
(2010) 05 KL CK 0094
In the High Court Of Kerala
Case No : W.A. No. 2290 of 2009

Principal Secretary to Government

APPELLANT

Vs

Jolly Varghese

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 3 ILR (Ker) 275 : (2010) 3 KLT 249

Hon'ble Judges : P.S. Gopinathan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Mathai M. Paikaday Jose Thomas (Pala), M. Rajagopalan Nair and P.C. Sasidharan, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Writ Appeal is filed by the State against the judgment of the learned Single Judge directing appellants to issue appropriate orders raising the upper age limit for applying to the post of non-teaching staff in various colleges in Kerala as in the case of teaching staff whose upper age limit for employment has been extended from 35 to 40 for the last over 6 years. Pre-degree course that was run in colleges was delinked from colleges in the year 1997 and Government provided for study equivalent to Pre-degree i.e. 11th and 12th Standard in Higher Secondary Schools. According to the Government, on account of delinking of Pre-degree from colleges, there was excess teaching and non-teaching staff. Consequently vacancies arising were not to be filled up and therefore, a ban was introduced against appointment of teaching and non-teaching staff in colleges in Kerala for a period of seven years i.e. from 1997 to 2004. However, simultaneously after lifting the ban against appointments, the upper age limit for appointment of teaching staff in the Arts and Science colleges was raised from 35 to 40. The extension of age limit originally granted from 1.4.2004 under various orders still continues and as of now, the said order is valid upto 31.12.2010. Even though the ban against appointment was applicable

to teaching and non-teaching staff, relaxation granted in regard to upper age limit for applying for posts in the Arts and Science Colleges was limited to teaching staff. This was questioned by the first respondent by filing Writ Petition before this Court and this Court held that the Government Orders impugned in the W.P.(C) are discriminatory and violative of Article 14 of the Constitution of India in as much as there is no difference between teaching and non-teaching staff for the purpose of maximum age for eligibility for appointment to the Colleges. First respondent is a Post- Graduate in Library Science, who on account of the ban could not apply for a post in any college after 2004 is her case.

2. During hearing learned Government Pleader submitted that no vacancies were there during the period of ban for non-teaching staff and so much so, even if the ban was not there, first respondent or similarly placed persons could not have been able to apply for the post. Counsel for the first respondent submitted that the only reason for Government not extending the upper age limit for non-teaching staff is their failure to approach the Government for the said purpose. We are not inclined to accept the argument of the appellants that in the absence of any proof of availability of post during the period of ban, the first respondent cannot apply for relaxation of upper age limit because without any positive evidence of availability of vacancy during the period of ban, Government has extended the benefit to the teaching staff. So far as upper age limit for appointment of staff both in teaching and non-teaching cadres in the Colleges is concerned, it is the same. Since the ban of appointment during a period led to the Government for relaxation of age limit for teaching staff, we see no reason why it should not be extended to other staff also. All what the learned Single Judge directed is to consider the case of first respondent and similar others who were eligible to be considered for appointment to various posts of non-teaching staff like Librarian but for the age bar on account of the ban against appointment. Consequently we dismiss the appeal.