
(1997) 09 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 19062/96 J

Madhavan and Others

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 05-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 50
Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 — Rule 17 , 18(1) , 18(2), 8
Kerala Public Services Act, 1968 — Section 2(1)

Citation : (1997) 09 KL CK 0007

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : Govind K. Bharathan and N. Madhavan, for the Appellant; K. Jayakumar, Government Pleader for Respondents 1 to 3, T.A. Ramadasan, for 4th Respondent and P.C. Sasidharan, for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—The writ Petitioners are advocates practising at Thalassery Bar. They are "Government Law Officers" coming within the purview of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978 (hereinafter referred to as "the Rules"). Being aggrieved by the proposal for immature termination of their services they approached this Court in the present proceeding to galvanize their case and to seek redressal. As per the terms of appointments the Petitioners are entitled to continue in service till 18th October 1998, 26th March 1998 and 24th July 1998 respectively. The Petitioners 1 and 2 are Additional Government Pleaders and Public Prosecutors and the third Petitioner is the District Government Pleader and Public Prosecutor. On an earlier occasion they came before this Court in O.P. No. 13138 of 1996 praying for a direction to restrain the first Respondent, the Government of Kerala, from taking any steps to terminate their services. When the above Original Petition came up for hearing on 27th September 1996, a

statement had been filed on behalf of the first Respondent stating that they have not taken any decision to terminate the services. This Court, after recording the said statement closed the said writ petition.

2. Subsequently, the Government issued Ext. P-5 notification on 11th October 1996 in exercise of powers conferred by Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968 (19 of 1968) amending "the Rules" referred to above. By the said amendment a new proviso is sought to be substituted in Rule 17 deleting the existing proviso. Apprehending immediate termination in view of the amended rule, the Petitioners filed the present writ petition seeking to strike down Rule 17 of the Rules. They also prayed for a declaration that the first Respondent, the Government of Kerala have no manner of right or authority to terminate the services of the Petitioners purporting to be in exercise of the powers Under Rule 17 of the Rules as amended by Ext. P-5 notification without assigning any reason whatsoever.

3. Before advertng to rival contentions the background of the above amendment may be taken note of. The Explanatory Note attached to Ext. P-5 notification itself is self-explanatory and hence it is ectyped hereunder.

According to Rule 17 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978, the Government may terminate the services of any Government Law Officer other than a Special Government Pleader or Special Public Prosecutor at anytime before the expiry of the term of his appointment without assigning any reasons therefor after giving one month's notice or one month's salary in lieu of such notice. In the judgment in O.P. 3298/87, the Honourable High Court of Kerala have observed thus: "it is conceded before me by the learned Government Pleader appearing in this case that there is no fixed monthly salary for an Additional Government Pleader and Additional Public Prosecutor engaged by Government to conduct cases in District Court Centres and Sub Court Centres. In such situation there is no possibility of paying one month's salary to the Government Law Officer....

At present the High Court Law Officers alone are being paid monthly salary. The District Government Pleaders and Additional Government Pleaders of Additional District Court Centres and Sub Court Centres are being paid a retainer fee in addition to their fee for conducting cases. But in the cases where there are more than ore Additional Government Pleader, the Additional Government Pleader earlier appointed alone will get the retainer fee.

Government propose to amend the rule by substituting the proviso to Rule 17 to enable them to terminate the services of the Law Officers on payment, as the case may be, of one month's salary or retainer fee or an amount equivalent to that of retainer fee, where there is no retainer fee, instead of one month's notice.

4. Rule 17 as it stood prior to its amendment is as follows:

17. Termination of appointment. - (1) Notwithstanding anything contained in

these rules, the Government may terminate the appointment of any Government Law Officer other than a Special Government Pleader or Special Public Prosecutor, at any time before the expiry of the term of his appointment without assigning any reasons therefore:

Provided that before such termination he shall be given one month's notice or shall be paid one month's salary in lieu of such notice.

The proviso to the above rule has been deleted and in its place the following proviso has been substituted:

Provided that before such termination he shall be given one month's notice or be paid, as the case may be, one month's salary or retainer fee or an amount equivalent to that of retainer fee where there is no retainer fee, in lieu of such notice.

5. "The Rule" is generally applicable to appointments, conditions of service, duties, rights and liabilities of Government Law Officers, other than the Advocate General and the Additional Advocate General and the procedure for the conduct of Government cases. Rule 8 deals with method of appointment of Government Law Officers at District Court, Additional District Court and Sub-Court Centres. Under Sub-rule (1) of Rule 18, they shall be appointed by the Government from a panel of names of advocates furnished by the District Collector concerned. Under Sub-rule (2) the above said panel shall be prepared by the concerned District Collector in consultation with the District and Sessions Judge and only those persons, who having regard to their qualifications, experience, integrity, reliability, reputation and character and antecedents are in the opinion of the District Collector fit to be appointed shall be included therein. However, Rule 17 authorises the Government to terminate the appointment of any Government Law Officers other than a Special Government Pleader or Special Public Prosecutor, at any time before the expiry of the term of his appointment without assigning any reasons for such termination. The above provision is unaffected even after the amendment of Rule 17. The power of the Government to terminate a Government Law Officer appointed Under Rule 8 is apodictic.

6. The predominant contention advanced by the learned Counsel for the Petitioners is that the provisions contained in Rule 17 violate Articles 14 and 16(1) of the Constitution. The argument is that those provisions confer power on the Government to terminate the Law Officers in an arbitrary and discriminatory manner. It is pointed out that the said power is uncanalised power and therefore it can be exercised by the Government to "pick and choose" the officers for the termination of their service according to their whims and fancies. While marshalling the said contention the counsel pointed out that the provisions contained in Rule 17 with particular reference to the words "without assigning any reasons therefor". The termination of appointment is allowed without assigning any reasons and hence the power conferred under the rule can be exercised capriciously, so argued.

7. No doubt the said provision authorises the termination of the Law Officers before the expiry of the term of their appointment without assigning any reasons therefor. However, the counter-affidavit filed on behalf of the first Respondent on 10th June 1997 discloses certain reasons for terminating the services of the Petitioners. In this context the following averments contained in the counter-affidavit were brought to my notice.

It is submitted that the performance of any of the Law Officers appointed by the earlier Government has been found to be unsatisfactory and the Government is reviewing all cases. It is further submitted that the Government has the power and authority to terminate the services of any Government Law Officer whose performance is found to be unsatisfactory or in whom the Government feels confidence cannot be reposed. It is submitted that in a democratic polity, to conduct the Government cases has to have nexus with the political philosophy of the Government and the policy structure of the Government. The political philosophy and policy structure of Governments differ when Governments change.

In order to examine whether the above grounds really exists for Governmental action, the files regarding the case had been called for. Pursuant to the direction of this Court, the files regarding the case was produced before this Court by the Government Pleader. After verification of the Government files it came to my notice that the file did not disclose any of such reasons for the termination of the Petitioners. Therefore, this Court further directed the Government to explain the position whether they really insist on these reasons in support of their action. In the aforesaid situation an additional affidavit had been filed on behalf of the first Respondent on 4th September 1997 withdrawing the aforesaid statements. The relevant portion contained in the additional affidavit is extracted hereunder:

3. In the counter-affidavit filed in the above Original Petition it was stated that "It is submitted that the performance of any of the Law Officers appointed by the earlier Government has been found to be unsatisfactory and the Government is reviewing all cases." It is further stated that "It is submitted that in a democratic polity to conduct the Government cases has to have nexus with the political philosophy of the Government and the policy structure of the Government. The political philosophy and policy structure of Governments differ when Governments change.

4. It is submitted that on an examination of the Government files no decision of the Government to review of cases of appointments by the earlier Government is seen to have been taken. It is submitted that the Government does not propose to review all cases of Government Law Officers appointed by the earlier Government. However, it is submitted that in terms of Rule 17 the Government has the power to terminate the services of the Government Law Officers without assigning any reason. It is submitted that the Government does not propose to review the cases conducted by the Government Pleaders whose services are going to be terminated.

5. In the aforesaid circumstances it is submitted that a portion of the counter-affidavit wherein it is stated that the performance of the Law Officers appointed by the earlier Government is being reviewed by the Government is hereby withdrawn. It is further submitted that the following sentences may also be treated as withdrawn in the counter-affidavit. "It is submitted that in a democratic polity to conduct the Government cases has to have nexus with the political philosophy of the Government and the policy structure of the Government. The political philosophy and policy structure of Governments differ when Governments change.

The above statements contained in paragraphs 3, 4 and 5 of the additional counter-affidavit are specifically recorded.

8. What I would say in the circumstances of this case is that the Governmental action in withdrawing the disputed statements contained in the counter-affidavit is well commendable. The independence and impartiality of the judicial system is the sine qua non for the successful working of the parliamentary democracy. It pre-supposes the existence of an effective independent and impartial Bar uninfluenced by the feelings of caste, creed, religion or political party. The faith in the independence and impartiality of the Bar shall not be allowed to be eroded or effaced under any circumstance. The conscience of the Constitution lies in Article 50 which propounds the State shall take steps to separate the judiciary from the executive in the public services of the State. The gesture to withdraw "the political philosophy of the Government" as being one of the circumstances to initiate the action of termination against the practising advocates at a Bar, can be viewed only within the spirit of the above framework. The appointment of Government Law Officers shall be made on the basis of their qualification, experience, integrity, reliability, reputation and character and antecedents and not on their "political philosophy" which is always known for its fallibility, flexibility and gullibility.

9. The first counter-affidavit filed by the State no doubt contains certain other reasons for terminating the services of the Petitioners. Such reasons are evident from the following averments contained in the said counter-affidavit.

It is submitted that the relationship between the Government and its counsel is qualitatively different from that between master and servant. It is essentially a position which requires mutual confidence and trust. This Hon"ble Court had occasion to consider the question of termination of Government Pleaders before the expiry of their periods. It was held by this Hon"ble court that going by the rationale of the work which a Government Pleader had to perform, it is only proper that the Government have the power given to them to terminate the services without assigning any reasons. It is submitted that the relationship between the Government and Government Pleaders are fiduciary in nature. Though it is an office under the State, it is one which necessitates an extraordinary degree of confidence on the part of the State in the Government Pleader. It is submitted that a lawyer has to be a person in whom the

Government has confidence.

The sum and substance of the contention is that the Government have lost faith in the Law Officers whose services are proposed to be terminated. In other words, the loss of confidence in them is the binding force for the action of termination. Though this reason is not found in the Government file it is sufficiently supplemented by the first counter-affidavit. In view of the nature of the attack on the impugned provision this Court can definitely take this as being one of the reasons though the impugned provision sanctions termination of the Law Officers without assigning any reasons.

10. The next question to be examined is, "loss of confidence" disclosed in the counter-affidavit would be a justifiable reason to terminate the services of the Petitioners. The faith is the basic force that sustains the society from its wanton aggressions. The affinity between the society and the individual as also the State and its subjects is bandaged by chain of faith. Once the chain has broken affinity or relationship ends with it. Therefore when there is loss of confidence, that is the end of the matter. The Supreme Court in *State of U.P. and others Vs. U.P. State Law Officers Association and others*, observed thus:

The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman.

Again in *State of U.P. Vs. U.P. Govt. Counsel (Crl.) Welfare Assn.*, the Supreme Court after taking note of the earlier decision in *State of U.P. and others Vs. U.P. State Law Officers Association and others*, observed thus:

This Court after considering the gamut of the controversy held that the Law Officers appointed by the Government to look after the work of the Government was only professional service as legal assistants and the service rendered by the counsel is only a service oriented professional service. Therefore, they are not employees of the Government. The Government is entitled to regulate its work by prescribing the conditions subject to which the work of the Government could be entrusted to and be discharged by the counsel. It is one of trust and confidence. So long as the trust and confidence remain and maintained by the counsel, the Government would engage the counsel. The Government have the liberty to relieve a counsel for the reason that they do not have confidence in the counsel.

From the above precedents it is axiomatic that the loss of confidence is a well recognised reason for terminating the services of the Law Officers by the Government. Even though this reason is not seen recorded in Ext. P-9 order subsequently issued by the Government in the case of the second Petitioner, the said reason contained in the first counter-affidavit is equally applicable in his case too. By Ext. P-9 issued Under Rule 17 of the Rules terminating the service

of the second Petitioner and appointing Sri Babu Sathyanath, T.V. in his place, no doubt came to the fore during the pendency of this writ petition but it cannot be attacked for that reason in the absence of any interim order restraining the Government from doing so. Therefore it cannot be said that the proposal for termination of the appointment of the Petitioners is made without the existence of any cogent reason.

11. The question now remains to be considered is, can Rule 17 be strike down as being a provision conferring arbitrary and discriminatory power on Government? Of course this question has necessarily to be answered. While analysing this issue, two basic conspicuous outlines are to be kept in mind. Firstly what is involved in Rule 17 is not appointment but its termination; secondly, the termination of a contract wrapped in trust and confidence. As long as trust and confidence of the higher authority, the Government subsists, the effect of appointment may continue to its maturity but its continuance may end abruptly when they suffer loss in it. What evinces here is honourable departing between the client and the lawyer and not taking cudgels at each other. Though this is the inevitable effect of the operation of the provisions contained in Rule 17, it may well be an in-built circumstance pointing towards guidance and canalization. The wisdom of the Government pervades and controls the exercise of power of termination of appointment built on mutual trust and confidence. Thus the power conferred on the Government in the present context cannot be equalised to the power of Governmental function in the administrative action. The discretionary power is not necessarily discriminatory when the legislative policy is from the statute and the discretion is vested in the Government or other authority as distinguished from a minor official.

12. It is highlighted that the Government can exercise the power of termination of Law Officers, even without assigning any reasons. The disclosure of reasons may sometimes contribute in degrading the sanctity of public interest. In certain cases it may lead to calamitous result of different form and shape. There may be cases where the pronouncement of reasons for termination of appointment would erode the credibility of the Bar. In such situations the termination with assigning reasons is egregious and opposed to the paramount interest of the community of lawyers. The proviso to Rule 17 provides that before the termination the officer shall be given one month's notice or be paid as the case may be one month's salary or retainer fee or an amount equivalent to that of retainer fee where there is no retainer fee, in lieu of such notice. This is also a safeguard while exercising power under this rule. In this context it is brought to my notice that the retainer fee paid to the Law Officers attached to the subordinate courts is very nominal whereas the Law Officers attached to the High Court are being paid fairly a good amount as monthly salary. The disparity is demonstrative and poignant when the notice pay is disbursed on termination. The retainer fee payable to the Law Officers can be enhanced or the notice pay payable under the proviso to Rule 17 in their case can be fixed as the amount equal to the total amount they have drawn during the month immediately preceding their termination of appointment.

It is definitely for the Government and their officers to take note of this factual situation and work out appropriate remedies to the extent possible. At any rate I do not find any scope for vituperation of the provision contained in the impugned rule. In view of the aforesaid situation it is arduous for this Court to say that the impugned rule confers arbitrary or discriminatory power on the Government.

13. Notwithstanding the above, the learned Counsel for the Petitioners Mr. Govindh K. Bharathan in his characteristic vigour and vitality has advanced an argument that his case is governed by the decision of this Court in Mohammed Ashraff v. State of Kerala 1991 (2) KLT 8180 while Marshalling his contention, he placed reliance also on the decision of the Supreme Court in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, I do not see it essential to go into this decision any further in view of the fact that the Division Bench in Mohammed Ashraff's case 1991 (2) KLT 8180 has analysed its scope in entirety and laid down eight meaningful and purposive propositions to be followed in the matter of termination of a Government Pleader. The counsel, in the present context, placed reliance on propositions (2) to (4) laid down in Mohammed Ashraff's case 1991 (2) KLT 8180, supra which are ectyped hereunder:

(2) There is a presumption in favour of the validity of State action and therefore the burden is on the person who alleges violation of Article 14 of the Constitution of India to prove his assertion.

(3) However, where no plausible reason or principle is indicated, nor is it discernible, the impugned State action will be ex facie arbitrary and in such cases, the initial burden gets discharged, shifting the onus on the State to justify that its action is fair and reasonable.

(4) If the State is unable to produce any "material" to justify its action as being fair and reasonable, the burden resting on the persons alleging arbitrariness must be held to be discharged.

What is revealed from proposition (2) is that there is presumption in favour of the validity of the State action. In view of the above presumption the validity of the impugned rule can be sustained. But the case of the Petitioners is that their initial burden is discharged in the absence of plausible reason discernible from the State action. In this case it cannot be said so because there is no omnibus order and the writ petition has been filed on apprehended termination. The challenge is mainly directed against the validity of the rule. The burden not being thus discharged it cannot be said the impugned provision is ex facie arbitrary as alleged by the counsel. The burden of proof to establish the invalidity of the provision still lies on the Petitioners and it has not been discharged. In this context it may be recalled that I have already found the reason for termination as loss of trust and confidence and that is a sufficient material to justify action of the State as fair and reasonable. Thus the factual situation in this case definitely dissuades me from applying the aforesaid three propositions so as to come to a conclusion that the impugned provision is arbitrary and unreasonable.

14. The next decision of the Supreme Court relied on by the counsel is State of U.P. Vs. Ramesh Chandra Sharma and others, . That was a case, where the Supreme Court analysed the provisions contained in paras 7.06 (1) and (2), 7.08 and 7.13 of the U.P. Legal Remembrancer's Manual. There the Supreme Court followed the decision in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , supra and distinguished the decision in Harpal Singh Chauhan and others Vs. State of U.P., , Finally the court observed thus:

The High Court has reached the conclusion that the only reason disclosed by the State Government for refusing to consider the case of these Respondents for renewal of their term were non-existent or extraneous. In substance, the action was supported by the State Government on the ground that there was no recommendation made by the District authorities for making the renewal as required by para 7.08. This is the only ground on which the action was supported by the State Government. However, the High Court found that the report of the District Officer was favourable to these Respondents and the District Judge had really recommended renewal of their term. Admittedly, the only ground on which the State Government sought to support its action is found to be non-existent in the record.

What is observed here is that the reasons disclosed by the State Government for refusing to consider the case for renewal of term are non-existent or extraneous. It is a case of renewal of term of Government counsel and not of termination. In the present case, cogent reason does exist for terminating the appointments. Hence the above decision will not render any assistance to the Petitioners.

15. In view of the discussion herein above, I do not find any merit in the contentions urged by the Petitioners. The impugned rule is quite legal and valid. The Petitioners are not entitled to any relief in this writ petition. It is accordingly dismissed. No order as to costs.