

(1964) 07 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 59 of 1963

P. Kunhikrishnan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-07-1964

Acts Referred:

Constitution of India, 1950 — Article 16, 311

Kerala State and Subordinate Services Rules, 1958 — Rule 10

Citation : AIR 1965 Ker 149

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and V. Sivaraman Nair, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Mathew, J.—This is an, application for the issue of the appropriate writ to call for the records leading to Ext. P 4 order and for quashing the same. The petitioner P. Kunhikrishnan Nair was a Panchayat Assistant of the Narlpetta Panchayat. He had applied for appointment as a Panchayat Executive Officer, and the Deputy Director of Panchayats, Kozhikode, by his order dated 3-2-1962, a copy of which is produced and marked as Ext. P1, appointed the petitioner provisionally to the post of Panchayat Executive Officer of Kunnummel Panchayat. The relevant portion of Ext. P1 order is as follows :

"The candidate is specially informed that the appointment now made is purely temporary and it will not confer on him any right or claim for continuance or future appointment in Government service but he will be entitled only to the emoluments attached to the post and he will be reverted to his original post in case he is not selected by the Kerala Public Service Commission".

The petitioner was subsequently selected by the Public Service commission for appointment as Panchayat Executive Officer. Thereafter the petitioner was served with an order a copy of which is marked as Ext. P 4, Ext. p 4 reads:

"Sarvasri P. Kunhikrishnan Nair and K. Narayanan Nambiar who have been provisionally selected and posted as Executive Officers of Kunnummel and Muzhakunnu Panchayats respectively under Rule 9 (a) (1) of Kerala State Subordinate Services (General) Rules in this office proceedings cited are reverted and posted to their original posts as Panchayat Assistants of Naripetta and Mattannur Panchayats respectively with immediate effect.

Sri. P. Kunhikrishnan Nair and Sri. K. Narayanan Nambiar will hand over charge of their respective offices to the Panchayat Inspectors concerned and get themselves relieved and proceed to their new stations forthwith. The Panchayat Inspectors concerned will take charge of the office of Executive Officers of Kunnummel and Muzhakunnu Panchayats from Sri. P. Kunhikrishnan Nair and K. Narayanan Nambiar respectively and relieve them immediately.

The District Panchayat Officers concerned will take immediate action to revert or oust as the case may be the incumbents now working as Panchayat Assistants in Naripetta and Mattannur Panchayats respectively and intimate the fact to this Office.

The Panchayat inspectors and Executive Officers concerned will take immediate action to give-effect to this order".

The petitioner complains that Ext. P4 order-amounts to a reduction of his rank and was passed in violation of the provisions of Article 311 of the Constitution. He also urged that Ext. P4 order is discriminatory, and violates Article 16 of the Constitution.

2. The State has filed a counter-affidavit containing the following averments: The petitioner's, appointment to the post of the Panchayat Executive Officer was purely provisional, that the appointment to the post of Panchayat Executive Officer is governed by the Kerala State and Subordinate-Service Rules, that in order that the petitioner may be eligible for appointment to that post, the character and antecedents of the candidate must be acceptable to the appointing authority, that on verification through the routine channel as in the case of every other prospective candidate recommended by the Public Service Commission for appointment to the Government Service, the petitioner's character and antecedents were found to be not acceptable to the Government, that his reversion to the post of Panchayat Assistant under the Panchayat Establishment raised no justiciable issue and that he had no seniority or rank above the other candidates mentioned in his petition.

3. It was argued for the petitioner that although Ext. P4 order would in itself appear to be innocuous, its real effect was to cast a stigma on the petitioner as the real reason for the termination of his service as Panchayat Executive Officer was that his character and antecedents were not satisfactory, it may be noted that the basis of this argument is the averment in the counter-affidavit that the petitioner's service as Panchayat Executive Officer was terminated because his character and antecedents were found to be not acceptable to the appointing

authority. The argument was that it was really as a punishment that the petitioner's service as Panchayat Executive Officer was terminated and that he was reverted to his original post of Panchayat Assistant, Ext. P4 only says that) the petitioner is reverted to his original post.

I am inclined to hold that there was no dismissal or reduction in rank within the meaning of Article 311 and therefore no enquiry as contemplated by that Article was necessary. Assuming that the real reason why the service of the petitioner as Panchayat Executive Officer was purported to be terminated is that his character and antecedents were not found acceptable to the appointing authority, I take the view that the real effect of the order was not to terminate the service of the petitioner as Panchayat Executive Officer, but only to declare that he has never been appointed to that post. The Rule governing the appointment to the post of Panchayat Executive Officer is the Kerala State and Subordinate service Rules. In the counter-affidavit filed on behalf of the State it is specifically stated:

"The post of Panchayat Executive Officer being one under Government Service as different from a Panchayat Assistant which comes under the Panchayat establishment, such appointments are governed by the Kerala State and Subordinate service Rules".

Rule 10 (b) of the state and Subordinate Service Rules, 1958, reads as follows:

"No person shall be eligible for appointment to any service by direct recruitment unless--

(i) he satisfies the Commission in cases where the appointment has to be made in consultation with it, or the appointing authority in other cases, that he is of sound health, active habits and free from any bodily defect or infirmity rendering him unfit for such service; and

(ii) the appointing authority is satisfied that his character and antecedents are such as to qualify him for such service".

It seems to me that the rule regarding the character and antecedents of a person for appointment to the service is really a rule laying down one of the qualifications of the person for appointment to the service. In this connection I would refer to the decision of the House of Lords in *Paranus v. Mini Artistes' Association*, 1964 1 All ER 25. In that case a person was enrolled as a member of a Film Artistes' Association and he was accepted as a member and continued as such. He was later on elected to the Executive Committee of the Union. In 1950 it was found that he had two previous convictions. Rule 4 (2) of the Union's Rules reads as follows: "No person who has been convicted in a court of law of a criminal offence shall be eligible for, or retain membership of the Association". It was held that on a true construction of Rule 4 (2) the person having been convicted of criminal offences, could not have been admitted as a member of the Union and that his admission to membership was therefore void, in the course of his speech Lord Evershed said:

"It is no doubt true, as counsel for the appellant submitted, that the word "eligible" according to the dictionary may, in certain contexts, mean suitable for election", as distinct from "qualified for election". As I have said, however, in the context of the phrase in the present Rule I cannot for my part entertain, any doubt but that, as a matter of English, the word "eligible" must mean and can only mean "legally qualified" ".

In the Court of Appeals in *Faranus v. Film Artistes' Association* (1963-1 All ER 636, at p. 645) Upjohn, L. J., said:

"If a person is not qualified in accordance with the terms of the rule, he cannot be admitted to membership, he is ineligible".

So, as the appointing authority was not satisfied about the character and antecedents of the petitioner, he was ineligible for being appointed to the service, which means that he had no qualification for being appointed to the service. Therefore Ext. P4 order can only mean that the Government have finally decided that the petitioner was ineligible for appointment. It cannot therefore be said that the petitioner's service as Panchayat Executive Officer was terminated by Ext. P4 as the appointment itself was void, in this view of the matter no question of the applicability of Article 311 arises in this case.

4. The further question is whether the prescription of a qualification as to the character and antecedents of a candidate, like the one under consideration, would in any way offend Article 16 of the constitution, counsel for the petitioner submitted that the exclusion of a person from service, on the ground that he is ineligible for the reason that his character and antecedents are not satisfactory or acceptable to the appointing authority, involves an infamy or a "badge of Infamy" which would ruin his reputation and chance of future employment, and therefore he should be given an opportunity of meeting the case of the appointing authority by confronting the witnesses who gave evidence against him as regards his character and antecedents. It is urged by the petitioner's counsel that the result of the investigation conducted in respect of the character and antecedents of the petitioner was not disclosed; to him, that he had no opportunity to have his say in the matter, and that before a person can be declared to be ineligible for service on the ground that his character and antecedents are not acceptable to the appointing authority, fairness requires a notice of the available materials and evidence against him on the question of his character and antecedents and an opportunity to meet them.

5. In *Banarsi Das and Others Vs. The State of Uttar Pradesh and Others*, and *George v. State of Kerala*, 1964 1 Lab LJ 505: (AIR 1904 Ker 238) it was held that a citizen has no right, fundamental or otherwise, to any employment under Government. Assuming therefore that the petitioner has no right to any employment under the Government the question that arises for consideration is whether it was open to the Government or any other authority to exclude him from service under Government on the basis of their pure subjective satisfaction

that his character and antecedents were unsatisfactory. The expression "character and antecedents" in tills context has come to mean very often the loyalty of the person to the Government of the day and to its ideals. Even accepting the view that employment under Government is a privilege and not a right, is there any principle which requires that before a person is declared unfit for service on the ground that his character and antecedents are unsatisfactory he should be given an opportunity of "being heard? The Government cannot grant or withhold employment on a basis which is discriminatory. Article 16, I think, embodies the principle that even if a person has no light, fundamental or otherwise, to get an employment under Government, he has a right to be treated equally with other persons. Article 16 speaks of equality of opportunity and not of any right. One who has no right to a job may have a constitutional right to be free from discrimination. The fact that one may not have a legal right to get or keep a Government post does not mean that he can be adjudged ineligible illegally. See *Perkins v. Elg* (1939) 307 U.S. 325 Even if a person has no right to a Government job he has a right to be free from damage to his reputation which might seriously hamper his future prospect to get an employment. An exclusion from Government service on the ground that a person's character and antecedents are not acceptable to the appointing authority may affect his reputation and may make him ineligible for future employment, To be deprived not only of the present Government employment but of the future opportunity for it certainly is no small injury when the Government employment so dominates the field of opportunity. Therefore if a person has a right to be free from damage to his reputation it might follow that the Government or the authority, if they want to exclude a person from service on the ground that his or her character and antecedents are not acceptable, should give him or her an opportunity of being heard.

That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self righteousness gives too slander an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss, notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done". (Bee Frankfurter, J. -- 1050 341 US 123

6. The learned Advocate General argued that disloyalty in the Government service under the present circumstances is a matter of great public concern and the revelation of the methods of detecting it and the names of witnesses involve public considerations of compelling importance, so that even if there is an element of stigma involved in the rejection of a candidate, on the ground of his unsatisfactory character and antecedents, the proper solution is not to consider the interest or the right of the person alone but the larger public interest. He also submitted that the judiciary should not interfere in a held like this where the executive should be given full play of its discretion to select the proper person,

as the Government like any other employer have the right to pick and choose their employees, it is true that the problem of security is really a matter for the executive and the Government should not be paralysed in handling it. But the question still remains whether the security problem relates only to sensitive areas where the secrets are or may be available and where critical policies are being formulated, it may not be necessary to extend the sensitive areas to posts other than those of defence and internal security.

7. The information as regards the character and antecedents of a candidate is often gathered by the Police Department. There is no guarantee that the information so gathered is reliable. Secret informers, whisperers, and tale-bearers may be playing their part in it. The question is whether the supposed right of confrontation and getting access to the materials in the possession of the Government should prevail over the interest of the public, and of the Government in carrying out the programme deemed necessary for security. I confess that to make a judgment in a matter like this is not easy. But I think that it is only the most powerful circumstance that can justify the stigmatising of a person as wanting in character on account of disloyalty or for other reasons on the basis of the information, which that person has no chance of knowing or meeting.

It is well known that weighing the security problem is a most difficult one. The Department which is in constant contact with the political influence and forces is the executive department; and its judgment on a matter like this should not be lightly interfered with by the court. When the particular employee's position is clearly a sensitive one the court has little choice but to refuse to upset the executive judgment even though, the most precious rights of the Individual are overridden. But when the employee's position involves neither an access to secret Information nor policy-making the court at some point, in the balance of clashing interest, has the responsibility in intervening to protect individuals.

The solution of the question whether in a particular case an individual has been victimised has to be arrived at on a balance of all those considerations. The stigma attached to a person excluded from Government service for the reason that his character and antecedents are not acceptable to the appointing authority may justify the exaction of the observance of the procedural safeguards, when that would not conflict with the interest of the public in the security of the Government. Therefore the problem in a case like this is not a simple one. One thing appears to be clear, the maximum protection must be given to each interest with the minimum sacrifice of the opposing interest.

8. Whether the equality of opportunity guaranteed by Article 10 of the Constitution is denied by a rule which leaves the adjudgment of the question of a candidate's eligibility to Government service to the subjective satisfaction of the appointing authority about his character and antecedents, is a matter upon which it is not necessary for me to pronounce any opinion, as I think that the decision of this case must be governed by the ruling of the Division Bench of this Court in

V. Dasan, Vazheyil Veedu Vs. The State of Kerala and Another, Mr. V.R. Krishna Iyer, for the petitioner, urged that the view expressed by Lord Reid in *Ridge v. Baldwin* 1964 AC 40 that the right to notice and hearing is not dependent on a duty or obligation on the part of the authority to make a quasi judicial approach to the question, should govern the decision of this case. I think this matter also is concluded by the ruling of the Division Bench above referred to. I am bound to follow it.

9. I dismiss the writ petition. No costs.