
(1967) 02 KL CK 0006
In the High Court Of Kerala

Kerala Varma (R.)

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-02-1967

Acts Referred:

Kerala State and Subordinate Services Rules, 1958 — Rule 14

Citation : (1969) 2 LLJ 218

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Judgement

K.K. Mathew, J.—Petitioner was appointed a storekeeper-physician in the Ayurvedic College, Tripunithura, on 20 July 1961. No qualifications had been prescribed for that post at that time. Petitioner continued to hold the post till October 1964. By a notification published in the gazette dated 5 June 1962 the Kerala Public Service Commission called for applications for appointment to the post of storekeeper-physician in the Ayurvedic College, Tripunithura. Petitioner also applied and appeared before the Commission for interview. The result of the selection was published in the gazette dated 30 April 1963. Petitioner was ranked second in the list. Respondent 4 was not in the list because he was not an applicant for the post. One O. Moideen Ahamed obtained the first rank and he was appointed to the post. He joined duty in the college, as storekeeper-physician on 23 March 1963 and the petitioner was transferred to the Ayuivedic College Hospital, Tripunithura, where the petitioner was posted as a physician. On 18 June 1963, Moideen Ahamod was transferred to another department and the post having fallen vacant, the petitioner was again appointed as storekeeper physician in the college. On 27 November 1962 Government issued orders prescribing new qualifications for the post of storekeeper-physician in the Ayurvedic College, Tripunithura. The prescribed qualifications were a degree or diploma in Ayurveda; two years" experience in the identification and handling of ayurvedic raw materials and discuss either as storekeeper-physician in the Government or private ayurvedic institutions; and willingness to furnish security of Rs. 500. The Kerala Public Service Commission issued a notification in the

gazette calling for applications to the post (Ex. P. 1). Petitioner also applied and appeared for the examination conducted by the Commission. The result of the examination was published in the gazette dated 10 March 1964. The petitioner was ranked No. 1 in the select list evidenced by Ex. P. 53. Therefore, normally petitioner ought to have been appointed to the post of storekeeper-physician of the Ayurvedic College, Tripunithura. But respondent 2 in consequence of a communication from the Public Service Commission recommending that respondent 4 should be appointed to the post, appointed him. Petitioner filed Original Petition No. 63 of 1964 to quash the order. The petition was dismissed. Writ Appeal No. 181 of 1964 was filed by the petitioner against the judgment in Original Petition No. 63 of 1964 and by Ex. P. 6 judgment the appeal was disposed of. By that judgment Government was directed to consider the question whether for recruitment to the service in question the principle of communal reservation is applicable or not in the light of the special rules, if any, as contemplated by Rule 14 of the Kerala State and Subordinate Services Rules, 1958, and pass appropriate orders. The petitioner also filed a petition dated 25 October 1965 before Government. On 15 June 1966 Government passed an order rejecting the petition dated 25 October 1965. Government made certain amendment to Rule 14 of the Kerala State and Subordinate Services Rules. The amendment has been given effect to from 17 December 1958 [vide G.O. No. (P) 202, Public (Rules), dated 21 May 1966]. Similarly, the notification issued by Government under Rule 14 specifying the services to which the rules of reservation shall be applied, has also been given retrospective effect from 17 December 1958 (vide Government notification No. 7415/66/PD, dated 21 May 1966).

2. Sri V.K.K. Menon, appearing for the petitioner, submitted that the Government had no power to issue the notification dated 21 May 1966 with retrospective effect from 17 December 1958 and in support of this, he relied on the decisions in *The Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, , *Calicut-Wynad Motor Service (Private) Ltd. Vs. State of Kerala and Others*, and *Rajalekshmi Motor Service v. Government of Kerala* 1959 KLJ 1425. Paragraph 6 of the judgment in 1959 KLJ 1425 is as follows:

All that Sub-section (2) does is to stipulate that the transport authorities constituted under Sub-section (1) shall have a composition in conformity with the provisions of Sub-section (2). There can be no doubt that the power to constitute the transport authorities is derived from Sub-section (1) that we are solely in the realms of a delegated statutory power, and that in such cases there is no right to retroactive action unless the legislature by express words or necessary intendment had authorized the same. It is not contended that any such authorization can be found or inferred, and it must follow that the retroactive operation attempted by the notification of 23 December 1958 was of no effect.

3. The rulings cited support the contention that it is not open to an authority exercising delegated legislative power to give retrospective operation to the

legislation unless the parent Act permits it to do so. Rule 14 as amended reads:

Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category; or where in the case of any service, class or category, for which no special rules have been issued, the Government have by notification in the gazette declared that the principle of reservation of appointments shall apply to such service, class or category, appointments by direct recruitment to such service, class or category, shall be made on the following basis.

4. Under the rule Government was given power by notification to apply the principle of reservation of appointments to any service or services. The power of the Government under the rule is akin to conditional legislation. In other words, the power of the Government to issue the notification is in the nature of conditional legislation as understood in constitutional law. What the Government has done by the notification is to apply Rules 15 to 17 to the service in question also. The nature of conditional legislation is dealt with by the Privy Council in *Archibald G. Hedge v. the Queen* 1883 AC 117; *Powell v. Appollo Candle Co., Ltd.* 1885 AC 282 and *Charles Russell v. the Queen* on the information of John Woodward 1882 A C 829. In 1882 AC 829 at 835 it is observed:

It was in the first place contended, though not very strongly relied on by the appellant's counsel, that assuming the Parliament of Canada had authority to pass a law for prohibiting and regulating the sale of intoxicating liquors, it could not delegate its powers, and that it had done so by delegating the power to bring into force the prohibitory and penal provisions of the Act to a majority of the electors of counties and cities. The short answer to this objection is that the Act does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals. The provision that certain parts of the Act shall come into operation only on the petition of a majority of electors does not confer on these persons power to legislate. Parliament itself enacts the condition and everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is in many cases convenient, and is certainly not unusual, and the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency.

5. If conditional legislation does not involve delegation of legislative power, no question of delegated legislation feeling given retrospective Operation arises here. I think, the rationale of the ruling of the Supreme Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, seems from this principle. In that case, the question was whether the notification issued on 26 July 1949 bringing the Travancore Taxation on Income (Investigation Commission) Act into operation as from 22 July 1949 was valid and it was held that there can be no objection to the notification fixing commencement of the Act on 22 July 1949 which was a date subsequent to the passing of the Act, that the Act has not been given a retrospective operation, that is to say, it has not been made to commence from a date prior to the date of it passing. It is true that the

date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance, it was held, would not attract the principle disfavoured the retrospective operation of a statute. The validity of the retrospective operation of the notification has been upheld in Original Petition No. 2860 of 1964 decided by a Pull Bench of this Court. In the light of that decision I do not think that it is open to the petitioner to contend that the Government had no power to give retrospective operation to the notification. If that be so, the order of Government dated 15 June 1966 rejecting the petition dated 25 October 1965 is right.

6. I dismiss the writ petition but in the circumstances without any order as to costs.