

(1992) 06 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 1634 of 1988 T

N. Indumathy

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 03-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1992) 06 KL CK 0018

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, for the Appellant; G. Krishnakumari, Govt. Pleader, for the Respondent

Judgement

K.P. Balanarayana Marar, J.—The request of Petitioner for employment as a dependent under the dying in harness scheme was rejected by the Government as per Ext. P-6 order. That order is under challenge in this Original Petition.

2. Petitioner's mother, a High School Assistant of a Government High School died in harness on 22nd May 1967. Within three years on attaining majority Petitioner presented an application for employment as a dependent in the prescribed form on 15th November 1985. Under the then Government G.O. dated 21st January 1970 the Petitioner was not eligible for appointment since the Government Servant had not put in a minimum service of five years. Still Petitioner had made the representation expecting a favourable order. A representation thereafter was made to the Chief Minister. By Ext. P-2 order Petitioner was informed that the claim is inadmissible as her mother had not put in the minimum service of five years. The G.O. dated 21st January 1970 was since then substituted by Anr. G.O. dated 28th February 1986 wherein also the requirement of minimum service was retained. A further representation was therefore made to the Chief Minister as well as the Minister for Education. Petitioner was informed that the request cannot be considered then in view of the existing G.O. She was further informed that the Government was proposing to modify the existing order to rectify the

anomalies and to extend the benefit to the relatives of Government employees who have completed probation. By G.O. dated 17th December 1987 the minimum qualifying service was relaxed to completion of period of probation or two years. Petitioner made a further request in the light of that G.O. But that request was turned down by Ext. P-6 on the ground that the death in, harness occurred before 1st July 1983 and the request cannot be granted in view of paragraph 17 of that G.O.

3. Challenging that order Petitioner seeks a writ of certiorari to quash the order as well as a writ of mandamus directing Respondents to pass appropriate orders appointing Petitioner in accordance with Ext. P-5 G.O. Since the filing of the petition additional ground (f) was also added in the original petition whereunder the provision in Clause 17 of the G.O. that the reduced period of service for eligibility of employment assistance shall be operative from 1st July 1983 is challenged as arbitrary and illegal. Petitioner seeks to strike down this condition incorporated in Clause 17 of Ext. P-5 as violative of Articles 14 and 16 of the Constitution of India.

4. No counter-affidavit was filed by the Respondents.

5. Heard counsel for Petitioner and Government pleader.

6. Under the dying in harness scheme the concessions contemplated in G.O. (Ms) 20/70/PD, dated 21st January 1970 were restricted to the relatives/dependents of Government employees who have put in a minimum service of 5 years in all cases arising on and after 22nd December 1972, the date of G.O. (P) No. 472/72/PD. The whole scheme was reviewed by the Government and by G.O. dated 27th January 1983 the dependents of Government servants who died in harness after having put in a minimum service of 5 years were held to be eligible for the employment assistance under the scheme. All the orders and instructions issued under the scheme were, codified and a compendious order was issued as per G.O. (P) No. 34/87/P and ARD, dated 17th December 1987. Clause 17 of this G.O. relates to the minimum service required for the Government servant so as to make the dependents eligible for employment assistance. By that clause dependents of Government servants who have completed the period of probation or two years whichever is less shall be eligible for the employment assistance under the scheme. The clause farther states that this reduced period of service eligible for employment assistance under the scheme shall be operative from 1st July 1983. The request of Petitioner for employment assistance under the modified scheme dated 17th December 1987 was rejected by the Government by invoking this provision contained in Clause 17. The mother of Petitioner died on 22nd May 1967 and the request for employment assistance was made in 1985. The contention of Respondents is that the relevant scheme applicable is the scheme formulated in G.O. dated 1st July 1983 which prescribes a minimum service of 5 years to enable dependent to become eligible for employment assistance. Petitioner's mother did not have the minimum service of five years.

7. Clause 17 of Ext. P-5 contemplates two classes of dependents. (i) dependents of employees who died before 1st July 1983 and (ii) dependents of employees who died after 1st July 1983. This classification is challenged by Petitioner as one not based on an intelligent differentia. The classification in Clause 17 is an unreasonable classification, according to learned Counsel for Petitioner and as, such violative of Article 14 of the Constitution. Counsel would argue that the denial of benefit to the dependents of Government servants who died prior to 1st July 1983 has no rational relationship to the object to be achieved by the Government Order. Would this differential treatment to the dependents of Government employees attract Article 14 of the Constitution is the main aspect to be considered in this Original Petition. The main question for determination therefore is whether the provision contained in Clause 17 of Ext. P-5 limiting the benefits of the G.O. to the dependents of Government servants who died after 1st July 1983 liable to be declared unconstitutional as being violative of Article 14.

8. The Supreme Court in the decision in *Suraj Mal Kailash Chand and Others Vs. Union of India (UOI) and Another*, laid down the conditions to be fulfilled to pass the test of permissible classification holding that though Article 14 forbids class legislation it does not forbid reasonable classification for the purpose of legislation. The conditions are: (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question. The Supreme Court further observed that the classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be nexus i.e. casual connection between the basis of classification and object of the statute under consideration. It is observed that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The following paragraph in the judgment in *In Re: The Special Courts Bill, 1978, -Re Special Courts Bill -* was quoted by the Supreme Court as apt and relevant.

The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination, between one person and another if as regards the subject matter of the legislation their position is substantially the same.

9. In that case the Supreme Court was considering the formula for computation of pension. The Government liberalised the formula but made it applicable to Government servants who were in service on 31st March 1979 and retired on and after that date. The Supreme Court held that this classification does not

stand the test of Article 14. It is observed that if the state considered it necessary to liberalise the pension there is no rational principle behind it for granting the benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. The equal treatment guaranteed in Article 14 is wholly violated since the rules accord differential and discriminatory treatment to equals in the matter of computation of pension. It is observed that a 48 hours difference in matter of retirement would have a traumatic effect. The division was thus found to be arbitrary and unprincipled.

10. It is true that the law can make and set apart the classes according to the needs and exigencies of the society. But the classification should never be arbitrary, artificial or evasive. As observed by the Supreme Court the classification must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in Ors. who are left out. But those qualities or characteristics must have a reasonable relation to the object of the legislation. The object of the G.O. is to have a uniform procedure while considering requests for appointment from relatives/dependents of Government servants dying in harness. There must be an equal treatment of persons similarly situated.

11. What does the phrase "similarly situated" mean? The Supreme Court in *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, held thus:

A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law.

12. Looking beyond the classification to the purpose of law the classification contemplated in Clause 17 of Ext. P-5 is not based on an intelligent differentia. A reasonable classification can only be one which includes all persons who are similarly situated with respect to the purpose of the scheme, viz. to benefit dependents of employees who died in harness.

13. It may be contended that the scheme being one for affording employment assistance on compassionate ground the same cannot be challenged like other executive or legislative action. This contention is not sustainable in view of the observation of the Supreme Court in *Kamala Gaiind v. State of Punjab and Ors.* 1990 S.C.C. 800. The Supreme Court held that even if it is compassion, there is no justification for discriminatingly extending the treatment unless there be some basis. No basis is seen mentioned in Ext. P-5. No counter affidavit has also been filed on behalf of Respondents stating the reason for the discrimination or justifying the differential treatment. Ext. P-5 is therefore vitiated to the extent of

the discrimination in respect of persons who died before 1st July 1983. The impugned part of Ext. P-5 is therefore liable to be quashed as violative of Article 14.

14. The validity of a similar provision in Clause 34 of Ext. P-5 G.O. came up for consideration before this Court in *Elsamma Mathew and Ors. v. State of Kerala* 1991 (2) KLT 683. The decision rendered therein lends support to the view that I have taken. That clause stipulates that if on examination one applicant (dependent) is found ineligible for employment assistance and on rejection of his application, the applications submitted by other eligible dependents shall be considered. But this concession shall be made operative with respect of cases of deaths occurred on or after 1st July 1983. This sentence in Clause 34 was declared invalid and was struck down.

For the aforesaid reasons the Original Petition is allowed and the condition incorporated in Clause 17 of Ext. P-5 that "this reduced period of service for eligibility for employment assistance under the scheme shall be operative from 1st July 1983" is declared invalid and is struck down. Clause 17 of the G.O. Ext. P-5 shall be read excluding the above mentioned sentence. Ext. P-6 order is therefore quashed and Respondents are directed to pass; appropriate orders on the application of Petitioner for employment assistance in accordance with law and in the light of the observations contained in this judgment within a period of two months from this date. Original Petition is disposed of as above. No costs.