
(1997) 09 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No's. 20295/95, 20313/96 and 14112 of 1997

P.A. Mohanavally and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (1997) 2 KLJ 515

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : V.N. Ramesan Nambisan and R. Rajasekhara Pillai, for the Appellant;
Alexander Thomas), for the Respondent

Judgement

K.S. Radhakrishnan, J.—Petitioners are working as Junior Public Health Nurses in various Public Health Centres in the State. They were appointed on a provisional basis under Rule 9(a)(1) of the Kerala State and Subordinate Services Rules in the year 1989. Prior to their appointment, they were selected by the second respondent for giving training in Auxilliary Nurse-cum-Midwifery in Government institutions in the year 1987. They successfully completed the training and obtained certificates of Registration from the Kerala Nurses and Midwiferies Council in the year 1989. Prescribed qualification for the post of Junior Public Health Nurses in the Health Services Department is a pass in the 18 months course in Auxilliary Nurses-cum-Midwifery Training. Government later appointed petitioners as Junior Public Health Nurses in the year 1989 on provisional basis for a period of one year. However, since there was delay in appointing Public Service Commission recruited persons, petitioners continued in service on a provisional basis. When their services were sought to be terminated, some of the petitioners approached this Court and filed O.P. Nos. 17378 of 1995 and 18288 of 1995. This Court disposed of those Writ Petitions directing the respondents to consider petitioners' representations. Representations were rejected and they have approached this Court challenging those orders, and sought for regularisation of their services.

2. About 1000 Junior Public Health Nurses are working in the Health Services Department in the State on a provisional basis. Government have issued several orders including G.O.Ms. No. 145/85/HD dated 10.9.1985 stating that provisional appointment would not confer any benefit except for emoluments. It was pointed out all those appointees are free to apply to the Public Service Commission for regular appointment as and when vacancies are notified. Government also giving training to Junior Public Health Nurses. Those who have successfully completed the training are given a certificate of registration from the Kerala Nurses and Midwiferies Council. They are also on a bonded obligation to serve the Government for a period of two years, since Government have given them training. Those who have undergone training, and fulfilled the bonded obligation, will have to give way so that another set of persons who have undergone training could be appointed on a provisional basis.

3. Junior Public Health Nurses training is conducted every year with a stipulation that they are to serve the Government for a period of two years or so. About 1016 candidates are coming out of the training schools every year and are waiting for fulfilling their bonded obligation. Government, therefore, felt that those who have got an opportunity to serve the department should give way to others so that another set of persons who have undergone training also would get an opportunity to get experience. Those who have already served the Government and have got experience in Government service on the basis of the bonded obligation would also be in a better position to compete with others for regular appointment through the Public Service Commission.

4. Some of the provisional employees who have been so appointed on the basis of bonded obligation have approached this Court and filed Writ Petitions, and have obtained interim orders, and some of them are continuing even after the period of the bonded obligation, with the result very many persons who have undergone training would not get the advantage of getting experience in Govt. Service to compete with others for getting regular appointment through the Public Service Commission. In some of the cases, this Court passed interim orders and allowed those persons to continue in service till Public Service Commission recruited persons report for duty. Now in certain Districts, Public Service Commission has already advised candidates for appointment. However in many cases, persons like the petitioners obtained interim stay of termination of their service; with the result even Public Service Commission hands could not be accommodated, leave aside the question of accommodation of persons with bonded obligation.

5. The only ground on which petitioners stake their claim is that they have been in service for a number of years and therefore entitled to have their service regularised. It may be true that they might have put in number of years of service, in certain cases. But it was equally open to them to apply for jobs in different service, if they so desired. There is another side of the picture, Government gave them opportunity to gain experience and to compete with

others for regular appointment. We cannot also forget the fact that there are large number of persons who do not have even the advantage of working on a provisional basis. Petitioners are obviously in a better position, and continued in service for long number of years with all emoluments and benefits. The experience they have gained after training as Junior Public Health Nurses would have given them an advantage for getting other employment, including the very same post through the Public Service Commission.

6. Counsel for the petitioners relied on the decision of the Supreme Court in W.P. (C) No. 476 of 1991. It is stated that Junior Public Health Nurses who have put in 6 years of service were directed to be regularised and about 95 persons were regularised by the Government on the strength of Supreme Court decision. It is the case of the petitioners, they have put in 8 years of continuous service, and therefore they are entitled to regularisation. What prompted the Supreme Court in ordering regularisation of those Junior Public Health Nurses is a matter not to be examined by this Court. I am of the view, each case has to be dealt with on the basis of facts and circumstances of that case. Mere fact that certain benefits have been extended to some others, the same would not by itself advance as a ground to grant the benefit. Petitioners have to establish their rights independently. This Court is only concerned with the rights of the petitioners vis-a-vis candidates recruited by the Public Service Commission and candidates who have undergone training, waiting for appointment, so as to fulfil the bonded obligation.

7. Counsel for the petitioners also relied on the decision of the Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., , wherein the Supreme Court gave certain directions to the State of Haryana to regularise the service of temporary or adhoc employees. The said decision recognised that the normal rule of regular recruitment is through the prescribed agency, and that the appointment of regularly selected candidates cannot be withheld or kept in abeyance for the sake of adhoc/temporary employee. Supreme Court also observed that adhoc/temporary employee should not be replaced by another adhoc/temporary employee. He must be replaced only by a regularly selected employee: This was only to avoid arbitrary action on the part of the appointing authority. It is also observed that if for any reason adhoc/temporary employee continues for a fairly long spell, the authorities must consider his case for regularisation, provided he is eligible and qualified according to rules and his service record is satisfactory and the appointment does not run counter to the reservation policy of the State.

8. Learned Government Pleader referred to the decision of the Supreme Court in E. Ramakrishnan v. State of Kerala, (1997) 1 L.L.J. 1215. In the above mentioned case, Supreme Court considered the decision in Piara Singh's case. In Ramakrishnan's case, petitioners therein were appointed as field workers in the Filaria Department of the State Govt. from 1981 to 1985, and they continued in service for 14 years, and wanted to have their service regularised. Supreme

Court rejected that contention and held that posts are to be filled up through selection by the Public Service Commission recruitment norms. Petitioners' services were sought to be terminated so as to accommodate those candidates recruited by the Public Service Commission. In fact an order issued by the Government was also brought before the Court so as to seek their claim for regularisation in service. Supreme Court did not accept the said prayer, since that Government order runs into the teeth of statutory requirement under Art. 320 of the Constitution. In other words, it was categorically held, Government cannot take any decision contrary to the Constitution so as to regularise the service of candidates de hors the recruitment rules and the statutory process for selection through the Public Service Commission. Supreme Court, therefore, upheld the action of the Government in notifying 30 vacancies to the Public Service Commission.

9. In the instant case, service of petitioners are sought to be terminated so as to accommodate Public Service Commission hands and also to accommodate those candidates who are under bonded obligation. Right of the Public Service Commission hands cannot be disputed. They have to be accommodated. It is constitutional mandate. After accommodating Public Service Commission hands there might be some vacancies. Question may arise as to whether persons like the petitioners are entitled to continue in those vacancies or to give way so as to accommodate persons who have completed training, and who are on a bonded obligation. It is pertinent to note petitioners have undergone training and have fulfilled their bonded obligation. After the training Government appointed them provisionally for a fixed period and they continued. Persons similarly placed like the petitioners, and who have undergone training and are on a bonded obligation, are awaiting temporary appointment. They are also similarly placed like the petitioners after their training. Once upon a time, petitioners were also at the same position awaiting appointment on temporary basis after training. In the said situations, I do not find any illegality in the action taken by the Government to terminate the service of the petitioners so as to accommodate Public Service Commission hands or to appoint persons who have undergone training. If, after accommodating Public Service Commission hands and candidates with bonded obligation, vacancies exist, and if there is necessity, petitioners could be accommodated. It is entirely for the appointing authority to decide.

Original Petitions are disposed of as above.