
(1993) 12 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 11287 of 1993

Sajan Mannali

APPELLANT

Vs

Hon"ble Chief Justice and Others

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Constitution of India, 1950 — Article 229(2)
Kerala High Court Service Rules, 1970 — Rule 35, 60

Citation : (1993) 1 ILR (Ker) 526 : (1994) 2 LLJ 817

Hon'ble Judges : T.V. Ramakrishnan, J;T.L. Viswanatha Iyer, J

Bench : Division Bench

Advocate : P.G. Chacko and T.R.G. Warriyar, for the Appellant; P.V. Rama Warriyar, M.B. Kurup, General and Mohan C. Menon, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—This writ petition is by an advocate ordinarily practising in this court hallenging the order Ext. R1(f) dated July 29, 1993, which was subsequently marked by the petitioner as Ext. P1 (b), of the Chief Justice of this court, the first respondent, as also the consequential proceedings Ext. P1 dated July 31, 1993, extending the period of service of the third respondent Sri. M.C. Madhavan, as Registrar of this court from the forenoon of August 1, 1993, so long as he continued as Special Officer for the establishment of the State Administrative Tribunal. The petitioner alleges and claims that he has filed the writ petition as a member of the Bar and as a citizen of this country, in discharge of his "duty to make an endeavour to uphold the rule of law in this country by defending the independence and integrity of the judiciary against every offensive tending to undermine its credibility in public esteem". We may at once mention that this tall claim of pro bono public spirit got diluted and devalued into a personal interest in the reply affidavit which the petitioner filed in the matter. More about it later. The background facts leading to the writ petition are as follows.

2. The third respondent joined the High Court service in September 1958 and was appointed the Registrar of this court on August 1, 1983, the post being one borne in and governed by the Kerala High Court Service Rules, 1970 (the Rules) framed under Art. 229 of the Constitution of India. He was due to retire on superannuation on January 31, 1992 after attaining the age of fifty five years on January 8, 1992. The Chief Justice was however of the view that it was imperative and absolutely necessary in public interest, in the interests of the High Court and of the sub-ordinate courts, and on public grounds that the services of the third respondent should be continued beyond his age of superannuation at least for a period of eighteen months, and accordingly extended his services for a period of eighteen months beyond January 31, 1992. While ordering this extension, the Chief Justice had recorded in his minutes Ext.R1(c) dated January 30, 1992 that the third respondent had, apart from his supreme qualities as an officer, introduced during his tenure of office, several excellent administrative procedures and systems, and toned up the administration extremely well with his exquisite managerial skills; some more were under implementation. Several important matters concerning the subordinate judiciary were also pending either decision or implementation. It was for these and other reasons recorded in detail in Ext.R1(c) that the Chief Justice extended the term of office of the third respondent for a period of eighteen months beyond the age of superannuation. Inter alia it was also recorded by the Chief Justice that it required sufficient persuasion from him to make the third respondent agree to continue. The term of office of the third respondent thus stood extended till July 31, 1993.

3. The State Government had taken a decision to establish a State Administrative Tribunal under the Administrative Tribunals Act, 1985. Government felt it necessary to have the services of an officer with sufficient legal background and work experience for dealing with the various matters relating to the establishment of the Tribunal, and appointed the third respondent as the Special Officer for the purpose with the concurrence of the Chief Justice by proceedings dated May 22, 1993. This was in addition to the functions of the third respondent as the Registrar of this court. The third respondent took charge of the assignment as Special Officer on June 5, 1993. The files produced by the learned Advocate General disclose that the third respondent had embarked on his duties in right earnest and submitted detailed reports in June/July, 1993 itself containing suggestions and recommendations on various matters pertaining to the establishment of the Tribunal.

4. Very much more remained to be done before the Tribunal could become a reality. By their letter Ext. R1(g) dated July 24, 1993, Government made a request to the Chief Justice to kindly consider the question of extension of the term of office of the third respondent as Registrar for some more time so that "the smooth transition and infrastructure build-up (of the Tribunal) will be possible as planned". This request was before the Chief Justice when he considered the question of extension of the services of the third respondent

beyond July 31, 1993 and recorded his decision in the minutes Ext. R1(e) on July 29, 1993 to extend it till such time as he continued as Special Officer for the establishment of the State Administrative Tribunal. This decision was followed by the formal order Ext. R1 (f) of the Chief Justice which was implemented by the proceedings Ext.Pl of this court. The writ petition has been filed challenging these proceedings.

5. We have given the bare facts leading to the writ petition leaving the details of the ground of challenge to be stated as and when we deal with them. A counter affidavit has been filed on behalf of the Chief Justice, the first respondent, by Sri. K.V. Sankaranarayanan, Registrar (Judicial) of this court. The third respondent has filed a detailed counter affidavit while the State, the second respondent, has filed a counter affidavit of its own. The petitioner filed a reply affidavit to these counter affidavits after the matter was heard in part on the 4th and 5th of October 1993, to which we will make reference later.

6. The contention raised in the forefront and which arises for consideration in the first instance, is that the Chief Justice has no power at all to extend the service of an officer of the High Court. This contention has been raised with many ramifications. We may however mention : that the writ petition as it was filed originally, conceded the power to the Chief Justice to extend the services of an officer of the High Court including the third respondent. But it was amended to raise the plea that the first respondent had no such power, that provision, if any, for extension of service was beyond the rule-making powers conferred by Article 229 of the Constitution and that extension of service was not permitted either by Rule 35 of the Rules, or Rule 60 of the Kerala Service Rules (the KSR in brief). A further ramification of this contention was that even in Rule 35 of the Rules, read with Rule 60 of the KSR, enabled such an extension, the facts and circumstances of this case did not justify the extension of the service of the third respondent.

Clause (2) of Article 229 empowers the Chief Justice to frame rules prescribing the conditions of service of officers and servants of the High Court. This power is subject to the provisions of any law made by the legislature of the State. The proviso to this clause lays down that the rules so made shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. Rule 35 of the Rules framed under the power so conferred, provides inter alia that the KSR shall govern the members of the Kerala High Court Service in the matter of their pay, allowances, leave, leave salary, pension and other conditions of service, with the proviso that except with regard to salaries, allowances, leave and pension, the Chief Justice shall exercise the powers vested in the Governor or the Government under any of the rules of the KSR. The contention of the petitioner in a nut shell, is that matters relating to extension of service of an officer are not part of his conditions of service and therefore the rule-making power of the Chief Justice under Article 229(2) does not extend to making provision for extension of service of any officer. For the same reason, Rule 35 also does not enable extension of service of an officer of

the High Court. Subsequently it is stated that the provisions of Rule 60 of the KSR which are relied on by the respondents in support of the extension of service of the third respondent are not applicable to the High Court service.

7. Apart from the oral submissions at the hearing, which no doubt were vehement, counsel could not substantiate his arguments with reference to any decided cases on the point, except to draw indirect support from Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others,). This decision was stated to be very much in point but we do not think so. In that case, the Supreme Court dealt with the ambit and scope of the power of "appointment" in Article 229(1) and, in that context observed, in para.27, that in regard to the servants and officers of the High Court, the Article "makes the power of appointment, dismissal, removal, suspension, reduction in rank, compulsory retirement etc., including the power to prescribe their conditions of service, the sole preserve on the Chief Justice", and that no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee except to the very limited extent indicated in the proviso. This the Supreme Court said was intended to ensure the independence of the High Court. Counsel for the petitioner seeks to derive support for his contention, from the absence of any reference to extension of service in the above passage, which according to him is indicative that the power under Article 229(1) is limited to the making of rules in relation to the above mentioned acts and no further. The argument does not however appeal to us. The decision does not have any such effect. For one thing, the Supreme Court was not dealing with the power under Article 229(1), but with the power of appointment under Article 229(1). Secondly, the Supreme Court does not purport to be exhaustive of all the powers comprehended in Article 229 as can be seen from their use of the word "etc.", and the words "including the power to prescribe the conditions of service". What the Supreme Court did Was only to uphold the primacy of the Chief Justice in laying down the conditions of service of the servants and officers of the High Court, subject to the limitations contained in the proviso. This decision is not therefore of any assistance to the petitioner.

8. Article 229(1) is *pari materia* with Article 309 of the Constitution relating to conditions of service of those appointed to public services of the State. The service of a Government servant commences with his appointment and entry into service after recruitment by the Public Service Commission or otherwise. All the matters pertaining to his service (except matters like chances of promotion) his retirement and beyond, like pension and other benefits are part of his conditions of service.

9. The expression "conditions of service" is one of wide import. It means all those conditions which regulate the holding of a post by a person right from the time of his appointment, till his retirement and even beyond it, in matters like pension, etc. The dismissal of a Government servant or his compulsory retirement are all matters which fall within his conditions of service AIR 1949 112

(Privy Council); State of Madhya Pradesh and Others Vs. Shardul Singh, . The expression would include age of superannuation as also the right to reduce it. State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others, ; Srinivasan v. State of Kerala AIR 1968 Ker.158 ,(Compulsory retirement, dismissal and reduction in age of retirement being part of conditions of service, extension of service is equally a condition of service. We are unable to find any difference in principle between the two.

10. We do not find any rhyme or reason to exclude extension of service alone from conditions of service. In fact counsel for the petitioner frankly admitted (not that he can contend otherwise in the light of the binding authorities on the point) that conditions relating to age of retirement and retirement benefits pertain to the realm of conditions of service of a Government servant and cannot be dissociated therefrom. The only contention necessitated by exigencies of the case, is that extension of service of a Government servant is not a condition of service.

11. We may note here that it had never been questioned that extension of service is a condition of service. It had always been understood only as such- K.P. Krishnankutty Menon and Others Vs. State of Kerala, ; Balakrishnan Nair v. Travancore Devaswom Board ILR 1972 Ker.35), State of Kerala v. Sundaram Iyer 1983 KLT 1105); Raghavan Nair v. Podmakumar, ILR 1993 Ker.677). We do not find any reason to depart from this long undisputed position, to hold that one facet of service relating to extension should alone be outside the purview of conditions of service.

12. Admittedly, age of retirement is a condition of service. The consequence of extension of service is to extend the age of retirement so far as the particular officer is concerned (vide Rule 5 in Appendix X Part A of K.S.R.). The provision for retirement is subject to any extension being granted, or to an officer being retired before his age, both of which could be only part of his condition of service. We may also mention that Rule 60 of K.S.R., which the petitioner does not challenge, itself permits retention or re-employment of an officer beyond the age of retirement. Extension of service is only one mode of retention of an officer in service beyond that date, and there is no reason why that should not be taken in as part of the conditions of service of the officer.

13. For the aforesaid reasons, we do not find any substance in the petitioner's contention that extension of service is beyond the rule making power under Article 229(1).

14. The above discussion also disposes of the contention that extension of service is not comprehended within Rule 35 as well.

15. The next question which arises for consideration is whether Rule 60 of the KSR enables an extension of service. The contention of counsel for the petitioner is that the said Rule does not ipso facto provide for an extension of service, and requires all Government servants to retire at the age of 55 or 60, as the case

may be. The only exception is that contained in Sub-clause (c), which enables a teacher who completes the age of 55 years in the course of the academic year to continue in service till the end of the academic year. But a reading of Sub-clause (a) is sufficient to dispel this argument. Rule 60 does not expressly bar an extension of service. While Sub-clause (a) prescribes the age of retirement, it also provides that an officer may be retained after the normal age of retirement only with the sanction of Government on public grounds, which must be recorded in writing, and further that he must not be retained after the age of 60 except in very special circumstances. The indication is clear that an officer may, subject to the conditions laid down, be continued in service even beyond the age of 55 years-whether it is termed retention or extension. Counsel however makes a distinction between retention in service and extension, and submits that no extension of service is contemplated, but only retention in service by way of re-employment. He refers to Note 3 which states that even in cases where it is found absolutely necessary to retain the services of an officer, who has attained the age of retirement, as far as possible only re-employment after retirement should be resorted to, which shall not ordinarily be sanctioned for more than one year at a time. But a reading of Note 5 makes it clear that extension of service is not taboo under Sub-clause (a). Note 5 is to the effect that except when extension of service is specifically sanctioned, the retirement of an officer is automatic and no separate sanction is required. Evidently the sanction mentioned for extension is the sanction of Government made mention of in Sub-clause(a) which literally speaks of retention in service. A combined reading of the rule with the Notes is sufficient to indicate that the retention in service contemplated by Sub-clause (a) embraces within it an extension of service as well. No clear cut distinction has been maintained in the Rule between retention and extension. Sub-clause (a) in fact does not speak of any particular mode of retention in service. It may be by way of re-employment or it may be by extension of service of the officer. What is evidently contemplated is the continuance in service of the officer and his continued availability to Government for public service. So long as there is no limitation in Sub-clause (a), we are not able to read the word "retention" as not permitting an extension of service.

16. We may deal at this stage itself with a subsidiary contention that because of Note 3 only re-employment should be resorted to and not extension of service and that the re-employment shall only be for one year at a time. The Note is not however absolute. It does not act as a bar to extension of service. It only says that as far as possible re-employment should be resorted to. The question whether extension of service should be made or re-employment should be resorted to is essentially a matter for the authority concerned-namely the Chief Justice in this case. The question is one of power, and Note 3 does not rule out an extension of service. It may also happen, that in a given case an officer whose continued service is required, may not be willing for a re-employment, but only extension. To rule out extension in such cases will well nigh negate the object of the rule itself.

17. We may refer to one other submission which counsel for the petitioner made, namely, that Rule 60 of the K.S.R. adumbrates extension of service only of teachers who are winners of National and State awards covered by the Exception to sub-clause(c) to the Rule. He submits further that the decisions in *State of Kerala v. Sundaram Iyer*, (supra) and *Raghavan Nair v. Padmakumar* (supra) recognising the power of Government to extend the service of an employee in certain circumstances are rendered per incuriam, without reference to and without being apprised of the impact of the exception on the interpretation of the rule. To put it mildly, we do not find any substance at all in this argument. The rule as such has to be interpreted and the Exception is only one part of it. This Exception which had only a short life from March 31, 1982 when it was introduced to September 22, 1990 when it was omitted cannot by any stretch of imagination govern the construction of the rule which had existed all along before, during and after, its introduction and omission. The contention only deserves to be stated and rejected. The decisions mentioned do not therefore require reconsideration for the reason stated by the petitioner.

18. Counsel for the petitioner was quite vehement in his next submission that the grounds for retaining an officer beyond the age of his retirement should be disclosed to and be available to the public. This, according to him, is the very essence of the expression "public grounds" in Rule 60(a). It is stated that a mere recording of the reasons in the files does not do justice for the rule. This is said to be the scope and ambit of the expression "public grounds".

19. We are unable to follow this contention. It is nowhere stated that the grounds should be disclosed to, and be made, public. All that Rule 60 (a) requires is the existence of public grounds to be recorded in writing. This requirement is satisfied when the authority concerned records his reasons in writing in the minutes, for extending the service of the officer. We are unable to discern a requirement of publication or disclosure to the public anywhere in the rule. The expression "public grounds" does not carry any such import, as we shall presently show. The requirement of "public grounds" is avoidance of arbitrariness, which is ensured by the insistence on recording them in writing. No publication of the grounds or disclosure to the public is contemplated as a condition precedent to the extension of service. The contention is untenable and proceeds on a total misconception of the requirements of Sub-clause (a).

20. The rule requires public grounds to be recorded in writing. According to the petitioner, such grounds are in any event wanting in this case. Now, what is a "public ground"? It appears in Rule 60(a) and it appears to be the term used in other allied or similar provisions (vide Rule 16 of the All India Services (Death-cum-Re-tirement Benefits Rules 1958). But Rule 56(d) of the Fundamental Rules which is akin to Rule 60(a) speaks of grounds of public interest, to be recorded in writing. No decided cases except one of the Bombay High Court were brought to our notice; nor, for that matter, any other literature on the subject. Counsel for the petitioner puts the requirement of public grounds as one of absolute

necessity - indispensability - while counsel for the respondents would equate it with public interest. They would submit that if public interest is subserved by the extension of the service of a particular Government servant, that is good ground for Rule 60. In any event they state that the scope of judicial scrutiny is limited and if the action concerned is found to be bone fide and in the interests of the public, this court will not interfere with it in exercise of the powers under Article 226 of the Constitution.

21. What is evidently intended by Rule 60(a) is that the extension of service in question should subserve the interests of the administration or institution in which the officer is employed. Public ground is complementary to public interest. "Public ground" will include public interest, but it may also mean something else. We are of the view that it comprehends a ground of a public nature, a ground related to public administration as such as against a mere private reason. It may be that in a given case, the general public interest may not be directly subserved by the extension of service of a particular Government servant; or the service of the officer may not be indispensable, but the continuance in office of a particular incumbent may be in the interests of the administration as was the case in *State of Kerala v. Sundaram Iyer*, (supra). In such cases, though the extension may not be absolutely necessary for the general public interest, still the ground may otherwise be of a public nature, justifying the extension of service. For instance, the special confidence reposed in a particular officer by a particular authority, or the felt necessity for the continued availability of the services of that officer for the performance of the duties of an office more effectively or with greater expertise needed at a given point of time - these may be grounds for extension of the service, though the interests of the general public at large will only be incidentally benefited. Such examples may be multiplied as to how the services of an officer may be conducive to better administration, for proper achievement or attainment of objects and results though the public interest as such may equally well be subserved with those waiting for appointment in the line. May be the personal charisma, charm, tact or special efficiency in dealings with men and matters, all this may contribute in better to the achievement of certain results which are desirable or required at particular times. It may also be a case where the continuance in office is required for completing projects or other programmes already initiated, these may be cases where the service of the officer may not be indispensable; nevertheless the ground in question may be a public ground. Essentially the question for consideration for extension under Rule 60(a) is whether authority acted bonafide on a ground which will stand the test of scrutiny in a court of law as based on relevant objective considerations. In the ultimate analysis, it should be a case of use of powers bonafide for the achievement of the public good, though public interest as such may be subserved by other officers. The scope of judicial review in such cases will be very limited, to see, whether the authority has acted bonafide, for reasons which are relevant as was held in the following cases.

22. In *Krishnankutty Menon v. State of Kerala*, (supra), a Government order

extending the service of doctors beyond the age of superannuation was under challenge. Mathew, J. observed that the question of granting extension of service is a matter within the discretion of Government, and that the ground of scarcity of doctors in the State stated in support of the order was a public ground as envisaged in Rule 60(a) of the K.S.R. In *Balakrishnan Nair v. Travancore Devaswom Board* (supra), Eradi, J. was more emphatic. There the term of service of the Devaswom Commissioner was extended by one year beyond his age of retirement and that was challenged by the senior-most Deputy Devaswom Commissioner, though he was posted as an acting Devasowm Commissioner with the designation, Intelligence and Investigation Officer in a newly created post. Eradi, J. sustained the extension relying on the decision in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, observing that under Rule 60(a), it was entirely for the Board to decide whether the continuance of an officer beyond the normal age of retirement was necessary on public grounds and if they bona fide formed that opinion, the correctness of that opinion cannot be challenged under Article 226 of the Constitution.

23. These observations were approved and followed by the Division Bench of Khalid and Sivaraman Nair JJ in *State of Kerala v. Sundaram Iyer* (supra) (para.9). *Raghavan Nair v. Padmakumar*, (supra) was another case where the extension of service of a member of the Indian Administrative Service was in question and was upheld after delineating the limited scope of judicial scrutiny of such orders. We may incidentally mention that in *Sreedharan v. State of Kerala* 1976 KLT 594) the converse case of compulsory retirement of a public servant before reaching his age of superannuation in public interest under the then existing Rule 60A of K.S.R. was dealt with and in para.7 of the judgment, the Full Bench held that while public interest was a condition precedent for a valid action under Rule 60 A, the existence of some relevant material, however slight, was sufficient. The decision was ultimately that of the Government and the court will not weigh the various aspects for and against an employee to determine whether it is in public interest or not to retire him.

24. For the reasons discussed by us above, we are unable to agree with the Bombay High Court (Kanade and Jamdar, JJ) in *Dinkar Sakham Kulkarni v. District and Sessions Judge, Akola* 1980 MLJ 331) that public grounds in the similar Rule 330 of the Bombay Civil Service Rules, 1959, required that the services of the person to be retained were indispensable, without whose services the administration of the department to which he is appointed cannot be properly or efficiently carried on. We express our disagreement with this extreme view taken by the Bombay High Court.

25. There is no case for the petitioner that the first respondent did not act bona fide. The grounds stated in Ext. R1(e) are valid grounds For the extension given to the third respondent. They constitute public grounds as adumbrated by us above. Ext.R1(e) is well within the scope of Rule 60(a). As a bonafide exercise of power by the Chief Justice on grounds which are relevant, Ext. R1(e) or the

consequential proceedings Ext. R1(f) and Ext.PI are not open to challenge in proceedings under Article 226 of the Constitution.

26. But, says counsel, the decision to extend the service of the third respondent was not a decision of the Chief Justice at all, as required by Rule 60(a), but one made at the behest of the Government without application of the mind. The post of Registrar is a selection post to which appointment is to be made either by promotion, or by transfer, or by direct recruitment. The Chief Justice had not applied his mind at all to the question and was perhaps leaving the matter to take the usual course after the retirement of the third respondent on July 31, 1993, when the motion which led to Ext.R1(f) was triggered off by the Government letter Ext.R1(g) dated July 24, 1993. The Chief Justice thereafter acted with great alacrity to oblige the Government and extended the term of the third respondent to facilitate his continuance as the Special Officer of the State Administrative Tribunal. The extension was ordered as a matter of course and without any application of the mind. In support of this plea, it is pointed out that the first respondent has not considered whether the new appointment should be by promotion, transfer or direct recruitment. If he was opting for direct recruitment, the motions in that direction should have started long back so that the selected incumbent could take charge on August, 1 1993. It is also stated that the first respondent has not considered whether there was any "nexus" between the post of Special Officer and the Registrar, the only work of the Special Officer, according to the petitioner, being to gather the records of the service matters pending in this court and despatch them to the Administrative Tribunal. The Chief Justice has also not considered the only relevant point arising for consideration whether the requirements of the High Court necessitated the continuance of the third respondent in service beyond July 31, 1993. He would also say that the statement in Ext.R1(e) that the third respondent had a fund of experience does not carry conviction in as much as the nature of this experience does not find mention therein or in any other proceeding. According to counsel, the first respondent has to demonstrate to the world at large that it is impossible to carry on the work in the High Court without the third respondent. He has to find absolute necessity or at least necessity, both of which do not exist in this case. The requirement of the Government is not a ground for extension. Counsel even went to the extent of stating that the retirement of the third respondent would have improved the working of the High Court, in as much as he did not have the judicial experience which was necessary for discharging the duties cast by Rules 15 and 16 of the Kerala High Court Rules.

27. We find absolutely no substance in any of these contentions. Some of these contentions have already been dealt with by us in the preceding paragraphs and it is unnecessary to repeat them. It is true that the third respondent was retiring in the afternoon of July 31, 1993. Even on the previous occasion when the extension of eighteen months was granted, the order was passed only just on the eve of his retirement on January 31, 1992, namely Ext.R1 (d). Admittedly no direct appointment had been made to the post so far. Hitherto the post had been

filled up only by transfer of a District Judge- not the senior-most District Judge as wrongly we believe, deliberately (as we expect the petitioner to have verified the facts before making an assertion) - stated by the petitioner in his writ petition - till the post was filled up on August 1, 1983 by promotion of a member of the High Court service, namely the third respondent. The absence of any proceedings prior to Ext.R1(g) letter of Government is not therefore of any significance; nor does it imply that it was the Government letter that triggered off the proceedings culminating in Ext.R1(f) and Ext.Pl. After all, Ext.RI (g) contained only a request to the Chief Justice to consider the question of extending the third respondent's service. If the Chief Justice, for his own reasons (as is evident from Ext.RI(e)) extended the service of the third respondent, the fact that the Government request was also before him at the time of consideration does not lend colour to any inference that the decision was not his but that of Government. In any case, even assuming that the Chief Justice was influenced to some extent by the request of Government, we do not find anything illegal in it so long as the decision was his, and for his own reasons. We have held earlier that the first respondent was guided by valid relevant public grounds in passing the order Ext.R1(f).

28. In fact, even if he was acceding only to the request of Government, the Chief Justice was actually subserving a public interest by saving the public exchequer of a large amount of expenditure which they would otherwise have had to incur for a separate Special Officer, with all the paraphernalia of an office, vehicle, staff and the like. Despite all the protestations of the petitioner, if any order has served the public interest, it is Ext.R1(f).

29. The petitioner has made various unfounded and reckless allegations about the third respondent in the writ petition, about which we shall be referring in detail later. These and the other snide remarks which very often found their way into the arguments, about which counsel for the third respondent took great umbrage, are not founded on any material and are in fact quite contrary to the facts borne out by the files placed before us by counsel for the first respondent. Successive Chief Justices from M.S. Menon, C.J. to Malimath C.J. who preceded the first respondent, have had only superlatives to describe the qualities of the first respondent. M.S. Menon, C.J. had found him extremely efficient and thoroughly hardworking and in his opinion there was no post in the administrative side of the High Court which, given a chance, he will not occupy, with distinction and to the satisfaction of all concerned. For Raman Nayar, C.J. he was outstandingly good in all respects, words which were echoed by Bhaskaran, C.J. with added words of his own. Malimath, C.J. found in him an ideal Registrar, who was an asset to the administration and was indispensable. We are not culling out all that the various Chief Justices have stated, but what little we have extracted above mark out the third respondent as an able and outstanding administrator, rich in experience and competent to fill the post of Registrar, which post he had occupied for ten years to the satisfaction of all concerned, at the time the order Ext RI(f) was passed. It is therefore no wonder that he was

considered for appointment as Registrar General of the Supreme Court of India during the tenure of Hon'ble Justice M.H. Kania as the Chief Justice of India, an offer which the third respondent declined for personal reasons. He was also the recipient of appreciative references by the Arrears Committee constituted of three Senior Chief Justices (vide Ext.R3(b)).

30. It is despite all this that the petitioner suspects the veracity of the Chief Justice's reference to the third respondent's fund of experience in Ext. R1(e) and complains about nonmention of the materials therein. The utter lack of good-faith in the petitioner is evident from this conduct of the petitioner. We do not think there is any obligation on the Chief Justice to prove to the satisfaction of the petitioner by producing the records before him for his perusal and approval that the third respondent was of proven ability and experience. It did look very often during the arguments that the petitioner believed such a duty to exist on the Chief Justice to prove the merit and ability of the third respondent to his satisfaction. All these pleas of the petitioner only deserve to be rejected, as wanting in substance, besides being positively mala fide.

31. Nor is there any bona fides in the petitioner's contention that the administration of the High Court will stand improved by the retirement of the third respondent. Such an assertion about one who had a fine record of service since August 1, 1983 and with the credentials mentioned above is most uncharitable and comes with ill grace from the petitioner who is least qualified to speak about it. The third respondent is actually qualified in law, qualified and capable of performing those duties which are cast by Rules 15 and 16 of the Kerala High Court Rules. We may also mention here that it is common knowledge that these duties are generally performed at the Joint Registrar level and not by the Registrar himself.

32. The blank assertion that the function of the Special Officer for the Tribunal is only to gather the service cases in the High Court and send them on to the Tribunal is again lacking in bona fides, besides being born out of ignorance of the functions of the Special Officer. The very constitution of the Tribunal requires considerable amount of preliminary spade work to be undertaken. The files will disclose that the Government could not make much of headway in the matter, and it was in that context they considered it necessary to have a Special Officer for the purpose, and made request to the Chief Justice to spare the services of the third respondent to function as a Special Officer. The Special Officer has to advise and assist the Government on various matters like the framing of the requisite rules to govern the proceedings in the Tribunal, matters of court fee, the financial implications, the staff pattern, constitution of Benches and their location, requirements of space and furniture, identification of proper buildings for the Benches of the Tribunal and various others. It is not as simple as the petitioner would think it is. The files disclose that during the period of two months the third respondent functioned as the Special Officer, he had sent voluminous reports to the Government about the steps to be taken and the basic

spade work to be undertaken for the setting up of the Tribunal.

33. Much was made of the fact that the Chief Justice did not file a counter affidavit himself to speak about the application of his mind and left it to be sworn by the Registrar (Judicial). We hardly find any substance in this. The proceedings Ext.RI(e) speaks for itself. The question ultimately is whether the decision was that of the Chief Justice, which we have held it is. The fact; that the petitioner, a so-called public interest litigant, came forward with a writ application making wild unsubstantiated allegations does not cast any obligation on the Chief Justice to swear to an affidavit in reply, particularly when it is clear from the order Ext.RI(e) and the files that everything had been done in the proper way. A high constitutional and judicial functionary can be presumed to have taken a decision only after due application of the mind. That presumption has to be displaced by the petitioner with cogent material and we have no hesitation in saying that apart from making the wild allegations, the petitioner has dismally failed in discharging that burden.

34. Allied to the above contention is the one that in sending the letter Ext.RI(g) to the Chief Justice, Government has trenched upon the latter's powers under Article 229(1) of the Constitution, besides violating Article 50 which requires the separation of the judicial power from the executive. The premise on which this contention is based is that Government had virtually dictated to the Chief Justice that he should continue the third respondent in service beyond July 31, 1993 and thereby trenched upon his exclusive preserve under Article 229(1). We have already held that the order Ext.R 1 (e) was the Chief Justice's own, for his own reasons. He has not yielded his authority to the Government. In fact such a plea does not stand in the face of Ext.RI(g). All that the Government did by that letter was to make a request to the Chief Justice to consider the continuance of the third respondent as Registrar to ensure a smooth transition of the work from the High Court to the State Administrative Tribunal. It was up to the Chief Justice to accept or not to accept this request. Government never dictated to the Chief Justice as to who should be the Registrar. This contention requires only to be rejected.

35. Incidentally it was also mentioned with reference to the decision in Darshan Lal Vs. State of Jammu and Kashmir, that the approval of the Governor was required for extending the term of service in as much as it had some financial implications. It was stated that in the case of extension, the incumbent concerned becomes entitled to increments during the extended term besides counting the said period also as service for purposes of pension. It is stated that this situation is covered by the proviso to Article 229(2) thereby requiring the sanction of the Governor. We are unable to agree. What Article 229(1) prescribes is that the Chief Justice may frame rules relating to the conditions of service of the officers and servants of the High Court. The rules so framed will require the approval of the Governor in so far as they relate to salaries, allowances, leave or pensions. The reference in the proviso is to the general rules framed for

governing the conditions of service of the officers and servants of the High Court in so far as they pertain to salaries, allowances, leave or pensions. The proviso does not speak with reference to any particular officer or the salaries, allowances, leave or pensions admissible to him under the aforesaid general rules. Those are matters of application of the general rules to individual cases which do not require approval of Governor. In fact, if we carry the contention of the petitioner to its logical extent, even a routine order granting an increment or a promotion in the normal course will require the prior approval of the Governor in view of the financial implications. Such an absurd situation could not have been postulated by the Constitution-makers depriving the Chief Justice of the content of all the powers vested in him under Article 229(1) and making him run to the Governor day in and day out for approval of the various routine order passed in implementation of the rules. The decision relied on related to R3(I) of the Assam & Nagaland High Court Services (Appointment, Conditions of Service and Conduct) Rules, which authorised the Chief Justice only to fix the initial pay of the Registrar at not more than Rs. 1180/- without the approval of the Governor. But the Chief Justice made appointment of a retired person as Registrar with a special salary of Rs. 1500/- and a special allowance of Rs.250/- without obtaining the approval of the Governor. This was a plain violation of Rule 3(I) and consequently of Article 229(1) of the Constitution as it was against the general rules and was not authorised. This decision does not support the petitioner in the light of our findings that the extension in this case was well within Rule 60(a) of the K.S.R.

36. Usha, J, had occasion to consider a similar question relating to extension of service of a member of the High Court staff in *M.V.K. Nam-biar v. State of Kerala* 1992(1)KLT24). The question directly arose whether the extension required the concurrence of the Government. After referring to *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, the learned Judge held that the Chief Justice was the only authority who could issue an order retaining an employee of the High Court after the age of retirement and that concurrence of Government was not required for the purpose. We are in agreement with this view. The provisos to Article 229(1) or Rule 35 have therefore no application to this case and approval was not necessary for the extension of service of the third respondent.

37. A further presumptuous contention was argued that the office of Registrar could have continued with the other Registrar in office without extending the term of the third respondent. We feel surprised how the petitioner makes bold to make such submissions, unsupported by any material and without perhaps any idea as to what is the volume of work to be handled, the work carried out by the respective Registrars and so on. It is not for the petitioner to dictate as to what the Chief Justice should or should not do; and as to how he should carry on the administration. The Chief Justice is the best judge of the requirements of the High Court. We have already held that the question of extension of service is in the discretion of the Chief Justice, and if it is a bona fide act, this court will keep

its hands off and refuse to interfere. This submission is rejected.

38. Ext. R1(f) was stated to be unreasonable besides being based on irrelevancies - Wednesbury unreasonableness, to be exact. We have already referred to the circumstances which were stated to have been not kept in mind while passing the order Ext.R1(f), when dealing with the question whether this order had been passed by the Chief Justice without any application of the mind. We do not intend to repeat them here though counsel had made it a separate ground of attack and dwelt at length on it. The other basis for the alleged unreasonableness was that neither Article 229 nor Rule 35 nor Rule 60 of the K.S.R. envisaged any extension of service. We have already dealt with this aspect and it is unnecessary to deal with it over again. It was alternatively stated that even if there is a law backing Ext.R1(f), it violates that law. We are unable to comprehend this argument in the face of the first submission that there is no law at all to support Ext.R1(f). It was stated that no interest of the High Court was involved, but only Government" interest, which according to the petitioner is a vitiating circumstance. We have already held that it was not the behest of the Government that led to Ext.R1(f), but the decision of the Chief Justice. Even assuming that it was based on the interest of the Government, the order was within the limits of Rule 60(a) as saving of Government expenditure (we have made mention of this earlier) is a public interest and public ground for purposes of Rule 60(a). If the Government thought particularly at a time when the State is going through a financial crisis that they could have the services of the same person to function both as Special Officer and Registrar, it could not be said that either the Government or the Chief Justice was acting unreasonably. We must also mention here that the continuance of the third respondent did not involve any additional expenditure or waste of public funds as alleged by the petitioner, in as much as the third respondent had reached the maximum of his pay scale and it was he who stood to lose heavily by his continuance in office.

39. It was next submitted that the extension of the term till such time as the Administrative Tribunal was set up, was in any event illegal and unreasonable. We do not find any basis in this plea. True, the term is unlimited, and the third respondent is to continue till such time as the Administrative Tribunal is established, but this itself enables the Chief Justice to terminate the services of the third respondent at any time. The term was obviously fixed in this fashion because the Administrative Tribunal may come into being at any time. If a term had been fixed for the extension, it will not be possible to terminate the service before that time, if the Administrative Tribunal took shape before the expiry of the extended term. The third respondent would have had to be continued till the expiry of the period. Be it noted that he was himself not willing to continue in office for any extended term. All this was obviated by the Chief Justice by making the extension co-terminous with the formation of the Administrative Tribunal. We do not find anything unreasonable in it. On the other hand we find every reason for making an extension in this fashion.

40. It was alleged by counsel that this gives a premium to the third respondent to continue in office endlessly, without his doing anything for the formation of the Administrative Tribunal. We must remember in this connection that the matter concerns the first respondent Chief Justice, and the Government, and we do not expect all these functionaries to allow the third respondent to function merrily and leisurely to linger on in office. This allegation is also most offensive, made callously and does not accord with the realities. The files disclose that the third respondent has been very active in the performance of his duties as a Special Officer and has done a large volume of work necessary for the formation of the Tribunal within the short time that he had functioned as such, about which we have already mentioned. It is also noteworthy that he himself was averse to the extension on both the occasions the Chief Justice wanted him to continue and it required a good deal of persuasion by the Chief Justice to make him continue. The plea of unreasonableness is therefore untenable and is overruled.

41. For the sake of completion we may also refer to a submission made that no confidentiality was maintained by the Government in making the request by Ext. R1(g) to the Chief Justice. It was stated that the letter was one addressed to the Registrar (Judicial) Shri K.V. Shankaranarayanan to place before the Chief Justice the request of Government to consider the question of the extension of the third respondent's service. The complaint is that this letter was known to the Registrar before it reached the Chief Justice. The complaint is baseless. The Ext. R1(g) was no doubt a letter from the Chief Secretary, and was formally addressed to the Registrar to accord with strict protocol. It was however sent to the Registrar, Sri. Sankaranarayanan in a closed cover along with another covering letter to place the enclosed cover before the Chief Justice (vide) Ext.R1(g)(1). The contents of Ext.R1(g) therefore continued to be confidential without disclosure of its contents before it reached the Chief Justice. There is therefore no substance in this contention. We do not think Ext.R1(f) would have been vitiated even if this contention were true. We have referred to it only because of the stress and elaboration with which it was argued.

42. We have found against the petitioner on the various points raised by him. We must mention here a question of locus standi raised by the respondents. The original petition was filed in the first instance as a public interest litigation, the petitioner claiming to be a person interested in the purity of the administration of justice, a person who felt agitated by the alleged illegal action of the Chief Justice in passing the impugned order. He allegedly felt alarmed that the confidence of the public at large in the judiciary will be shaken by the highest judicial functionary of the State passing an order which, in his view, was on the face of it, unsustainable in law. He also claims to be a champion of the cause of the judicial officers of the State who were deprived of the chance of a posting as Registrar -persons who were described by his counsel in the course of arguments as "disabled and disadvantaged" because of their official subordination, who had to be "servient" without an opportunity to assert their rights, lest they offend the Chief Justice. But, in the reply affidavit, the case degenerated from this tall

posture into a personal interest, as an aspirant for the post of Registrar by direct recruitment. The respondents on the other hand have refuted all this. They point out that this is a pure and simple case of wreaking vengeance because a criminal complaint was filed against the petitioner by the third respondent in his capacity as the Registrar of this court, pursuant to which the petitioner had to remain in jail for two days. It is this action that has led to the writ petition. The genesis of this criminal complaint is to be found in the location of a grand old shade tree near the premises of the Kerala High Court Advocates Association which was in danger of falling down with resultant damage to the Association building. The Chief Justice took action to remove the tree to avert the danger to the building. The Advocates Association passed a resolution in the first instance protesting against the proposal to cut the tree, but later retraced its steps when it realised the threat posed to their habitat. The Association then passed another resolution endorsing the Chief Justice's action. The petitioner along with another Advocate branding themselves as friends of trees obstructed the cutting of the tree, which resulted in police action and the complaint before the Magistrate filed by the third respondent. The petitioner was arrested, put in jail for two days and ultimately came out, according to him, on the persuasion of Sri. V.R. Krishna Iyer, retired Judge of the Supreme Court of India. In this background, it is stated that the petitioner was nursing a grouse against the third respondent, which he is now ventilating through this writ petition, with the masquerade of a public interest litigation.

43. We do not think it necessary to go into the question of the petitioner's locus standi as such though the petitioner sought to support his claim with reference to *Lakhi Ram Vs. State of Haryana and Others*, and *S.P. Gupta Vs. President of India and Others*,), among others, because we have already held otherwise that the writ petition is bereft of any merit and has to fail. But we do find considerable force in the plea of the respondents that this writ petition has been prompted by personal motives rather than lofty public interest.

44. We may mention here that this writ petition, which had been given wide publicity, contains many allegations which, to say the least, are reckless and baseless to the core and contrary to facts, evidently intended to malign the third respondent. We shall mention a few of these false and unfounded allegations made apparently with a view to tar the third respondent with a bad brush. Para 2 of the original petition states that conventionally the senior-most District Judge used to be appointed as a Registrar of the High Court and that giving the go-by to this well- established convention, the third respondent was appointed as the Registrar about a decade ago. For one thing, this averment is totally irrelevant for purposes of this writ petition, as the appointment of the third respondent in August, 1983 is not in issue here, after he had a commendable record of service of over a decade, to which we have already referred. That apart, this statement is baseless and untrue as it was never the practice or convention to appoint the senior-most District Judge as the Registrar, as pointed out in the counter affidavit of the first respondent. True, a District Judge was being appointed, but there was

no convention to appoint the senior-most District Judge (vide also our remarks in para 27 supra).

45. Towards the end of para 2 appears yet another mischievous statement that the third respondent wields unparalleled influence in political and governmental circles, so much so that he could obtain sanction for a special personal pay for his tenure as the Registrar of the High Court from the previous Pay Commission. This is followed by yet another statement in para 3 that this "maneuverings" at government level had yielded results and he had got himself appointed as the Special Officer for the purpose of setting up the State Administrative Tribunal. Very serious allegations and insinuations have thus been made in these two paragraphs. These paragraphs were read over to us on the second day of the hearing of this case, on October 5, 1993 when we sought clarification from the petitioner of the source of the information on the basis of which these assertions had been made, the writ petition or its verifying affidavit being silent thereon. Counsel for the petitioner was not then able to satisfy us with any such material. He prayed for time to file a reply affidavit after the hearing had gone on more nearly two days, which we granted, and adjourned the case to October 25, 1993. The reply affidavit made its appearance on October 18, 1993. But it has not improved matters. Far from that, it has made the position only still worse with a fresh crop of vague and wild statements. Despite taking time from us, the petitioner has not pointed out the basis or the material on which he made his allegations. The reply affidavit is afflicted with the same vagueness as the writ petition itself. No material has been disclosed in support of these allegations, nor the source of information, if any. Evidently there was none worthy to be stated. On the other hand, what the petitioner states in para 18 of his reply affidavit is that he is a person with political connections, that "a top functionary" of a leading political party in the ruling United Front Government was a classmate of the third respondent in the Government Law College, Ernakulam, during 1966-68 and that a senior Minister, who also belongs to the same political party, in the same Cabinet, was also a classmate of his in the Law College during the same period. The petitioner in his capacity as the President of the Youth Congress, Mattancherry Block Committee, has close acquaintance with the State level leaders of the said political party, and by virtue thereof he has reliable sources of information regarding the third respondent's "maneuver-ings" with the aforesaid leaders for his purpose. To say the least, the statement is an irresponsible one, made without any basis. Despite his being granted time to file reply affidavit with particulars, the petitioner has not chosen to disclose details of the alleged source from which he obtained information about the so called maneuverings of the third respondent except the bald allegations about top political functionary and senior Minister, without disclosing who they are and what was the information they allegedly conveyed. There is no whisper even in the reply affidavit as to what the maneuverings were. On the other hand, what the petitioner has achieved by para. 18 of his reply affidavit is only to present in a bad light the unnamed political leader, and the Minister as susceptible to maneuverings. Such

irresponsible and reckless assertions unsupported by details of source or material cannot form the foundation of any valid pleadings. A public interest litigant, which the petitioner claimed to be in the first instance, cannot get away with it after making such allegations without supporting them with materials and source. More so, in a litigation of this nature at the hands of a person who claims to be public spirited citizen, a political figure with alleged closeness with the bigwigs in Government, and all that. A public interest litigant like the petitioner is certainly not above the law of pleadings.

46. To cap it all, i.e. after making such baseless assertions and aspersions, and when respondents 1 and 3 chose to defend themselves with their case, the petitioner has filed a petition C.M.P. No. 25885 of 1993 to strike off certain portions of their counter affidavits as "frivolous, vexatious and scandalous". We find no substance in this petition as the respondents are well within their rights in defending their case with all the facts and defences available to them against the uncalled for and unsubstantiated allegations which the petitioner has chosen to make. Having made some aspersions the petitioner must also be prepared to receive what the respondents state in reply. Counsel for the respondents had taken strong exception to the allegations made by the petitioner in the writ petition and in the reply affidavit, as also to various remarks made during the course of the arguments. The length to which the petitioner is prepared to go when it suits him can be gauged from the submission made on his behalf that the word "maneuvering" did not carry any bad meaning at all, but was a nice and complimentary one. We do not say anything more on this. C.M.P. No. 25885 of 1993 only deserves to be dismissed.

47. The original petition abounds in such allegations elsewhere as well to which we are not making detailed reference. Suffice it to say that these allegations made without any basis lend colour and support to the respondents' contention that it is not any public interest, but pure private vendetta that has prompted the petitioner to file this writ petition. We hold so.

48. A fundamental objection to the very entertainability of this writ petition was raised by the respondents, that it has not even been properly verified despite the numerous allegations made as aforesaid. Neither the affidavit in support of the original petition, nor the reply affidavit stated as to which are the allegations made on information and which are the allegations made on knowledge. Failure to make verification of the facts stated and allegations made in accordance with law is by itself fatal to the writ petition as held by the Supreme Court in *The State of Bombay Vs. Purushottam Jog Naik*, *A.K.K. Nambiar Vs. Union of India (UOI) and Another*, and *Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others*, among others. As rightly pointed out by the respondents, the original petition has to fail on this sole and simple ground.

49. We are therefore satisfied that there is no merit in this writ petition and that it was motivated by extraneous reasons than any genuine vindication of any public cause.

50. Every conceivable point was taken and argued. The final hearing took nearly five days of this court's time, with the petitioner taking over four days in his main and reply arguments, the respondents being quite brief, the first respondent's counsel taking about three hours, and the Advocate General and counsel for third respondent half an hour each. The baseless and unfounded nature of the allegations evidently made with intent to malign was such that even the mild mannered and soft spoken Advocate General was roused to seek award of exemplary costs from the petitioner. Counsel for the other two respondents were equally vehement in their denunciation of the conduct of the petitioner and pressed for costs which they said they will be making over to the Legal Aid Board, if awarded. The writ petition has to fail for the reasons already stated by us. This is really a fit case for costs against the petitioner, and that too heavy costs. The time of two Judges of this court for nearly five days has been spent on this case virtually as a forum for the petitioner to vent his personal vendetta when numerous other deserving cases are waiting in the queue for adjudication. We are however exercising restraint, and refrain from awarding costs, despite all the provocation for it.

The original petition is dismissed.

As soon as the judgment was delivered, counsel for the petitioner prayed for grant of leave to appeal to the Supreme Court under Article 134A of the Constitution of India. We do not find any question of law of general public importance arising for decision in this case, much less a question requiring to be decided by the Supreme Court of India. We decline the prayer to grant leave. Leave refused.