

(2008) 11 KL CK 0055

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24349 of 2008 (W)

Thulaseedharan Thankappan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Penal Code, 1860 (IPC) — Section 363, 365, 366A, 376(2)(g)

Citation : (2009) 1 KLJ 462

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillay, N. Santha, K.A. Balan, Peter Jose Christo and S.A. Anand, for the Appellant; Anu Sivaraman (G.P.) and Alexander Thomas, for the Respondent

Judgement

P.N. Ravindran

1. The short question that arises for consideration in this Writ Petition is whether the advice made by the Kerala Public Service Commission long back in the year 1995 can now be acted upon and the respondents compelled to give effect to that advice by appointing the petitioner. The brief facts of the cases are as follows : The petitioner is presently working as Lower Division Clerk in the Muruthomkara Grama Panchayat in Kozhikode District. While he was working as Lower Division Clerk in the Vanimel Grama Panchayat in Kozhikode district he applied for appointment to the post of Sub Inspector (Trainee) in the police (General Executive Branch) Department. He was selected and advised for appointment by the Kerala Public Service Commission, hereinafter referred to as the "Commission" for short, as per Ext. P1 advice memo dated 29-12-1995. Pursuant to Ext. P1, he was called for the medical examination held on 12-6-1996 and found medically fit for appointment as Sub Inspector (Trainee). However, the order of appointment did not follow. The petitioner thereupon submitted a representation dated 14-11-1997 before the Inspector General of Police (Training). When there was no response, he moved the Director General of

Police by filing a representation dated 4-12-1997 and thereafter filed O.P. No. 1554 of 1998 in this Court praying for the following relief's:

- i) a writ of mandamus or other appropriate writ, direction or order directing the respondents 1 to 3 to take such necessary steps to call the petitioner for training and appoint him as Sub Inspector trainee on Rs. 1,100-2070 in the Police (General Executive branch) department pursuant to Exts. P2 and P3;
- ii) a writ of mandamus or other appropriate writ, direction or order directing the respondents 1 to 3 to allow forthwith the petitioner to undergo training in the Police training college as Sub Inspector trainee in terms of Exts. P2 and P3;
- iii) a writ of mandamus or other appropriate writ, direction or order directing the respondents 1 to 3 to keep vacant and unfilled the post of Sub Inspector trainee reserved for scheduled tribe to which the petitioner was advised for appointment under Ext. P2 by the 4th respondent.

2. By Ext. P2 judgment delivered on 27-1-1998, this Court disposed of O.P. No. 1554 of 1998 with a direction to the Inspector General of Police (Training), Thiruvananthapuram and the Director General of Police to consider the representations submitted by the petitioner, which were produced and marked as Exts. P4 and P6 respectively in the said Original Petition and pass orders thereon within one month from the date of receipt of a copy of the judgment. As directed by this Court, the Director General of Police considered the petitioner's representations and after verification of his character and antecedents informed him in Ext. P3 letter dated 22-7-1998 that his appointment as Sub Inspector (Trainee) in the General Executive Branch of the Police Department will be decided only after disposal of Crime No. 6 of 1996 of Munnar Police Station, wherein he was arrayed as an accused.

3. In Sessions Case No. 187 of 1999 on the file of the Court of Session, Kottayam, which arose out of Crime No. 6 of 1996 of the Munnar Police Station (the Suryanelli Rape case) the petitioner was convicted and sentenced to undergo imprisonment for 11 years and to pay fine for the offences punishable under Sections 363, 365, 366 A and 376(2)(g) of the Indian Penal Code. The petitioner challenged the judgment of conviction and sentence in Criminal Appeal No. 610 of 2000 on the file of this Court. The said appeal was heard and disposed of along with the appeals filed by the other accused in Sessions Case No. 187 of 1999. By judgment delivered on 20-1-2005 reported in Joseph Vs. S.I. of Police, , a Division Bench of this Court set aside the conviction and sentence and acquitted the petitioner of the charges. Following the conviction in the criminal case, the petitioner was removed from service invoking Rule 18(a) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. After the judgment of conviction was set aside by this Court on appeal, he moved the Director of Panchayats seeking reinstatement in service. That request was declined on the short ground that the State of Kerala has filed Criminal Appeal Nos. 1547 and 1575 of 2005 in the Apex Court challenging the judgment of

acquittal passed by this Court. The petitioner thereupon filed W.P.(C) No. 19373 of 2006 in this Court. By Ext. P4 judgment delivered on 4-9-2007, a learned Single Judge of this Court allowed the said Writ Petition and issued the following directions :

9. In the circumstances, the stand taken in Ext. P7 cannot be accepted. But at the same time, I am constrained to note that the State has preferred an appeal against the acquittal of the petitioner. I am not inclined to order that consequential benefits should be given to the petitioner, taking note of the fact that the appeals against the order of the acquittal are pending before the Supreme Court as such. But it would be neither proper nor legal to continue to keep the petitioner away from service. In fact, it would only be appropriate that the petitioner be reinstated in service and asked to serve, instead of giving rise to a situation where the petitioner could claim all consequential benefits on reinstatement, if the order of acquittal is ultimately upheld by the Supreme Court.

10. In the result, Ext. P7 is set aside and the petitioner will be reinstated in service. The 2nd respondent shall pass appropriate orders in this regard, reinstate the petitioner in service and give appropriate posting within a period of one month from the date of receipt of a copy of this judgment. I make it clear that all benefits due to the petitioner on reinstatement, for the period during which he was kept out of service, shall be disbursed to him only after the disposal of Criminal Appeals Nos. 1547/2005 and 1575/2005 pending before the Supreme Court, and subject to the decision to be taken by the Supreme Court in that regard. It is further made clear that the petitioner will be paid wages and other benefits for the period of service after reinstatement. It is also made clear that the above direction is without prejudice to the right of the respondent to complete the disciplinary action which is initiated under Ext. P2.

4. In Ext. P4 judgment, this Court also permitted the State Government to proceed with the disciplinary action initiated against the petitioner by the Deputy Director of Panchayats as per memo of charges dated 3-3-1998, a copy of which was produced and marked as Ext. P2 in W.P.(C) No. 19373 of 2006. Pursuant to the direction issued by this Court in Ext. P4 judgment, the petitioner was reinstated in service by Ext. P5 proceedings dated 31-10-2007 issued by the Director of Panchayats and posted as Lower Division Clerk in Maruthomkara Grama Panchayat in Kozhikode District. Ext. P5 discloses that the petitioner's reinstatement in service is subject to the decision of the Apex Court in Criminal Appeal No. 1547 and 1575 of 2005.

5. The petitioner had, shortly after he was acquitted by this Court, filed Ext. P6 representation dated 7-3-2005 before the Director General of Police requesting that he may be permitted to undergo training for the post of Sub Inspector of Police in the General Executive Branch. Later, after Ext. P4 judgment was delivered by this Court directing his reinstatement in service, he submitted Ext. P7 representation dated 28-12-2007 before the Director General of Police requesting that he may be appointed as Sub Inspector (Trainee) in the General

Executive Branch. This Writ Petition was thereafter filed on 11-8-2008 seeking the following relief's :

- i. issue a writ of mandamus or any other appropriate writ; order or direction commanding the 3rd respondent to appoint the petitioner as Sub Inspector Trainee in the Police (General Executive Branch) Department pursuant to Ext. P1 and depute him for training within a time limit to be fixed by this Hon''ble Court.
- ii. issue a writ of mandamus or any other appropriate writ, order or direction commanding the 3rd respondent to dispose of Exts. P6 and P7 within a time limit to be fixed by this Hon''ble Court.

6. The petitioner contends that as he has been acquitted in the criminal case, the respondents are bound to appoint him as Sub Inspector (Trainee) based on the advice made as per Ext. P1. The petitioner contends that in view of the judgment of this Court in Criminal Appeal No. 610 of 2000 acquitting him of the criminal charges and Ext. P4 judgment directing his reinstatement in service, the judgment of conviction passed by the Court of Sessions, Kottayam can no longer be held out against him to deny appointment as Sub Inspector (Trainee). The petitioner further contends that the advice evidenced by Ext. P1 is still in force and that the respondents are bound to appoint him as Sub Inspector (Trainee). He contends that the advice made by the Commission will stand cancelled only if the candidate advised does not join duty pursuant to the order of appointment and not otherwise.

7. The Assistant Inspector General of Police, Police Headquarters, Thiruvananthapuram has on behalf of the third respondent, filed a statement dated 1-9-2008. The statement reads as follows :

The petitioner was an accused in Crime No. 06/96 of Munnar Police Station (Suryanelli Rape Case). The case was investigated by the Crime Branch and the case was charge sheeted as SC 187/99 before the Assistant Session Court (Special Court, Kottayam). The accused was sentenced to undergo imprisonment for 10 years and the fine of Rs. 7,000/- by Special Court. The petitioner and other accused filed appeal against this judgment before the Hon''ble High Court of Kerala in Criminal Appeal No. 610/2000. The Hon''ble High Court pronounced the judgment in Criminal Appeal No. 610/2000, and thus acquitting the accused on 20-01-2005.

2. Subsequently Government of Kerala had filed a Criminal Appeals Nos. 1547/05 and 1575/05 before the Supreme Court of India on 09-05-2005 and the same are still pending with Hon''ble Supreme Court of India.

3. The appointment to the post of SI of Police (GE) in respect of the petitioner can be made only after getting his verification report with regard to character and antecedents which is still pending with the ADGP, Intelligence, Thiruvananthapuram. In view of the direction from the Hon''ble High Court of Kerala the present position has been ascertained from the ADGP, Intelligence.

Since the Criminal Appeals Nos. 1547/05 and 1575/05 are still pending with Hon"ble Supreme Court of India, the ADGP, Intelligence has not furnished verification report with regard to character and antecedents in respect of the petitioner.

4. In view of the above facts the appointment of the petitioner as SI of Police (GE) in the Police Department can be decided only in the light of the disposal of the Criminal Appeals Nos. 1547/05 and 1575/05 pending with Hon"ble Supreme Court of India.

8. I have heard Sri. S.P. Aravindakshan Pillay, the learned counsel appearing for the petitioner, Smt. Anu Sivaraman, the learned Government Pleader appearing for respondents 1 and 3 and Sri. Alexander Thomas, the learned Standing Counsel appearing for the Commission. The learned counsel for the petitioner contended that as the advice made by the Commission is still in force and as the petitioner has been acquitted of the criminal charges and later reinstated in service as Lower Division Clerk in the Local Self Government Department, respondents 1 and 2 are bound to appoint him as Sub Inspector (Trainee) in the General Executive Branch. The learned counsel for the petitioner contended that pendency of the Criminal Appeals filed by the State of Kerala in the Apex Court from the judgment of acquittal passed by this Court cannot be a ground to deny him appointment based on the advice made as per Ext. P1. The petitioner was acquitted of the criminal charges by a Division Bench of this Court and merely for the reason that the appeals filed by the State of Kerala from the judgment of acquittal are pending in the Apex Court, appointment cannot be denied to the petitioner, it is contended. The learned counsel for the petitioner also contended, relying on the decision of this Court in Suresh v. Public Service Commission 2008 (2) KLT 441 that appointment cannot be denied merely for the reason that the selected candidate is involved in a criminal case. Per contra, the learned Government Pleader appearing for respondents 1 and 2 contended that the petitioner cannot at this distance of time claim appointment as Sub Inspector (Trainee) merely for the reason that the advice made by the Commission will remain in force till an order of appointment is issued based on that advice.

9. I have considered the submissions made at the Bar by the learned counsel appearing on either side. Ext. P1 discloses that the petitioner was advised by the Commission for appointment as Sub Inspector (Trainee) as early as on 29-12-1995. At that point of time, the petitioner was in service as Lower Division Clerk in the Local Self Government Department. Though he was later convicted by the Court of Session, Kottayam in Sessions Case No. 187 of 1999 and sentenced to undergo imprisonment for 11 years and to pay fine, on appeal, the judgment of conviction was set aside by this Court and he was acquitted of the criminal charges. Following the judgment of acquittal, the petitioner was also reinstated in service by Ext. P5 order dated 31-10-2007 issued pursuant to the directions issued by this Court in Ext. P4 judgment, subject to the outcome of the appeals filed by the State of Kerala in the Apex Court against the judgment

of acquittal passed by this Court acquitting the accused in Sessions Case No. 187 of 1999 on the file of the Court of Session, Kottayam. Therefore, as matters now stand, the petitioner cannot be denied appointment only for the reason that he was implicated and later convicted in a criminal case. Then the only question that remains to be considered is whether the advice made by the Commission more than 12 years back can now be acted upon and the petitioner claim appointment based on that advice.

10. In *A. Sreekantan Nair and Others v. M.K. Muraleedharan Nair and others* 1991 LAB.I.C. 2163, a Division Bench of this Court considered the question whether advises made by the Commission more than a decade back can be acted upon and appointments made based on such advises. The Commission had in the year 1977 invited applications for appointment to the post of Work Assistant in the Kerala State Road Transport Corporation, hereinafter referred to as the "Corporation" for short. As per the terms of the settlement arrived at between the Corporation and its workmen, appointments of Work Assistants in the Corporation were to be made from among candidates possessing the qualification of I.T.I. Certificate and candidates who do not possess I.T.I. Certificate, in the ratio of 1:1. The vacancies notified for non I.T.I. candidates were 300. A ranked list of candidates was published by the Commission on 3-11-1979 comprising of 1170 each of I.T.I. and non I.T.I. candidates. Out of the 1170 I.T.I. candidates, 1126 candidates were advised and appointed. Out of the 1170 non I.T.I. candidates 1124 candidates were advised between 30-1-1980 and 7-8-1981 and out of the said 1124 candidates, 762 candidates were appointed. 362 non I.T.I. candidates who had been advised remained to be appointed.

11. In the meanwhile, the Corporation took steps for special recruitment under Rule 17A of Part II of the Kerala State and Subordinate Services Rules, 1958 and issued a notification inviting applications from candidates belonging to the Scheduled Casts and Scheduled Tribes for appointment as Work Assistants. Appointments were also made from the ranked list prepared pursuant to the said notification. While the said ranked list was being operated, 51 out of the 362 non I.T.I. candidates included in the ranked list published on 3-11-1979 and advised by the Commission, filed O.P.No. 6469 of 1984 and connected cases in this Court. They contended that the vacancies of Work Assistants cannot be filled up by SC/ST candidates advised later. The said contention was accepted by a Division Bench of this Court and it was held that candidates advised earlier had preference for appointment over the SC/ST candidates advised later in point of time. The Division Bench also held that the open vacancies notified earlier could not have (sic) filled up by the SC/ST candidates recruited later under Rule 17A of Part II of the & S.S.R. Though for want of vacancies consequent on the reduction of staff strength, there was no scope for appointing the 51 petitioners who had moved this Court, the Corporation conceded that they will be given preference for appointment as and when appointments are made in future. By judgment delivered on 31-5-1988, those Original Petitions were disposed of recording the concession made by the Corporation that the said 51 petitioners will be given

preference for appointment as and when appointments are made in future. Claiming similar benefits, other candidates who had been advised but had not been appointed including those higher in rank than me 51 petitioners, filed applications seeking reopening of the judgment in O.P. No. 6469 of 1984 and connected cases. They also filed Upon. 306 of 1991 and connected cases. All the applications and the Original Petitions were heard together and disposed of by the Division Bench by judgment delivered on 25-3-1991. The Division Bench, while repelling the claim made by the petitioners in the applications and in the Original Petitions held as follows :

23. The advice in this case was made as early as in 1980-81. Over ten years have passed by after the advice was made. The notification of the vacancies itself was in 1977. Fourteen years have passed by after the vacancies were so notified. The reason stated by the Corporation for the non-appointment of the candidates advised was that there were no vacancies to which they could be appointed, thanks to the abolition of posts. The contention of me petitioners is that when once an advice is made, that advice tenures for all time and enables me person advised to be appointed at any point of time whenever a vacancy arises in future. Reliance is placed for this proposition on the decision in *S. Javandas V. State of Kerala*, (1978) 2 Ser LR 590: (1979 Lab IC 95) (Kerala).

24. Assuming that an advice has this effect, as propounded by the petitioners, we are of the view that it will be unjust and unreasonable to keep the advice pending for an unduly long period of time to enable the person advised to be appointed at any future time, whatever be the period that has elapsed after the advice. Keeping the advice and the right to appointment alive for an unreasonably long time is itself arbitrary and violative of the guarantee of equality of opportunity under Articles 14 and 16 of the Constitution.

25. Equal opportunity for public employment is one of the fundamental freedoms guaranteed by the Constitution. Public employment opportunity is national wealth or property of the nation which all citizens are equally entitled to subject of course to the possession of qualifications necessary for holding the post. No class of people can monopolise public employment for any reason. Right to employment is no private property, but one to be shared equally by all those who are eligible for it.

26. In this country of perennial unemployment particularly, the guarantee of equal opportunity in public employment assumes great importance. Such opportunity must be available to succeeding generations of young men who become eligible for appointment from time to time by acquiring the necessary qualifications. It should not be that the right to employment gets concentrated in a few hands and the right to compete and be selected for employment consequently denied for long periods altogether. As far as possible, young talent and succeeding generations ought to find their avenues in public employment if so desired and they should not be shut out from appointment for the mere reason that selections have been made long ago on an imaginary or inflated

basis and those included in the old select lists remain to be appointed. Otherwise the guarantees under Articles 14 and 16 will become illusory. Creation of such reservoirs from which appointments are to be made for years to come leads to arbitrariness for the reason that any advice beyond the necessities of a particular period will result in stagnation of the list for a long number of years with resultant denial of opportunities for the subsequent eligible candidates.

27. Apart from the contingency of unreasonable inflation in the number of vacancies notified for selection, it may also happen that vacancies once notified may be abolished for various reasons, or Government may choose not to fill up those vacancies for reasons like financial stringency, change of policy and the like. To confine future appointments in such cases to those selected years back and deny the benefit thereof to future generations will be the very negation of the concept of fitness and justness guaranteed by Articles 14 and 16.

28. The instant selection is one in point. 1124 candidates were advised for appointment of which appointments could be made only of 762 candidates. For various reasons 362 out of those selected could not be appointed for a long period of about four years after the expiry of the life of the rank list, though there was no ban on appointments. It was thereafter that the Government direction barring further appointment was issued. Even now the Corporation is not in a position to absorb only in the course of another two years. The position therefore, is that many out of the 362 candidates have remained in the advice list without appointment for nearly ten years. If we accede to the contention of the petitioners, the chances of all the present generation of young men for selection as Work Assistant in the Corporation will stand stalled for a few more years to come and the appointment will be relegated to those who competed for it in 1977. By the time the next recruitment comes, all of them may be over aged or be otherwise ineligible. Such an unreasonable consequence flowing from keeping an advice pending for long ought not to be permitted. At any rate, this court, in its discretion under Article 226 ought not to give its imprimatur to such unreasonableness, by issuing directions to appoint persons from such stale advice lists.

29. The period of validity of a rank list from out of which advice for appointment is made was two years previously and currently it is three years. We feel that advice of any candidates ought not to be valid or pending for an unreasonably long period of time. A period of two years after the expiry of the rank list will be reasonable for the advice to be alive and to continue the right of the advised candidates to be appointed. It is no doubt true that the authority should not arbitrarily refuse to make appointment, if there are vacancies, on any unreasonable or extraneous reasons. If there is such unreasonableness or extraneous reasons. If there is such unreasonableness on their part, this court will certainly intervene to see that the vacancies are filled up in due time so that candidates advised may not be deprived of their rights under the advice. But where, as in this case, there were no vacancies to which the advised candidates

could be appointed or where the posts stand abolished, or are not to be filled up for various reasons like financial stringency, the advice made cannot be permitted to outlive reasonable period of say two years after the expiry of the rank list.

12. In the instant case, the advice evidenced by Exit. P1 was made as early as on 29-12-1995. More than 12 years have passed thereafter. After the notification pursuant to which the petitioner applied was issued, several other notifications would have been issued and many other candidates would have been selected and appointed as Sub inspectors of Police and promoted to higher posts. The ranked list in which the petitioner's name was included admittedly ceased to be in force more than a decade back. What the petitioner now seeks is appointment as Sub Inspector of Police based on the advice made by the Commission way back in December, 1995. The Division Bench of this Court has in *A. Serenading Near and others V. M.K. Muraleedharan nair and others* (supra) held that the advice made by the Commission cannot outlive a period of two years after the expiry of the ranked list. It was also held that if the advice made by the Commissioner are kept alive for long, it will deprive the succeeding generations of their right to compete and be selected for employment and that to confine future appointments to those selected years back and to deny employment to future generations will negate their fundamental rights guaranteed in Articles 14 and 16 of the Constitution of India. The Division Bench of this Court has also held that after the expiry of a period equal to the period of validity of the ranked list, advises made by the Commission cannot be acted upon. In the light of the authoritative pronouncement of the Division Bench of this Court referred to above the petitioner cannot at this distance of time, invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India and seek a writ in the nature of mandamus commanding the third respondent to appoint him as Sub Inspector of Police based on the advice made by the Commission long back in December, 1995. Further, the petitioner is not an unemployed person. He is admittedly employed as Lower Division Clerk in the Local Self Government Department though his continuance in service is subject to the outcome of the appeals filed by the State of Kerala from the judgment of this Court acquitting the petitioner and the other accused in Sessions Case No. 187 of 1999. In the event of the judgment of acquittal being reversed and the petitioner being convicted by the Apex Court, he will necessarily face removal from service. The same situation will follow if the petitioner is appointed as Sub Inspector of police. Therefore, the possibility that the petitioner will be thrown out of service if the Apex Court finds him guilty, cannot also be put forward as a ground to seek appointment as Sub Inspector of Police, based on the advice made in the year 1995. Having regard to the facts set out above and the principles laid down by the Division Bench of this Court in *A. Serenading Near and others V. M.K. Marylander near and others* (supra), I hold that the petitioner is not entitled to the reliefs sought for. The Writ Petition is accordingly dismissed.