before the Lok Ayukta. The averments in the complaint are reiterated in the counter affidavit, and it is vehemently maintained that, since the petitioners were necessary parties in an enquiry that was contemplated under the Kerala Lok Ayukta Act, the petitioners could not be heard to contend that they could not be proceeded against in any proceedings before the Lok Ayukta. It is reiterated that the 3rd respondent has a serious grievance in the matter of appointments granted to the petitioners, and apart from that, he has also raised allegations regarding the conduct of the public servants, who, according to the 3rd respondent, were in collusion with the petitioners in the matter of appointment granted to the petitioners. It is therefore contended that the complaint before the Lok Ayukta was maintainable in all respects, and it was within the jurisdiction of the Lok Ayukta to issue positive directions with regard to cancellation of the appointment of the petitioners.

5. I have heard Sri. P.C. Sasidharan, the learned counsel for the petitioners, Smt.Renu D.P., the learned Standing counsel for the 1st respondent Lok Ayukta, Sri. P. Gopal, the learned counsel for the 2nd respondent College as also Sri. Sunil Nair Palakkat, the learned counsel for the 3rd respondent.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that this is a case where the challenge by the petitioners is against the proceedings initiated by the 1st respondent Lok Ayukta, against them, pursuant to a complaint filed by the 3rd respondent. The challenge in the writ petition is essentially with regard to the jurisdiction of the Lok Ayukta to proceed against the petitioners, and in particular, the jurisdiction of the said authority to pass any orders directing a cancellation of the appointments given to the petitioners by the 2nd respondent College. In this connection, it is relevant to note that under the Kerala Lok Ayukta Act, 1999, a "grievance" refers to a claim by a person that he sustained injustice or undue hardship in consequence of a maladministration. The said term is used in contradistinction to the term "allegation", which is defined in relation to a public servant, as meaning any affirmation that such public servant, - (i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person; (ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or (iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant. The distinction between "grievances" and "allegations", has already been highlighted in the decision of this Court in Dr. M.K. Ramachandran Nair and Others v. State of Kerala and Others - 2009 (3) KHC 919. It follows therefore that a complaint, at the instance of the 3rd respondent, which raises a grievance, in respect of the appointment offered to the petitioners herein, by the 2nd respondent College, cannot be investigated or enquired into by the Lok Ayukta. The scheme of the Kerala Lok Ayukta Act indicates that the complaint filed by a complainant, before the Lok Ayukta, can be in respect of either a "grievance" or an "allegation" in respect of actions that have been taken either by, or with the general or specific approval of, the persons specified in Section 7 of the Kerala Lok Ayukta Act. The persons referred to in Section 7 include (i) the Chief Minister; (ii) Minister; (iii) Member of State Legislature; (iv) Secretary; (v) officer bearer of a political party at the state level; or (vi) an officer referred to in sub-clause (iii) of clause (d) of Section 2 of the Kerala Lok Ayukta Act. Apart from this, Section 7 also authorises an investigation into any action taken by, or with the general or specific approval of, a person who answers to the description of "public servant" under the Kerala Lok Ayukta Act.

7. A reading of the definition of "public servant" under Section 2 (o) of the Kerala Lok Ayukta Act, would indicate that neither the petitioners in this writ petition nor the 2nd respondent College, would answer to the description of "public servant" under Section 2(o) of the Kerala Lok Ayukta Act. It follows, therefore, that any action of the 2nd respondent College that had the effect of offering an appointment to the petitioners herein, cannot be seen as an action either taken by, or with the approval of a public servant. Ext.P6 complaint, which is preferred by the 3rd respondent before the Lok Ayukta, insofar as it relates to the petitioners in this writ petition, is with regard to the alleged illegal appointments

granted to the petitioners by the 2nd respondent College. As already noted, neither the petitioners nor the 2nd respondent College answer to the description of a "public servant" under Section 2(o) of the Kerala Lok Ayukta Act. The Lok Ayukta consequently, has no jurisdiction to enquire into any action taken by the petitioners or the 2nd respondent College.

8. There is yet another aspect of the matter. When it comes to conducting enquiries into an action taken by the University or its officials, it may be that, with regard to an "allegation" as regards the action of the University in question, approving the appointment of the petitioners in the 2nd respondent College, there could be an enquiry conducted by the Lok Ayukta against the public servants involved, but any enquiry with regard to a "grievance" voiced in a complaint, must be with a view to ascertain whether there was any injustice or undue hardship caused to the complainant through such action of the University. In this connection, it is relevant to note that an approval granted to the appointment of the petitioners herein cannot possibly cause any injury or hardship to the 3rd respondent complainant, since he was admittedly not an applicant, along with the petitioners, to the post of Reader in the 2nd respondent College.

9. The powers granted under the Kerala Lok Ayukta Act, 1999, to the Lok Ayukta while taking the steps prescribed in Sections 12 to 15, indicate that the nature of the relief granted to a complainant is materially different in cases where what is alleged in a complaint is a "grievance" and in cases where what is alleged in a complaint is an "allegation". The impleadment of the petitioners herein as respondents in a complaint before the Lok Ayukta, and a consequent enquiry against them by the Lok Ayukta, can be legally sustained only if it is demonstrated that the petitioners are public servants and even then, on the basis of the averments in the complaint, if it can be demonstrated that the complainant had a grievance against them. As I have already found that the petitioners do not answer to the description of public servant under the Act and further, the complainant cannot be seen as a person who had a "grievance" in respect of their appointment, the complaint before the Lok Ayukta, to the extent it seeks an enquiry or other action against the petitioners herein cannot be maintained. Consequently, Ext.P6 complaint, to the above extent, cannot be investigated or enquired into by the Lok Ayukta.

10. I therefore declare that the Lok Ayukta has no jurisdiction to look into this aspect of the complaint preferred before it by the 3rd respondent. As a consequence, Ext. P8 order of the Lok Ayukta, to the extent it contemplates an enquiry into the legality of the appointments offered to the petitioners, by the 2nd respondent College, is set aside. While doing so, I make it clear that nothing in this judgment shall affect the enquiry by the Lok Ayukta of those aspects in Ext.P6 complaint as fall within its jurisdiction under the Kerala Lok Ayukta Act, 1999. Such aspects would take in, for instance, an enquiry into any "allegation" made against a public servant within the meaning of that term under Section

2(b) of the Kerala Lok Ayukta Act, and can only be for the purposes of such steps as the Lok Ayukta may take, under Sections 12 to 15 of the Act, in respect of the said allegations. The writ petition is accordingly disposed.