
(1973) 10 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 2722 of 1972

Mrs. Baby George

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 26-10-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(2), 16(3)
Representation of the People Act, 1951 — Section 98

Citation : (1973) KLJ 923

Hon'ble Judges : V.P. Gopalan Nambiyar, J; George Vadakkal, J

Bench : Division Bench

Advocate : P.C. Abraham, for the Appellant; Mani J. Meenattur and P.C. Chacko, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—This writ petition is by an Advocate of this Court for a writ of mandamus directing the State to forbear from making any appointments to the post of Government Pleaders/Public Prosecutors (including the post of Additional and Junior Government Pleaders) in the High Court without inviting applications from eligible aspirants. As stated in the counter-affidavit filed by the State, appointments to High Court Government Pleaders are governed by certain "Rules" issued in G.O. Ms. 36/66/Law dated 17th June 1966 as amended from time to time. It is said that the "Rules" are not statutory, but are mere instructions in the nature of executive orders intended for purposes of guidance. The statutory nature or otherwise of the "Rules" was not canvassed before us; and by our mere reference to them as "Rules" we shall not be understood as having pronounced upon the same. Arguments before us were on the basis that there was a violation of the fundamental right under Art. 16 of the Constitution; and for that, it matters little whether the violation is by a statutory rule or by an executive instruction. In view of the importance of the question raised, and the interests of the profession involved, we issued notices to the President of the Advocates' Association, who appeared in person before us, and to the Bar

Council of Kerala, which appeared through Counsel. We are grateful to them for their assistance. The "Rules" relating to the appointment of Government Pleaders, in so far as they are relevant, are these:

1. In the "High Court there shall be one Government Pleader, one Additional Government Pleader, one Public Prosecutor and one Additional Government Pleader for Labour Law (hereinafter referred to as Standing Lawyers who shall be appointed by Government on the recommendation of the Advocate-General.
2. The term of office of a Standing Lawyer shall ordinarily be for a period of two years. But Government may re-appoint him for further periods not exceeding two years at a time.
3. The services of every person holding the office of Standing Lawyer shall unless Government specifically order otherwise terminate automatically on his attaining the age of 62 years.
4. The Standing Lawyers are to represent Government in all cases in the High Court, where the State is a party. They shall, also attend to such other work as may be assigned to them by the Advocate General or by the Government from time to time.
5. The Standing Lawyers will be attached to the Office of the Advocate-General and they will be subject to the supervision and control of the Advocate-General.
6. The Standing Lawyer will be paid a fixed monthly remuneration of Rs. 1,500 (Rupees one thousand and five hundred only). Over and above the fixed monthly remuneration of Rs. 1,500/- provided above, the Standing Lawyers will be entitled to the fees prescribed under heads B and C of the Schedule in respect of work contemplated there under.
7. A Standing Lawyer shall be entitled to travelling allowance and daily allowance at the rate prescribed for First Class Officers of the State. He will not be entitled to any daily allowance when he claims day fee for actual appearance.
8. The Standing Lawyer is debarred:-
 - (a) from advising or holding briefs against the Government in any civil or criminal matter.
 - (b) from giving advice to private parties in cases in which he is likely to be called on to appear or advise Government.
 - (c) from defending accused persons in criminal prosecutions.
9. The Standing Lawyer is eligible for leave not exceeding that admissible to a full-time temporary or officiating Government servant, subject to the condition that the grant does not involve any extra cost to the Government.
10. The Standing Lawyer is not entitled to any remuneration for preliminary work done in connection with the conduct of a case, enquiry or other matter:

Provided that the Government may, in any special case, having regard to the arduous nature of the work involved in such case, enquiry or other matter, or the time spent in the preliminary work, or for any other sufficient reason of a like nature, allow payment of such remuneration as may be fixed by them.

x x x

24. The Advocate-General will distribute Government cases among the Standing Lawyers and Counsel in the panel subject to the directions and control of the Government. He will be at liberty, whenever it is found necessary, to transfer any case or class of cases from one counsel to another in the panel, or to his own file, or to the file of any of the Standing Lawyers, with the concurrence of the Government.

x x x

27. The Government shall be at liberty at any time before the expiry of the term of a Standing Counsel or a drafting counsel to terminate his services without assigning any reason therefore:

Provided that such termination shall not be effected unless a two months notice has been issued.

2. The petitioner's grievance is that the existing vacancies in the posts of Government Pleaders and Additional Government Pleaders in the High Court we are told that, in all, there are now nearly twenty two Standing Counsel are sought to be filled up without inviting applications and that the same violates Art. 16 of the Constitution. The counter-affidavit has taken the stand that before making selections to these posts, applications are not invited by the Government; and that the procedure is to invite a panel of names from the Advocate-General, from which the selection or appointment is made by the Council of Ministers.

3. Art. 16(1) of the Constitution reads:

16. Equality of opportunity in matters of public employment, (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 16(2), In its closing part, refers to "any employment or office under the State": Art. 16(3) again, uses the expression "employment or appointment". The Article does draw a distinction between "employment" under the State, and, as was contended, "appointment to any office under the State". Sukhnandan Thakur Vs. State of Bihar and Others, , and Pirthwinath Chowdhry Vs. State of Uttar Pradesh, are, to notice only two of them among the cases which have pointed out the distinction. It was said for the petitioner and the stand was endorsed by the President of the Advocates' Association and by the Counsel appearing for the Bar Council that Government Pleadership was an appointment to an "office" under the State. Alternatively, it was contended that it was an "employment"

under the State. Either way, Art. 16 would be attracted. In expatiating on these aspects, arguments roamed over a wide field and sometimes drifted far away from the moorings into regions where it was unnecessary to tread. Thus, for instance, the question as to whether the Government Pleader holds a "civil post" under Art. 311 of the Constitution, whether he is, or can be regarded as, a full-fledged Government servant, do not appear to be strictly germane to the scope of Art. 16(1), although they may help to throw some light on the question pointedly arising for determination. In *C.K. Achuthan Vs. The State of Kerala and Others*, , the petitioner who approached the Supreme Court under Art. 32 of the Constitution was a contractor for the supply of milk and other articles to the Government, who complained of the cancellation of his contract by the District Medical Officer who awarded the same to a Co-operative Society. Violation of Art. 16 was the main ground of complaint. In repelling the attack based on the same, the Supreme Court observed:

Article 16(1) of the Constitution, both in its terms and in the collocation of the words, indicates that it is confined to "employment" by the State, and has reference to employment in service rather than as contractors. Of course, there may be cases in which the contract may include within itself an element of service. In the present case, however, such a consideration does not arise, and it is therefore not necessary for us to examine whether those cases are covered by the said Article. But it is clear that every person whose offer to perform a contract of supply is refused, or whose contract for such supply is breached, cannot be said to have been denied equal opportunity of employment, and it is to this matter that this case is confined.

In *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, it was pointed out by the Supreme Court that the width and the amplitude of clauses (1) and (2) of Art. 16 are not to be cut down by any analogies or considerations imported from Art. 309 and 310, or Chapter XIV, of the Constitution of India. In the light of the above authorities, the content of Art. 16(1) may, we think be predicated as: an employment in service, or appointment to an office, under the State.

4. The learned Government Pleader stressed that there is a distinction between serving under the Government, and being in the service of the Government. He relied on the decision in *Raja Bhadur Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others*, . That was concerned with the question whether the Sarpanch of a Gram Panchayat could be said to be "in the service of the Government" within the meaning of S. 123(7) of the Representation of the People Act 1951 after its amendment. Prior to the amendment, Clause (8) to S. 123 covered a wider field, and referred to any person "serving under the Government of India or a State". Stressing the distinction between the two, the Supreme Court observed:

Para. 11. In our opinion, there is a distinction between "serving under the Government" and "in the service of the Government": because, while one may

serve under the Government, and may not necessarily be in the service of the Government, under the latter expression one not only serves under the Government but is in the service of the Government and it imports the relationship of master and servant.

Based on the above passage, the learned Government Pleader would contend before us that employment under the State or appointment to an office under the State, must be understood as in the service of the State or the Government, and therefore importing the relationship of master and servant, which it was said, was absent as between the Government Pleader and the Government. In other words, borrowing the language in *Dr. Nanigopal Ghose Vs. State of West Bengal and Others*, it was contended that what was required to attract Art. 16(1) was a contract of service, and not a contract for service.

5. We doubt if it would be altogether correct to import the principle of the Supreme Court decision in *Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others*, rendered in an altogether different context, and with respect to the provisions of a totally different statute, to the provisions of Art. 16(1) of the Constitution. That shall not preclude us from considering the Government Pleader's argument that quite apart from the decision relied on, the relationship of master and servant is necessary, both for the purpose of "employment" under the State, and for appointment to an "office" under the State and that a mere contract for service would not be within the Article. He relied upon the decision in *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, where the well-known tests of control are formulated to determine the relationship of employer and the employee or of master and servant for the purpose of the Industrial Disputes Act. In *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*, the appellant before the Supreme Court was an Auditor appointed by the Central Government, of the Durgapur Projects and the Hindustan Steel Ltd., both of which were Government owned Companies. He was removable by the Central Government, and the Comptroller and Auditor-General exercised full control over him. The question was whether he held an "office of profit" under S. 102 (1) (a) of the Constitution, and was therefore disqualified for being chosen as a Member of Parliament. The only question on which controversy turned was, whether it could be said that the office of profit held by him was "under", the Government. It was argued that this involved subordination to the Government with respect to the well-known tests of (1) the right to appoint (2) the right to remove or dismiss (3) payment of salary or wages (4) functional responsibilities of the office, and (5) control over the performance of the functions of office. The Supreme Court observed:

We agree with the High Court that for holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. The Constitution itself makes a distinction between "the holder of an office of profit under the Government and "the holder of a post or service under the Government"; see

Art. 309 and 314

After referring to *Maulana Abdul Shakur Vs. Rikhab Chand and Another*, and *M. Ramappa Vs. Sangappa and Others*, , the Court further observed:

In view of these decisions, we cannot accede to the submission of Mr. Chowdhry that the several factors which enter into the determination of this question the appointing authority, the authority vested with power to terminate the appointment, the authority which determines the remuneration, the source from which the remuneration is paid, and the authority vested with power to control the manner the duties of the office are discharged and to give directions in that behalf must all co-exist, and each must show subordination to the Government, and that it must necessarily follow that if one of the elements is absent, the test of a person holding an office under the Government, Central or State, is not satisfied.

Quite an interesting aspect is highlighted by the decision of the Privy Council in *Attorney General for New South Wales v. Perpetual Trustee Co. (Ltd)* (1955 Appeal Cases 457). Of particular relevance, appear the following observations :

Their Lordships can now express their final opinion upon the case. They repeat that in their view there is a fundamental difference between the domestic relation of servant and master and that of the holder of a public office and the State which he is said to serve. The constable falls within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office; he is a ministerial officer exercising statutory rights independently of contract. The essential difference is recognised in the fact that his relationship to the Government is not in ordinary parlance described as that of servant and master.

We feel therefore, that it may not be altogether appropriate to look for the relationship of master and servant as between the holder of an office under the State and the Government. In any event, that would not be a decisive factor, the absence of which would negative in every case, the nexus between the officer and the Government. As pointed out by Salmond in his *Torts* in a passage (11th Edn. P. 406) extracted in the House of Lords decision noticed supra action based on master and servant relationship seems to be a historical relic of the days when the master had proprietary interest in the servant, and seems anomalous in modern industrial conditions. This has been ruled too in a number of decisions to which we shall, in due course, refer. But we would first refer to some decisions of the Supreme Court which were cited as giving a contrary indication. We have already referred to the passage in *Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others*, which was not with respect to Art. 16. In *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , the question was whether a Mauzadar in the Assam Valley was holding a "civil post" under the Assam Government, within Art. 311 of the Constitution. In considering that question it was observed:

Para. 9. There is no formal definition of "post" and "civil post". The sense in

which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State—see the marginal notes to Art. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chap.1 emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post. It

We think the observations were made in the context of Art. 311, which, as observed in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, should not be allowed to cut down the wide language of Art. 16(1) and (2) of the Constitution.

6. We may wind up this part of the discussion by referring to the decision of the Supreme Court in *Roshan Lal Tandon Vs. Union of India (UOI)*, . Observed the Court:

It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The employment of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a

purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.

The decision relied on the following passage in Salmond and Williams on Contracts, 2nd Edn, page 12;

So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has been fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or things fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.

7. We may now refer to the cases where the nature of the post of Government Pleader specifically came up for consideration, in one way or other. In *The State of Uttar Pradesh Vs. Sri Bhola Nath Srivastava and Others*, , after referring to the authorities, it was held that Government Pleadership was an office under the Government, no less so because of the relationship of Counsel and client between the two, and that it was not necessary that the relationship of master and servant should exist in every case between the Government and the holder of an office under the State, to attract Art. 16(1) of the Constitution. We shall have occasion to refer to the case again on another aspect. *Pirthwinath Chowdhry Vs. State of Uttar Pradesh*, , raised the question whether the termination of the petitioner's appointment, as Government Pleader, violated Art. 311 of the Constitution. It was held that it did. After pointing out that Art. 16 makes a distinction between "appointment" and "employment", the learned judges held that the post of an Additional Government Advocate was an "office" in the nature of a service, and fell within Art. 311 of the Constitution. In *A. Ramachandran Vs. A. Alagiriswami*, Govt. Pleader High Court, Madras and Another, there is an exhaustive survey of the nature and concept of Government Pleadership in Madras, with particular reference to the terms and conditions of the "Rules" pertaining to the appointment, which were in vogue in that State. It was held that the Office was a public office; but the "Rules" being devoid of statutory force, the writ of mandamus prayed for, was refused. In *State of*

Rajasthan Vs. Madanswarup and Another, , it was held, on the terms of the engagement, that the contract was a purely professional engagement which created only the relationship of Counsel and client, and there was no relationship of master and servant, and the case did not fall within Art. 311. There was, and there could be, no discussion of the scope and content of Art. 16(1) in the light of the clarifications offered by the subsequent judicial decisions. In Suresh Prakash Agarwal, Advocate Vs. State of UP and Others, . the petitioner was aggrieved by the termination of his appointment as a Panel Lawyer for the conduct of Government cases. It was ruled by a learned judge that the appointment of a Panel Lawyer is an appointment to an "office "under the State within the meaning of Art. 16(1) of the Constitution, and that Art. 311 was attracted to the same. Reference was made to two Supreme Court decisions, Mahadeo Vs. Shantibhai and Others, and Srimati Kanta Kathuria Vs. Manak Chand Surana, . In Mahadeo Vs. Shantibhai and Others, , the question considered was whether the appellant before the Supreme Court was disqualified under S. 98 of the Representation of People Act by reason of his holding an "office of profit", within the meaning of that section. Three grounds of disqualification were put forward: (1) by reason of his being included in the panel of lawyers prepared by the Central and Western Railway Administration; (2) by reason of his holding office of a part-time Professor of Laws in the Madhav College on a regular salary; and (3) by reason of his holding the post of President Member of a Tribunal under S. 73 of the Madhya Pradesh Town Improvement Trust Act. The Supreme Court upheld the disqualification on the first of these grounds, held that the second ground was of doubtful validity; and negatived the third ground altogether. In dealing with the first ground it is significant that the learned judges (Hidayathullah C J. & Mitter J.) held that the appellant's appointment to watch the cases coming up for hearing against two of the Railways in the various courts and give, timely intimation, was appointment to an office, and it further amounted to an office of profit. An almost similar question came up shortly thereafter before a larger bench of five judges of the Supreme Court in Srimati Kanta Kathuria Vs. Manak Chand Surana, . The question arose with respect to Art. 191 of the Constitution, as to whether the appointment of the appellant. Smt. Kanta Kathuria, as Special Government Pleader to conduct particular arbitration cases for the Government, constituted her the holder of an office of profit so as to disqualify her election to the State Legislative Assembly. All the five judges were agreed that in view of the retrospective removal of the disqualification by a subsequent statutory provision, the appellant was not disqualified But two of the learned Judges (Hidayatullah C.J. & Mitter J.), following the decision in Mahadeo Vs. Shantibhai and Others, were of the view that but for the statutory provision, the disqualification would have been incurred. The majority (Sikri, Ray and Jaganmohan Reddy JJ.) took the view that as the appointment was specific, there was no appointment to an office, and that they could not visualise an office coming into existence every time a pleader is asked to appear in a case on behalf of the Government. We note that the majority judges also referred to Mahadeo Vs. Shantibhai and

Others, , and explained it on the ground that the case was more like that of the case of a Standing Counsel disqualified by the House of Commons (to which reference had been made earlier by the majority Judges). Both Mahadeo Vs. Shantibhai and Others, and Srimati Kanta Kathuria Vs. Manak Chand Surana, have discussed the concept of the term "office" as expounded by Rowlatt J. in Great Western Ry. Co. v. Bater (1922-8-Tax Cases 231 at 235) and approved by Lord Atkin and Lord Wright in Mac Millan v. Guest (1942 A.C. 561). These aspects have been discussed, for instance, also in The State of Uttar Pradesh Vs. Sri Bholu Nath Srivastava and Others, . We shall therefore spare ourselves the trouble of an elaborate discussion on these lines. But we would refer to the felicitous choice, made, by Lord Atkin in Mac Millan's case (1942 A.C. 561), of one out of the several shades of meaning given in the New English, Dictionary, to the word "office". The chosen meaning is: "A position or place to which certain duties are attached, especially one of a more or less public character." The "Rules" to which we have referred earlier, appear to us to create the office of Government Pleader, assign it a term, ordinarily of two years, fix an age of superannuation, assign duties, fix remuneration, and direct that the Government Pleader shall work under the control and supervision of the Advocate-General: The Government is also given a right to terminate the office, at any time after two months" notice, without assigning reasons. All these are in respect of counsel and legal adviser of the Government, which, with its rapidly expanding activities in a welfare State, stands out as the biggest litigant in the courts. We think these indicia sufficiently make out that the Government Pleadership is an "office" under the State, in the light of the principle in Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others, reaffirmed again in State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another, .

8. We shall then proceed to consider whether there is a violation of Art. 16(1) of the Constitution, on the ground that the appointments are being made without inviting applications for the post. The petitioner's Counsel relied on the decision in Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others, where it was observed:

5. It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matters of employment or appointment to any office under the State, contained in Art. 16(1) of the Constitution. So long as the ban subsists. any application made by the petitioner for employment under the State is bound to be treated as waste-paper. The fundamental right guaranteed by the Constitution is not only to make an application for the post under the Government but the further right to be considered on merits for the post for which an application has been made. Of course, the right does not extend to being actually appointed to the post for which an application may have been made. The "ban" complained of apparently is against his being considered on merits. It is a ban which deprives him of that guaranteed right. The inference is clear that the petitioner has not been fairly treated.

But it is clear that the observation about the right to make an application for the post has to be understood against the background of the blanket ban in that case against the petitioner, preventing him for all time, from applying for any post. Even so, the observation in *T. Devadasan Vs. The Union of India (UOI) and Another*, is only to the effect that every citizen should be afforded an opportunity for seeking employment, and no more. Reliance was next placed on the decision in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, where, while repelling an argument, that appointments made in the absence of clear and well-defined rules, were bound to be arbitrary, the Supreme Court remarked that if the appointment and the terms and conditions thereof are advertised, and selections made thereafter, there can be no breach of Art. 16. But to argue syllogistically from this, that every case of appointment without advertisement would violate Art. 16, would be a fallacy. In *The High Court. The High Court, Calcutta Vs. Amal Kumar Roy, Sri. Roy* complained about having been overlooked for promotion as Sub Judge while his juniors were promoted for the post. The High Court had considered his case and had decided to defer his promotion for a period of one year. Dealing with the grievance based on Art. 14 and 16 of the Constitution, the court observed:

Para. 9. It is difficult to see how either of those articles can be pressed in aid of the plaintiffs case. The plaintiffs case was considered alongwith that of the others, and the High Court, after a consideration of the relative fitness of the Munsiffs 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. Where the number of posts, to be filled is less than the number of persons under consideration for those posts, it would be a case of many being called and few being chosen. The fact that the High Court made its choice in a particular way cannot be said to amount to discrimination against the plaintiff.

While selections made openly and in the full glare of publicity afford the best guarantee against arbitrariness and capriciousness of actions put through in the secrecy of an office-chamber, there may well be certain highly specialised and sensitive posts or offices, selections to which, may not altogether be appropriately made by the "open-market" method. It is here that we have to take note too, of the decision in *In Re: "A" an Advocate*, where an Advocate's action in offering his services for the office of Counsel on record for a State was condemned as unprofessional. That seems to rule out calling for applications in this sphere as inconsistent with the ethics of a noble and learned profession; In the light of the above principles, we are unable to endorse the broad submission of the petitioner's Counsel that the right to have vacancies advertised and thereafter to make applications for the post is an essential ingredient of Art.

16(1) of the Constitution.

9. Judicial decisions have also taken the view that an appointment by selection, or by a process otherwise than by calling for applications, does not necessarily offend Art. 16; See S.T. Venkataiah Thimmaiah and Another Vs. State of Mysore and Others, , Dr. Kartar Singh Rai Vs. State of Punjab and Another, and The State of Uttar Pradesh Vs. Sri Bhola Nath Srivastava and Others, . In the last of these, the appointment of Government Pleaders made on the recommendation of the Advocate-General was sustained as not violative of Art. 16 of the Constitution. We think that the fact that the appointment of Government Pleader is made out of a panel recommended by the Advocate-General affords sufficient guarantee against arbitrariness, and the violation of Art. 16 of the Constitution. Whether or not, as the petitioner's Counsel would contend, on the authority of *Adi Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, , the position of the Advocate-General is not quite so prestigious as is generally supposed to be, he is still regarded as the official head of the Bar, fills an important role in the profession, and has his due place in the Bar Council. He can certainly be expected to know the volume and weight of the work to be handled in his office; and the type of persons needed and suited to handle the same. May be, his choice or his vision in these matters may not extend in the directions in which the petitioner would like them to go. But of his fitness to make a proper choice, there can be little doubt; and the mere possibility of worthy eligibles falling outside the range of selection, is, by itself no ground to condemn the scheme of selection itself. This writ petition fails, and is dismissed with no order as to costs.