

(1988) 11 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 8032 of 1988-F

P.K. Kunjukrishnan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Contract Act, 1872 — Section 23

Citation : AIR 1989 Ker 253

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : P. Krishnamoorthy and N.N. Venkitachalam, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Petitioner was appointed Additional Government Pleader, Quilon by the State Government on 3-7-1986 for a period of three years from the date of assumption of charge. The order makes it clear that the conditions of service, duties, remuneration etc. of the petitioner will be governed by the rules issued on 25-1-1978 as amended from time to time. He joined duty on 14-7-1986. By Ext. P3 dated 13-9-1988, State Government issued notice to him that his appointment shall stand terminated on the expiry of one month from the date of receipt of the notice.

The termination is now challenged. In the process petitioner also contends that Rule 17 of the Rules aforesaid is unconstitutional being violative of Articles 14 and 16 of the Constitution and being void u/s 23 of the Contract Act.

2. Rule 17 of the Rules aforesaid reads as follows :

"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 reason therefore :

Provided that such termination shall not be effected unless one month's notice in writing has been given to him."

It is in accordance with this rule that the petitioner's appointment has been terminated with one month's notice.

3. Learned counsel would contend that the power vested in the Government under Rule 17 is an arbitrary power contrary to public policy and, therefore, void and unconstitutional. Learned counsel submitted that the office of the Government Pleader or an Additional Government Pleader is an office under the State and for this purpose, relied on the decision of a Division Bench of this court in *Mrs. Baby George v. State of Kerala* 1973 K LJ 923. 4. In the above case constitutionality of the procedure adopted by the State Government in proceeding to appoint Government Pleaders in the High Court without inviting applications and based only on the panel submitted by the Advocate General was challenged as violative of Article 16 of the Constitution. In that connection, the Division Bench held that the office of the Government Pleader is an office under the State for the purpose of Art. 16 of the Constitution. However, the court sustained the procedure adopted observing as follows:

"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 An Advocate* AIR 1962 SC 1337 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 Article 16(1) of the Constitution.

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 *Dr. S. T. Venkkataiah Thimmaiah v. State of Mysore* AIR 1969 Mys 186, *Dr. Kartar Singh Rai Vs. State of Punjab and Another*, and *the State of Uttar Pradesh v. Bholanath Srivastava* AIR 1972 A11 460. In the last of these, the appointment of Government Pleaders made on the recommendation of the Advocate General was sustained as not violative of Article 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 Article 16 of the Constitution."

5. Learned counsel for the petitioner placed reliance on three decisions of the Supreme Court. First of these is West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, . In that case Electricity Board terminated the services of an officer with immediate effect on payment of three months' salary in lieu of three months' notice on the strength of Regulation 34 of the Board's Regulations which enables such action. The Court held Regulation 34 arbitrary in nature and that it suffered from the vice of enabling discrimination, naked hire and fire rule and violative of Article 14. The Supreme Court relied on the decision in S.S. Muley v. J.R.D. Tata 1980 Lab IC 11 where the Bombay High Court had struck down a similar rule in the Air India Employees'; Service Regulations.

6. The next decision is that in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . In that case also rule authorising termination of service with notice was successfully challenged and the court held that it was arbitrary and contrary to public policy. The last of decisions relied on is O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, A similar rule in the Indian Tourism Development Corporation (Conduct, Discipline and Appeal) Rules was struck down as violative of Article 14 of the Constitution. But it is significant to note that though in this decision that rule was struck down it did not order reinstatement to any position.

7. It appears to me that the present case is wholly distinguishable from the above decisions. The above decisions dealt with situations where the relationship between the two parties was purely master and servant relationship. It is true that the office of the Government Pleader is an office of the State. But it cannot be said that it reflects pure master and servant relationship, assuming that it reflects any such relationship. Relationship in this case is essentially that of a litigant and a lawyer. As indicated by the Division Bench of this Court in Baby George's case 1973 K LJ 923, a member of the Bar belongs to a noble and learned profession. He cannot even submit an application seeking appointment of Government Pleader as that would be unprofessional. The relationship between Government and Government Pleader is qualitatively different from that between master and servant. It is essentially a position which requires mutual confidence and trust. As observed by brother Sukumaran, J. in O.P. No. 8374 of 1984 :

"The petitioner fills in an office as a member of the learned profession. That office is essentially one of utmost trust and confidence. And no member of the profession would cling on to a file or to a client, the moment the client is seen to show the slightest dissatisfaction about counsel's conduct. In that sense, the case is different from an ordinary probationary civil servant or persons of that stature."

8. In W.A. No. 497 of 1984, a Division Bench confirmed the judgment in O.P. 8374/84. The Division Bench specifically considering Rule 17 of the Rules observed :

"Rule 17 of the relevant rules provides for termination of appointment without assigning any reason. Not only that, going by the nature of the work a Government Pleader has to perform it is only proper that the Government have the power given to them under Rule 17."

9. The special features of relationship between government and law officers are sufficient to indicate that law officers cannot be treated on a par with government employees or public servants. That would justify special treatment of law officers. Is this classification justified or reasonable? It is stated in Willis on "Constitutional Law" that :

"It is a matter for judicial determination but in determining the question of reasonableness the Courts must find, some economic, political, or other social interest to be secured, and some relation of the classification to the objects sought to be achieved. In doing this the courts may consider matters of common knowledge, matters of common report, the history of the times, and to sustain it they will assume every state of facts which can be conceived of as existing at the time of legislation" and many different classifications of persons have been upheld as constitutional. A law applying only to one person or class of persons is constitutional if there is sufficient basis or reason for it."

10. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, it was observed : "Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if looked at from the stand point of the authority making it, the classification is found to rest on a reasonable basis it has to be upheld" and "..... discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis."

11. In the very nature of things relationship between State and law officers cannot be equated to that of master and servant; it is on a higher plane, in a different context and at a different level. No doubt the office of the Government Pleader is an office under the State. But the office is one which necessitates an extraordinarily high degree of confidence on the part of the State Government and it appears to me that to compel the State Government to continue to deal with a law officer irrespective of other circumstances would be an arbitrary imposition of a service of a law officer on the Government; that may also be contrary to public policy.

12. In regard to condition of service relating to mode of termination of appointment of public servants, there could be varying standards to be applied to different posts depending on the nature of the posts and duties attached to such posts. Classification of persons holding sensitive positions in public employment in the matter of termination of service is certainly reasonable and justified by public interest. In view of the fiduciary nature of client-counsel relationship between State and, law officer, a provision that the State shall be entitled to terminate the engagement of counsel on notice cannot be regarded as

discriminatory or arbitrary or violative of Articles 14 and 16 of the Constitution. An advocate is not justified in clinging on to any case, notwithstanding the indication of the client that he no longer wants the service of the counsel. The mere fact that the relationship is expressed to be salaried employment does not in any manner affect or alter the nature of the relationship. No advocate will be justified in dictating terms to the client as to the period of notice terminating the engagement. The notice, of course, shall be reasonable and the termination of the engagement shall be subject to the rights of the legal practitioner, A government law officer is not in any better position. State which has made the Rules is bound by provisions of the Rules and, therefore, obliged to give notice. Rule 17 cannot be held to be arbitrary or opposed to public policy.

13, Termination involved in Ext. P3 is a termination pure and simple. It involves no stigma. It cannot, therefore, lead to any legal grievance on the part of the petitioner. It is further argued that the action is mala fide based on political consideration. There are no adequate facts disclosed in the petition to support the case of mala fides.

14. In these circumstances, the Original Petition deserves to be and is hereby dismissed In the circumstances, there will be no order as to costs.