
(1998) 07 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 4717/90 J

K.S. Rajamony

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 17(3), 19
Kerala Public Mens Corruption (Investigations and Inquiries) Act, 1987 — Section 32,
4(1), 6(3)
Kerala Public Mens Corruption (Investigations and Inquiries) Conditions of Service of
Members of the Commission Rules, 1990 — Rule 3, 5, 6
Members of the Legislative Assembly Rules, 1982 — Rule 10

Citation : (1998) 07 KL CK 0010

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K.P. Satheesan and K.K. Gopinathan Nair, for the Appellant; M.S.
Radhakrishnan Nair, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.S. Rajan, J.—Petitioner while practicing as Senior Advocate of this Court was appointed as a Member of the Kerala Public Men's Corruption (Investigations and Inquiries) Commission (hereinafter referred to as "the Commission") on 10th March, 1992. After completing his full term of office of five years he retired on 10th March, 1996. Petitioner claimed benefit of reimbursement of expenses for medical treatment on a par with the retired Judges of the High Court. The request of the Petitioner contained in his letter dated 5th April 1997 was forwarded to the Government by the Secretary to the Commission as per Exhibit P-4. By Exhibit P-5 the Government rejected the above request. It is Exhibit P-5 that is under challenge in this Original Petition.

2. In order to appreciate the argument of the Petitioner it is necessary to refer to the salient features of the Statute, namely, the Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 (hereinafter referred to as, "the Act"). u/

s 4(1) of the Act the Governor shall constitute a Commission consisting of three Members for the purpose of conducting investigations and inquiry in accordance with the provisions of the Act. The appointments are to be made on the advice tendered by the Chief Minister in consultation with the Chief Justice and the Leader of Opposition. One of the members shall be a person who is qualified to be appointed as a Judge of the High Court. According to Section 6(3) of the Act, a member shall have the like status, shall be entitled to the same salary, allowances and pension and shall be subject to same conditions of service as a Judge of the High Court of Kerala. Section 32 of the Act confers power to make rules providing for, among other things, for the conditions of service of the members of the Commission. Accordingly, the Kerala Public Men's Corruption (Investigations and Inquiries) Conditions of Service of Members of the Commission Rules, 1990 (hereinafter referred to as "the Rules") have been framed. Under Rule 3 a member shall be entitled to the same perquisites as of a Judge of the High Court of Kerala from time to time. Rule 5 provides that a member is entitled to surrender leave facilities as in the case of a Class I Officer of the State Government. Rule 6 deals with the medical reimbursement which is as follows:

6. Medical Reimbursement. A member shall be entitled to the same Medical Attendance as of a Minister and the Medical Attendance to the Ministers, Speaker, Deputy Speaker, Leader of Opposition, Chief Whip and the Members of the Legislative Assembly Rules, 1982 shall be applicable for reimbursement of medical expenses of a member and the members of his family.

Rule 10 provides the residuary matters which reads as follows:

10. Residuary matter.-In matters not made mention of in these rules and for which provision is there in the Rules, notifications, orders and proceedings in force which govern the conditions of service of Judges of the High Court of Kerala, or the Supreme Court, as the case may be, those provisions will be applicable to a member as far as possible under the Act. The changes made from time to time in the service conditions of the Judges of the High Court or Supreme Court, as the case may be shall be made applicable to a member of the Commission to the extent permitted by the provisions of the Act.

3. The statement filed on behalf of the Respondent takes the stand that under Rule 6 a Member is entitled to the medical reimbursement which will be equivalent to that of a Minister, Speaker, etc. Since the Petitioner is a retired Member of the Commission, he is not entitled to get the medical reimbursement. Rule 10 is applicable only to the matters not mentioned in rules elsewhere and for which provision is there in the rules. It was further stated in the statement that according to Rule 10, if a retired Judge of the High Court or of Supreme Court is appointed as a member of the Commission, his conditions of service will be governed by the Rules, notifications, orders and proceedings in force in the absence of relevant provisions in the above Rules. The medical facilities and concessions granted as per Government Order dated 23rd October 1996 read

with the Government Order dated 11th January 1985 can be availed of only by a retired High Court Judge. He is, therefore, not entitled to the benefit of the above Government Orders.

4. Therefore, the question which arises in this Original Petition is as to whether Rule 10 which deals with the residuary matters is applicable in the case of the Petitioner. Rule 10 really is a provision which fills up the gap and omissions in the Rules where no provisions are available in any of the preceding rules. In such cases the provisions governing the conditions of services of Judges of the High Court or the Supreme Court as the case may be will be applicable to a Member as far as possible under the Act. The changes made from time to time in the service conditions of the Judges shall also be made applicable to a Member of the Commission. This is in consonance with Section 6(3) of the Act which confers the status of a High Court Judge to a Member of the Commission. In this connection it is worthwhile to refer to Exhibit P-6. In Exhibit P-6 the Government found that a Member of the commission was eligible for commutation of pension, family pension, D.C.R.G. etc. by virtue of the provisions in Rule 10 of the Rules read with Sections 17(a)(3) and 19 of the High Court Judges (Conditions of Service) Act, 1954. The Government also relied on Section 6(3) of the Act about which reference has already been made earlier. Thus, it is obvious that the Government was aware that Rule 10 applies to a Member of the Commission like the Petitioner while extending the same benefits available to High Court Judge in the matter of commutation of pension, family pension, D.C.R.G. etc.

5. The stand of the Government that since the Petitioner is a former Member of the Commission, he is not entitled to the medical reimbursement is not correct. High Court Judges (Conditions of Service) Act, 1954 deals with not only the conditions of service of the sitting Judges, but also of the retired High Court Judges. When the Government was of opinion that by virtue of Rule 10 of the Rules the provisions contained in the High Court Judges (Conditions of Service) Act with regard to commutation of pension, family pension, D.C.R.G. etc. can be paid to a Member of the Commission, I do not find any justification for denying the benefit of medical reimbursement to the Petitioner. By Exhibit P-3 the Government ordered that the medical facilities and concessions allowed as per Exhibit P-2 to the retired Supreme Court Judges will be extended to the retired Judges of the High Court and their family members who are residing in Kerala. Thus, Exhibit P-3 is part of the conditions of service of the Judges of the High Court of Kerala and therefore by virtue of Rule 10 the above conditions of service are applicable to the Petitioner also. When a retired High Court Judge is entitled to the benefit of medical reimbursement by virtue of Exhibit P-3, there is no reason to hold that a former Member of the Commission is not entitled to the same. Otherwise, there is no meaning in declaring that a Member shall have the like status and shall be entitled to same salary, allowances and pension and shall be subject to the same conditions of service as a Judge of the High Court of Kerala. The above section comprehensively embraces not only the same conditions of the High Court Judge but also of a retired High Court Judge.

Therefore, I quash Exhibit P-5. The Respondent is directed to reimburse the expenditure incurred by the Petitioner for medical treatment in accordance with Exhibit P-3 order.

Original Petition is allowed as indicated above.