
(1963) 05 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No's. 119, 309, 497 and 532 of 1962 and C.M.P. No's. 1366, 1399 and 1986 of 1963

K.M. Sugatha Prasad and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-05-1963

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1), 16(2), 19, 311
Kerala State and Subordinate Services Rules, 1958 — Rule 10(2)

Citation : AIR 1965 Ker 19 : (1966) 2 LLJ 93

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and V. Sivaraman Nair, in O.P. Nos. 119, 309, 497 of 1962, V.R. Krishna Iyer and V.M. Nayanar, in O.P. No. 532 of 1962, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—In all these four writ petitions, the respective petitioners, challenge the orders passed by the appropriate authorities terminating their officiating services as teachers in the Education Department of the State. As the grounds of attack taken on behalf of the petitioners, and the defence of the State in all these matters are substantially common, all the writ petitions have been heard together.

2. The questions that arise for consideration in all these writ petitions are (i) whether any of the fundamental rights guaranteed to the petitioners under the Constitution have been in any manner infringed or violated by the orders under attack; and (2) whether the State Government is bound to disclose the grounds, on the basis of which they have come to the conclusion that the character and antecedents of each of these petitioners are not such as to make them eligible for appointment to service under the State.

3. In O. P. Nos. 119, 497 and 532 of 1962, the circumstances under which the

petitioners were appointed to the officiating posts .as also the reasons given by the authorities for terminating their services are substantially the same. Therefore, so far as these writ petitions are concerned, I will refer only to the averments made in O. P. No. 115 of 1962, as well as to the order of termination passed therein.

4. The petitioner in O. P. No. 119 of 1962 completed the S. S. L. C. and Teachers' Training Course of Examinations. He applied to the Public Service Commission of the State for selection for appointment as a teacher under the Government. The Public Service Commission informed the petitioner that he was selected for recruitment as Leave Reserve Primary Teacher in the Education Department. But the petitioner also admits that the said communication clearly stated that the selection of the petitioner is subject to whatever further checking Government may find it necessary to do.

5. Later, he was informed by a communication issued by the District Educational Officer, Kozhikode, dated 17-1-1961, Ex. P. 1, that the petitioner has been advised for recruitment as Leave Reserve Primary Teacher in the Kozhikode District. Accordingly he was appointed to certificate as teacher in a Government school mentioned therein. But while he was serving as a teacher, the District Educational Officer passed an order dated 1-12-61, Ex. P. 3, wherein it is stated that in view of the adverse reports received regarding the character and antecedents of the teachers mention-ed therein, who have been appointed under Ex. P. 1, the District Educational Officer orders that the appointments be terminated on the expiry of one month from the date of receipt of the proceeding by the teachers. There is no controversy that this order, Ex. P. 3, takes in the petitioners in O. P. Nos. 119, 497 and 532 of 1962. In consequence of this direction issued by the District Educational Officer, the Assistant Educational Officer, under the Ex. P. 2, directed the Headmasters concerned of the schools in question to serve the copy of the proceedings, Ex. P. 3, on the petitioners and to terminate their appointments on the expiry of one month.

It is under these circumstances that the services of each of the petitioners in these three O. Ps. were terminated. These orders of termination are attacked by these petitioners as illegal and void. According to the petitioners, the reasons given for terminating their services are certain adverse reports stated to have been received, regarding their character and antecedents and inasmuch as the petitioners had a right to continue in Government service, the State Government was bound to disclose the nature of the enquiry made, as well as the conclusions arrived at by the State Government and should have also given an opportunity to the petitioners to offer their explanations. That course not having been adopted it is the case of the petitioners that the termination of their services under the circumstances, is in violation of Article 311 of the Constitution.

6. The petitioners also take up the position that when once they have been advised for appointment by the Public Service Commission, they are entitled to be given the appointment by the appropriate authorities and any enquiries stated

to have been made by the authorities concerned, behind their back, cannot be relied upon as grounds for terminating their services. In fact, the case of the petitioners appears to be that though the orders are styled as orders of discharge or termination on being given one month's notice, in fact and in reality these orders amount to dismissing the petitioners from Government service without complying with the provisions of Article 311 and such action has been taken according to the petitioners, as and by way of punishment entailing penal consequences.

7. An additional affidavit has been filed on 10th January 1963 wherein they refer to an order of the Government. No. 8410/Di/62/ Home dated 15-3-1962 and another G.O.M.S. No. 711/. Home dated 23-1-1960. In particular relying upon the G.O. dated 15-3-1962 the petitioners make a grievance that a permanent ban has been imposed debarring the petitioners from making any application for Government service even in future. I will refer to this Government order of 1962, a little later because a similar circular stated to have been issued in respect of the petitioner in O. P. No. 309 of 1962 is also under attack in that writ petition.

8. In the counter-affidavit filed on behalf of the State Government in the said three writ petitions, they aver that the orders of terminations, challenged by these petitioners are pure administrative orders" and the petitioners are not entitled to challenge them under Article 226 in this Court. The State Government also take up the position that the appointment of each of those petitioners was purely temporary and provisional and was liable to be terminated at any time without assigning any reason, and in passing those orders of termination, there has been no infringement of any of the fundamental rights guaranteed to persons, like the petitioners.

9. The State Government further elaborate their contention and state that the appointment as a teacher was in a leave vacancy which was a purely provisional one under the "emergency provision contemplated under Rule 9 of the Kerala State and Subordinate Service Rules (General Rules) 1958, and by that appointment no right or claim for continuance in service or future employment has been conferred on any of the petitioners. Such appointments can be terminated by the appointing authority, according to the State Government, without assigning any reason whatsoever. Inasmuch as a regular appointment to Government Service can be made only after also satisfying the provisions of Rule 10 of the Kerala State and Subordinate Service Rules, which makes also a provision to the effect that the appointing authority must be satisfied that the character and antecedents of a candidate are such as to qualify him for such service, the appointing authorities conducted the usual inquiries on this aspect and ultimately, on the basis of the materials made available to the appointing authorities, the latter came to the conclusion that the petitioners, in view of their character and antecedents, are unsuitable for appointment to Government service. It is because of this opinion formed that the Government decided that the petitioners should not be allowed to enter Government service.

10. The State Government also take up the position that the verification of character and antecedents was done by the same agency and applying the same standard as is done in the case of all candidates selected for appointment to Government service and the petitioners were denied appointments for the sole reason that they were found unsuitable for appointment to Government service on verification of their character and antecedents. No rights of the petitioners were infringed in any manner by the orders, which are under attack.

11. The petitioner in O. P. No. no of 1962 in particular has filed an application C. M. P. No. 1366 of 1963 for directing the State Government and the other respondents to disclose the machinery used for the purpose of verification and the report obtained by verification relating to his character and antecedents. That application has been opposed by the State Government. In particular, the Home Secretary to the State Government has filed a counter-affidavit in the same application claiming privilege under Sections 123 and 124 of the Indian Evidence Act. No such application has been filed in O. P. Nos. 497 and 532 of 1962. As a similar application has been filed in O. P. No. 309 of 1962 also, I will advert to this petition a little later.

12. Coming to O. P. No. 309 of 1962, here again, it will be seen that this petitioner was advised by the Kerala Public Service Commissioner by its communication dated 3-4-1961, Ext. P.S herein, about her having been selected for recruitment as L. P. Graduate Teacher in the Education Department of the State. But here again the said communication makes it very clear that the selection of the petitioner is subject to satisfactory proof of health and whatever further checking Government may find it necessary to do. On the basis of the selection made by the Public Service Commission, the petitioner was appointed provisionally as officiating Graduate Teacher, as per the order of the District Educational Officer, Irinjalakuda, dated 24-7-1961, Ex. p.1. Here again, it must be noted that the appointment was a provisional one on an officiating basis. The District Educational Officer, again issues a communication Ex. P.2, dated 12-9-1961, to the Headmistress of the School where the petitioner was working as a teacher, to discharge the petitioner, who, was appointed provisionally as officiating teacher under Ex. p.1, after one month from the date of receipt of the said communication. On the basis of Ex, P.2, the Headmistress passes an order, Ex. P-3, dated 16-10-1961, discharging the petitioner from service. No doubt, the petitioner appears to have made certain representations to the Director of Public Instruction but that did not result in any material benefit to the petitioner. Therefore, the petitioner challenges the orders, Exts. P.2 and P.3, referred to above,

13. Here again, the petitioner treats the termination of her service as one of dismissal from service and according to her the order violates Article 311 of the Constitution. The petitioner also takes up the position that there was no condition attached to her appointment under Ex. p.1.

14. The petitioner also states that according to her information, her services

were terminated because of certain inquiries that appear to have been conducted behind her back and in view of the suspicion entertained by the Government regarding her leanings or association with the Communist Party. The petitioner, no doubt, says that she has nothing to do with politics nor has she associated herself with the Communist Party or its activities. According to the petitioner, the Government was not entitled to make any such investigation behind her back and come to a decision to terminate her services, without giving the petitioner an opportunity to place her explanation in respect of any report that the Government may have received.

15. This petitioner again has filed an additional affidavit on 1-1-1963 wherein she makes a reference to the Government Order No. 8419/D162/ Home dated 15-3-1962. as well as another Order of the Government dated 23-1-1960. In particular, just like the petitioner in O. P. No. 119/1962 this petitioner also refers to the 1962 Government order as imposing a permanent ban against her from aspiring for Government service for all time to come.

16. The State Government again takes up more or less the same stand that they have taken in the other writ petitions. They reiterate that the petitioner was appointed only on a provisional basis and no permanent appointment was given to her. Here again, after referring to Rule 10(2)(b) of the Kerala State and Subordinate Service Rules, 1958, it is stated that, after giving the petitioner a provisional appointment, enquiries were conducted and it was found on the basis of the materials collected in the said enquiry that the character and antecedents of the petitioner were not such as to make her suitable for being appointed to Government service, and it was because of that that her provisional appointment was directed to be terminated by giving her one month's notice. The State Government also reiterate their contention that no rights guaranteed to the petitioner under the Constitution have been violated by the orders under attack and that it is for the appointing authority to be satisfied that a person selected for appointment, who has no doubt been provisionally appointed, is a fit and proper person to be given a regular appointment. The State Government also take up the position that Article 311 of the Constitution does not apply because no action has been taken against either this petitioner or as against the other petitioners as and by way of punishment. The same type of enquiry that is being conducted in respect of all candidates advised for appointment to Government service, was conducted in the case of the petitioner and, therefore, there is no question of any different standard being applied to the petitioner alone.

17. Here again, the petitioner has filed C. M. P. No. 1399 of 1963 for directing the respondents to disclose the machinery used for verifying the character and antecedents of the petitioner and the material or report of such verification. This application is opposed on behalf of the respondents and here again the Home Secretary to the State Government has filed a counter affidavit claiming privilege under Sections 123 and 124 of the Indian Evidence Act.

18. A supplementary affidavit has been filed by the State Government in this writ

petition in C. M. P. No. 1399 of 1963 on 19th March 1963. In particular, the said affidavit deals with the scope of the Memorandum No. 8419/D1/62/ Home dated 15-3-1962 which has been relied upon by this petitioner as well as the petitioner in O. P. No. 119 of 1962 as imposing a permanent ban against their aspiring for Government Service.

19. There is also an application filed C.M.P. No. 1985 of 1963 by the State Government in this writ petition to use this supplementary affidavit filed on 19-3-1963 not only in this writ petition but also in the connected three writ petitions. I will refer to these matters in the later part of this judgment.

20. Therefore, from what has been stated above, it will be seen that, according to the petitioners, their fundamental rights, guaranteed under the Constitution have been violated by the orders of discharge passed by the appropriate authorities and which are under attack in these writ petitions. The violation that is alleged by these petitioners is the right stated to have been guaranteed to them under Article 16(1) and (2) of the Constitution. Their farther grievance is that the orders of discharge passed against them are in effect orders dismissing them from service and passed in violation of Article 311 of the Constitution. Their further grievance also is that the State Government was bound to disclose the materials stated to have been collected by them, on the basis of which they have come to the conclusion that the character and antecedents of the petitioners are such as not to make them eligible for Government Service.

21. According to the State Government, no rights of any of these petitioners guaranteed under the Constitution have been infringed and they are not also bound to disclose the materials available with them, on the basis of which, they have come to the conclusion regarding the character and antecedents of these petitioners.

22. Before I consider the two points enumerated above that have arisen for consideration in these proceedings, it is necessary to state that there is absolutely no controversy in any of these writ petitions that the appointment of each of these petitioners was purely on a provisional and officiating basis. There is also no controversy that the reasons given by the State Government for terminating their Services, though provisional and temporary, are that the appointing authorities came to the conclusion that the character, and antecedents of these petitioners are such as not to make them, in the opinion of the appointing authority, eligible for appointment to Government Service. The enquiries stated, to have been made by Government, are also not challenged.

23. In my opinion, most of the points that arise for consideration in these writ petitions are already covered by a decision rendered by me earlier, and which is reported in *Sadanandan v. State of Kerala*, ILR (1962) I Ker 696 : (AIR 1963 Ker 39). That judgment of mine was taken up in appeal and my lord and learned Chief Justice and Mr. Justice Govindan Nair, in writ Appeal No. 31 of 1962 have confirmed the views expressed by me. In my decision referred to above, I had

elaborately considered the question as to what exactly is the nature of the fundamental right, if any, guaranteed to a person who makes an application for being appointed to government service. I had also considered the question as to whether the fact that a selection has been made by the Public Service Commission, in the first instance, gives a right as such, to that candidate to be appointed to Government Service as a matter of course. I had also adverted to the provisions contained in Rule 10 of the Kerala State and Subordinate Service Rules and in particular to the matter provided for in Rule 10(2)(b), wherein one of the pre-requisites for appointment to Government Service, is the satisfaction to be arrived at by the appointing authority regarding the character and antecedents of a candidate.

In that connection, I had held in that decision, after referring to the relevant rules on the subject, that the fact that the Public Service Commission has made a selection, will not as such give a right to a candidate to be appointed to any post. I had also held that under Rule 10(2)(b) of the Kerala State and Subordinate Service Rules the eligibility for being considered for appointment to any service, by direct recruitment, depends upon the appointing authorities being satisfied that the character and antecedents of the persons are such as to qualify them for such service. In considering the nature of the rights, if any, that are guaranteed to persons aspiring for a Government service, I had also adverted to the observation of his Lordship Mr. Justice Sinha as he then was, in the decision reported in *Banarsi Das and Others Vs. The State of Uttar Pradesh and Others*, to the effect that it is open to the appointing authority to lay down the requisite qualification for recruitment to the Government Service and that it is also open to the authority to lay down such pre-requisite conditions for appointment as would be conclusive to the maintenance of proper discipline amongst Government servants. I had also referred to the further observation of the learned Judge, with reference to Article 16, to the effect that like all other employers, the Government are also entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government.

24. Pausing here for a minute, it may be stated that in none of these writ petitions have the petitioners challenged the validity of the provisions contained in Rule 10 of the Kerala State and Subordinate Services Rules nor have any of the petitioners urged that the Government is not entitled to take into account the character and antecedents of the appointments before their appointment to Government service. In my previous decision, I had also held that the State Government is entitled to take into account the character and antecedents of the particular applicants, especially in view of the provisions contained in Clause (2) Sub-rule (b) of Rule 10 of the Kerala State and Subordinate Services Rules, 1958, which are rules framed by virtue of the powers conferred under the proviso to Article 309 of the Constitution.

25. I had, also occasion to consider the nature of the rights guaranteed under Articles 16(1) and (2) of the Constitution. In that connection I had referred to

the decision of their Lordships of the Supreme Court, reported in *The General Manager, Southern Railway Vs. Rangachari*, wherein their Lordships have held that what is guaranteed under Article 16(1) and (2) is the equality of opportunity and nothing more; and that Article 16(1) or (2) does not prohibit prescription of reasonable rules for selection to any employment or appointment to an office and that any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. I had also adverted to another decision of the Supreme Court, which has since been reported in *Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others*, to the effect that the fundamental right guaranteed under the Constitution, is not only to make an application for a post under the Government, but the further right to be considered on merits for the post for which the application has been made, but that the right does not extend to being actually appointed to the post for which an application may have been made.

That the equal opportunity under Article 16(1) and (2) is amply satisfied when a party has been given a chance to apply and his application has been considered and that there is no right for getting appointed to a particular post, is also clear from the following observations of the learned Chief Justice in the decision reported in *The High Court, Calcutta Vs. Amal Kumar Roy*, at p. 1710:

"Lastly, it was submitted that the plaintiff has been discriminated against in the matter of his promotion, and, therefore, Arts. 14 and 16(1) of the Constitution have been violated. It is difficult to see how either of those Articles can be pressed in aid of the plaintiff's case. The plaintiff's case was considered along with that of the others, and the High Court, after a consideration of the relative fitness of the Munsifs chose to place a number of them on the panel for appointment as Subordinate Judges, as and when vacancies occurred. He had, therefore, along with others, equal opportunity. But equal opportunity does not mean getting the particular post for which a number of persons may have been considered. So long as the plaintiff along with others under consideration, had been given his chance, it cannot be said that he had not equal opportunity along with others, who may have been selected in preference to him".

The legal position is also, in my view, well established that there is no fundamental right to be continued in employment of a State and that a party cannot complain about the termination of his service by the State, as an infringement of any constitutional right, when no question of violation of Article 31: arises. (See the following observation of Mr. Justice Venkatarama Iyer in *P. Balakotaiah Vs. The Union of India (UOI) and Others*, at p. 238):

"The real complaint of the appellants is that their services have been terminated; but that involves, apart from Article 31, no infringement of any of their constitutional rights. The appellants have no doubt a fundamental right to form associations under Article 19(1)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated

by the State, they cannot complain of the infringement of any of their constitutional rights, when no question of violation of Article 311 arises".

26. The learned Judge has also observed in the later part of the judgment that Article 311 has application only when there is an order of dismissal or removal and that it is not every termination of service of an employee that falls within the operation of Article 311. The learned Judge has also made it clear that it is only when an order of termination is passed by way of punishment that it is one of dismissal or removal under Article 311.

26a. The same principles have also been laid down by the Supreme Court in their decision reported in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , In particular, in this decision, the learned Chief Justice states that it is only in those cases where the Government intends to inflict the three forms of punishment provided under Article 311, that a Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and that if the termination of service is sought to be brought about otherwise, than by way of punishment, the Government servant concerned cannot claim protection of Article 311(2).

27. I have adverted to these passages regarding the applicability of Article 311, because I have already indicated that according to the petitioners the orders terminating their service, are really orders of dismissal passed as and by way of punishment, involving penal consequences.

28. I am not inclined to accept the contentions of the petitioners that Article 311, in any manner stands attracted in these cases. The Government have made it very clear in their counter-affidavits that no action has been taken as against any of the petitioners as and by way of punishment and that the services of the petitioners who were appointed on a provisional basis, pending an investigation into their character and antecedents were dispensed with because their character and antecedents were not found to be satisfactory so as to make them eligible for permanent appointment.

29. Therefore, the applicability of Article 311 or any violation thereof, in my view, stands completely eliminated. On the foregoing discussion, I have also already indicated the nature of the right, under Article 16(1) and (2) that is guaranteed to persons like the petitioners.

30. In all these cases, there is no controversy that each of these petitioners has a right to make an application for service under the Government and in fact they did make such applications. That those applications were also properly considered is clear from the fact that the Public Service Commission advised about their recruitment for appointment in the Education Department; and they were also given provisional appointment pending investigation into their character and antecedents, It was really because the appointing authority on enquiry was not satisfied about their character and antecedents, that their temporary services were terminated and no permanent appointment was given

to them. Under these circumstances can it be stated that there is a violation of any constitutional rights guaranteed to persons like the petitioners and that is the question arising for consideration under point No. 1 enumerated above. The decisions of the Supreme Court, referred to above, make it very clear that the rule as to equal opportunity is amply satisfied when a party is enabled to make an application and that application is properly considered. But it is also made clear that the equal opportunity does not extend to being appointed to a post. These decisions also make it clear that it- is open to the appointing authorities to fix reasonable qualifications for all such applicants for being appointed to Government service. In my view, it cannot be stated in the circumstances, that there has been any violation of any constitutional rights guaranteed, to person like the petitioner and, therefore, it must be held that the orders of termination passed by the various authorities will have to be upheld.

31. The various aspects dealt with by me above, and which as I have already indicated, were also considered in my earlier decision in ILR (1962) 1 Ker 696: K. Sadanandan Vs. The State of Kerala, have been accepted by the learned Judges, on appeal in writ Appeal No. 31 of 1962 (Ker). In fact, a perusal of the Judgment of the learned Judges if I may say so with respect clearly shows that the learned Judges approve of the principles laid down by me that the appointing authorities are entitled to take into account the character and antecedents of the applicants and if the authorities are not satisfied on these matters that will be a good ground for refusing appointment under the State.

32. Then the other question that arises for consideration is as to whether the State Government is bound to disclose the materials, that were available before them on the basis of enquiries conducted from which they have come to the conclusion that the character and antecedents of each of these applicants are such as not to make them eligible for appointment to Government Service. No doubt, each of these petitioners makes an allegation that it is really because of the opinion entertained by the appointing authorities that they are sympathisers of the Communist Party that they have not been given an appointment and their grievance is that they are made to suffer because of their political leanings. Apart from the fact that each of these petitioners states that they have nothing to do with any political party, they also make up the plea that mere association with a political party, namely, the communist party, is not an offence and on that ground there can be no denial of service under the State.

In this connection, the learned counsel for the petitioners, Mr. V. E. Krishana Iyer, has relied upon the recent decision of the Supreme Court, in Civil Appeal No. 83 of 1962 : V.S. Menon Vs. Union of India (UOI), , a copy of the judgment in which is available in blue print. According to the learned counsel, even assuming that the opinion formed by the State Government that these petitioners are sympathisers of the Communist Party is correct, taking interest in the political activities of the Communist Party, will not amount to taking part in subversive activities, so long as the Communist Party continues to be recognised as a

political Organisation which has not been banned. The learned counsel urged that simply because the petitioners may have been associating themselves with members of the Communist Party, it does not mean that the petitioners are engaged in subversive activity. Subversive activity, in order to make a person ineligible for Government service, must amount to actively pursuing activities as are calculated to subvert the Government established by law.

33. In my view, the decision of the Supreme Court referred to above, and relied upon by the learned counsel for the petitioners does not at all assist him in his contention that the Government is not entitled to form an opinion, regarding the character and antecedents of a particular candidate.

34. The Supreme Court, in the decision referred to above, had to consider the question as to whether an action taken against an officer, by terminating his services on the basis of Rule 3 of the Civil Services (Safeguarding of National Security) Rules 1949, was valid or not. In considering the question, the learned Judges had to advert to the requirements of R. 3 before taking action as against the Officer. One of the requirements, according to the learned Judges, indicated in Rule 3, before action could be taken is that the authority concerned, must form an opinion that a Government servant is engaged in subversive activities. It is in that connection that the learned Judges had to consider as to what exactly will amount to being engaged in subversive activities. No such consideration arises in the matters on hand before me, because it is not controverted that the State Government is entitled to take into account the character and antecedents of a particular candidate, before he can be appointed to Government service.

35. A consideration of the second contention naturally leads me to deal with the applications filed by the petitioner in O. P. No. 119 of 1962, namely, C.M.P. No. 1366 of 1963, and C.M.P. No. 1399 of 1962 filed in O. P. No. 309 of 1962. Those are applications filed by the petitioners therein on 27-3-1963 to direct the State and the other respondents to disclose (a) the machinery used for verifying the character and antecedents of the petitioners and (b) the material or report of such verification. It is rather interesting to note that the appeal as against my previous judgment, namely, Writ Appeal No. 31 of 1962 (Ker), was disposed of by the learned Judges on 19-2-1963.

36. One of the contentions that appears to have been taken in the appeal before the learned Judges, was that the conclusion reached by the Government in that case regarding the character and antecedents of the appellant was arrived at on no materials whatsoever or at any rate was a conclusion arrived at on irrelevant materials. But the learned Judges were not inclined to consider that contention because they were of the view that before the petitioner could raise such a contention in appeal, he should have moved before the Judge who heard the writ petition an application for compelling the State to disclose the grounds on which they came to the conclusion that the appellant's character and antecedents were such that he could not be considered for employment. The learned Judges were also of the view that is as much as that had not been done in the writ proceeding

they cannot entertain that contention for the first time in an appeal. These two applications for compelling the respondents herein to disclose the machinery used for verifying the character and antecedents and to disclose the materials or report of such verification, have been filed within a week after the disposal of the appeal by the learned Judges.

37. As I mentioned earlier, on behalf of the State the Home Secretary has filed counter-affidavits claiming privilege under Sections 123 and 124 of the Indian Evidence Act. The Home Secretary has stated that the Government's conclusion in regard to the character and antecedents was based on the report of the Dy. Inspector General of Police, C.I.D. and Railways, Trivandrum. It is also mentioned in the affidavit by the Home Secretary that no irrelevant or extraneous considerations have weighed with the Government in coming to the conclusion regarding the character and antecedents of the petitioners. It is also stated that the petitioners cannot compel the Government to disclose the reasons in the report on the strength of which Government came to the conclusion regarding, the petitioners' character and antecedents. The Home Secretary further states that he has carefully examined the report and other relevant documents relating to the verification of the character and antecedents of the petitioners and according to him, those documents and reports form unpublished public records relating to the affairs of the State and he is entitled to claim privilege against their production u/s 123 of the Evidence Act. The Home Secretary also states that the report of the Deputy Inspector General of Police on the strength of which Government have come to the conclusion, is a report made in official confidence and he considers that it would not be in public interest to disclose the contents of the report and he is of the view that public interest would suffer by such disclosure. But it is also stated by the Home Secretary, that without prejudice to the claim or privilege under Sections 123 and 124 of the Evidence Act Government is prepared to make available to this Court, the file relating to the report of the Deputy Inspector General of Police, on the basis of which the Government's conclusions regarding character and antecedents of the petitioners were arrived at. . The learned Advocate General has quite naturally relied upon the decision of the Supreme Court reported in *The State of Punjab Vs. Sodhi Sukhdev Singh*, wherein their Lordships have, if I may say so with respect, very elaborately considered and laid down the various principles which have to be borne in mind in dealing with a claim for privilege under Sections 123 and 124 of the Indian Evidence Act.

38. No doubt, the learned counsel for the petitioners takes up the position that the decision of the Supreme Court referred to above was rendered in a suit and that those principles are inapplicable to proceedings under Article 226. In fact, the learned counsel for the petitioners was prepared to take up the position that there can be no question of any privilege being claimed by the Government in proceedings initiated for the issue of a writ of certiorari. The learned counsel for the petitioners has also referred me to certain decisions, wherein the reasons given by the authorities, functioning under particular statutes have been

scrutinised by the Courts and the Courts have held that the authorities concerned, in coming to a particular conclusion have taken into account matters which are irrelevant or are not germane.

39. The learned Advocate General has taken up the position that the principles laid down by the Supreme Court in the decision referred to above regarding the claim of privilege applies in full force to proceedings under Article 226 also.

40. The question, when properly arises, may have to be considered as to how far the Government may be entitled to claim privilege when there is a violation of fundamental rights guaranteed under the Constitution. No doubt, in the decision of the Supreme Court, such a question did not arise. Nor am I *prima facie* satisfied, that the contention of the learned counsel for the petitioner, that under no circumstances whatsoever, can the plea of privilege be claimed in proceedings under Article 226 can be accepted in toto. Those contentions will have to be very seriously considered on a proper occasion when the question directly arises.

41. A consideration of the question of the plea of privilege will "become relevant and material only if the petitioners are able to satisfy this Court that this Court can scrutinise the grounds which were available before the authorities concerned and come to a conclusion that these grounds are absolutely irrelevant in arriving at a conclusion regarding the character and antecedents. No doubt, if an opinion or a satisfaction has to be arrived at by a particular authority or an officer functioning under a statute it may be open to the parties, who are aggrieved by decisions arrived at by such officers to urge that the opinion or satisfaction has been reached by the officer or authority concerned on a consideration of irrelevant materials. But, in my view, such cases stand on a different footing because the statute itself will give an indication as to the purpose which is sought to be served by the said enactment. (12) In cases like this, in my view, no such consideration arises at all. Appointment to Government service is essentially an administrative or executive action. The position may, no doubt, be different if the applicants are able to establish that in addition to the right to apply and being considered for a particular post, they have also a right guaranteed under the Constitution to be appointed to the particular post. But, as I have already indicated, the constitutional right does not extend to conferring a right on any person of being appointed to Government service. I have adverted to the various decisions of the Supreme Court on that aspect. Therefore, it has become unnecessary for me to consider these applications because no useful purpose will be served by this court directing the Government to make available the grounds or materials available before them on the basis of which they have come to a conclusion regarding the character and antecedents of these petitioners. The nature of the materials to be collected and the satisfaction that is to be arrived about character and antecedents are entirely matters for the appointing authorities; and there is no controversy that the appointing authorities have a right to be so satisfied especially in view of the provisions of Rule 10(2)(b) of the Kerala State and Subordinate Services Rules on these

matters before a person can be appointed to Government service. When there is no right to be appointed, as such to Government service, and when in this case I have already held that the limited right that is given under Articles 16(1) and (2) has been sufficiently complied with, the grounds available to the Government to come to a conclusion one way or the other is not a matter which this Court can be called upon to scrutinise, especially when the Government is entitled to pick and choose. Therefore, without expressing any view regarding the plea of privilege claimed by the Government, these two applications, C. M. P. Nos. 1366 and 1395 of 1963 are to be dismissed. Therefore, it follows both the questions arising for consideration in these writ petitions, will have to be decided against the petitioners.

43. Before I close, I should refer to the supplementary affidavit that has been filed by the State in S. M. P. No. 1399 of 1963 in O. P. No. 300 of 1962 as well as to the application filed by the State in C. M. P. No. 1986 of 1963 in O. P. No. 300 of 1962. I have already indicated that the grievance of the writ petitioners in O. P. Nos. 119 and 309 of 1962 is that a total ban against their aspiring for service has been imposed by the Government Memorandum No. 8419/D1/62/, Home dated 15-3-1962. The State Government have taken up the position that the said circular was not intended to impose any such total ban and it is a secret-document which should not have been, available to the petitioners. But the point to be noted is that in the supplementary affidavit dated 19th March 1963, the State Government have made it clear that the said Government Order of 15-3-1962 is a top secret document and that the said memorandum is by no means intended to operate as a perpetual and absolute ban against the persons mentioned therein. There is no controversy that the names of all these four writ petitioners are referred to in the said document.

It is also mentioned, that according to the State Government, the persons mentioned therein would not be appointed to Government service so long as their character and antecedents are not acceptable to Government, They also refer to the instructions issued by the Government that a person debarred once on the ground of his character and antecedents can be appointed to Government service if it is shown that he has not participated in subversive activities within three years of the time of any subsequent enquiry into his character and antecedents or that there has been evidence of a change of attitude on his part since the first enquiry and report about his character and antecedents. The State Government also make it clear that it is their accepted policy that no person is to be disqualified from entry into Government service only on account of his political affiliation, or on the ground that he has canvassed at elections to vote for any particular party. Though this supplementary affidavit is filed only in C.M.P. No. 1399 of 1963 in O. P. No. 309 of 1962, the learned Advocate General has filed C. M. P. No. 1986 of 1963 in O. P. No. 309 of 1962 wherein a request has been made to record all those statements of the State Government in all the other connected writ petitions also. These statements made in the supplementary affidavit of the State Government are recorded.

44. In the result, all the four writ petitions are dismissed and parties will bear their own costs.

45. C. M. P. Nos. 1366 of 1963 and 1399 of 1063 are dismissed subject to the recording of the statement made by the State Government in its affidavit dated 19-3-1963.

46. C. M. P. No. 1986 of 1963 is disposed of subject to direction"; contained herein.