

(1974) 07 KL CK 0013
In the High Court Of Kerala

Sreedharan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-07-1974

Acts Referred:

Kerala Public Services (Amendment) Act, 1970 — Section 2

Citation : (1975) 1 LLJ 310

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—The petitioner and the second respondent were both appointed on 31-1-1967 as principals, Ayurveda colleges. Their appointments are governed by the special rules issued by the Government as per G.O. MS. 481 dated 19th September, 1964. Rule 6 as it stood till it was amended by a notification dated 19-7-1972 provided that every person appointed to the category of a principal among others shall within the period of his probation pass the account test lower if he has not already passed it or account test for subordinate officers Part I of Madras. Both the petitioner and the second respondent had not passed either of the above tests at the time of their appointment. The second respondent had, however, passed the account test for executive officers. The petitioner passed the test in Oct., 1969; and on its basis the Government by an order Ext. PI dated 3-3-1971 declared that the petitioner had satisfactorily completed his probation with effect from 28-10-1969. The second respondent claimed that the account test for executive officer which he had passed should be treated as equivalent to the test qualifications prescribed in Rule 6 and his probation also be declared on its basis. He was informed by the Government by a letter Ext. P2 dated 1-8-1970 that it cannot be done. However, the Government changed its view and the second respondent was temporarily promoted as Director of Indigenous "Medicines by Its order Ext. P4 dated 16-2-1970. That was challenged by the petitioner before this Court by filing O.P. 761 of 1970. That case was disposed of by directing the Government to make a regular appointment after deciding the question of eligibility of the second respondent's probation being declared on the

basis of his having passed the account test for executive officers. After that the Government made several attempts to treat that qualification as equivalent to the tests prescribed in Rule 6 and appoint the second respondent to the post of Director of Indigenous Medicine in the regular manner. All that has been successfully resisted by the petitioner by filing a number of writ petitions in this Court when occasion demanded. However, the Government passed the order Ext. P9 dated 5-10-1971 declaring that the passing of the test for executive officers was sufficient for the post of principals of Ayurveda colleges, and declaring the second respondent's probation with effect from 31-1-1969. Accordingly by an order Ext. P10 dated 5-10-1971 the second respondent was appointed Director of Indigenous Medicines with effect from 28-10-1969. This petition has been filed to quash Exts. P9 and P10,

2. During the pendency of this writ petition the special rules have been amended as referred to already by a notification dated 19-1-1972, by adding the words "or account test for executive officers" at the end of Rule 6 and providing that the above amendment shall be deemed to come into force with effect from 19th September, 1964. The effect of that amendment has been to prescribe the passing of account test for executive officers as one of the requisite tests to be passed by a person for appointment to the cadre of principal of Ayurveda college with effect from 19th September, 1964. If this amendment is valid, the second respondent would have one of the requisite qualifications even before his appointment as principal, and the impugned orders cannot then be successfully attacked. Therefore, the only contention advanced by counsel for the petitioner before me is that above amendment, in so far as it purports to operate in respect of any period prior to 25-1-1970 on which date the Kerala Public Services (Amendment) Act, 1970 came into force empowering the Government to make rules with retrospective effect, is invalid. In other words, the contention is that the power of making rules with retrospective effect can operate only from the date from which the power was granted to the Government. To illustrate the matter, the Government can make rules on any day after 25-1-1970 with retrospective effect from 25-1-1970, but not with effect from any date prior to 25-1-1970. There is no contention that the Amendment Act is unconstitutional or otherwise invalid. Then the only question is one of construction of Section 2 of the Act, as it stands amended. It is this amendment that gave the Government the power to make retrospective rules. Sub-section (1) alone is relevant; and it reads:

2. Regulation of recruitment and conditions of service. (1) The Government may make rules either prospectively or retrospectively to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State of Kerala.

In my view the above provision clearly empowers the Government to make rules with retrospective operation for any period prior to the date on which the amended provision came into force. There is nothing in the language of the

section to warrant an argument that the power granted to the Government cannot be exercised in respect of a period prior to the date on which the said power was granted. The only object of the amendment was to grant such a retrospective power; and it is as clear as anything. Counsel for the petitioner submitted that this point was seriously mooted before a Full Bench of this Court in Sreedharan Pillai v. State of Kerala 1973 KLT. 151, and that the Full Bench left open the question after indicating the contentions in support of the opposing views. With respect, I am unable to see any force in the contention advanced by counsel for the petitioner.

3. In the result, this original petition is dismissed. There will be no order as to costs.