

(1982) 11 KL CK 0022

High Court Of Kerala

Case No: O.P. No"s. 7162 of 1981 and 2117, 4237, 5479, 8054, 8177, 8367 and 8544 of 1982

H.A. Najeema Beevi

APPELLANT

Vs

Kerala Public Service
CommissionRESPONDENT

Date of Decision: Nov. 12, 1982**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 315(1), 317, 320
- Kerala State and Subordinate Services Rules, 1958 - Rule 9

Citation: (1983) ACJ 574**Hon'ble Judges:** P. Subramonian Poti, Acting C.J.; T. Chandrasekhara Menon, J**Bench:** Division Bench**Advocate:** P.V. Sreedharan Nair, S.P. Aravindakshan Pillai and N. Mohandas, for the Appellant; T.P. Kelu Nambiar, for the Respondent

Judgement

P. Subramonian Poti, Actg., C.J.

The same question arises in all these cases and that is whether an employee of the Kerala Public Service Commission could claim that he is a workman entitled to the benefits of the provisions of the Industrial Disputes Act. We had occasion to consider the scope of the term "workman" in the context of claim by temporary employees appointed under Rule 9(a) of the Kerala State and Subordinate Services Rules, 1958, that they are workmen under the Industrial Disputes Act and therefore their services should not be terminated except in accordance with Chapter V-A of the Act. We are referring to the decision in Umayammal v. State of Kerala (1982) KLT 829. The Full Bench said in that case thus:

12. In the light of the decision of the Supreme Court in Bangalore Water Supply case the concept of the expression "industry" has been put on a very wide canvass. Therefore those who contend that a particular establishment is not an industry,

should satisfy the Court that the said establishment falls outside the limits prescribed by the Supreme Court. Where there is systematic activity organised by co-operation between employer and employee (the direct and substantial element is commercial) and for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not purely spiritual or religious where no material things or services as such come in) there is apparently an industry. Absence of profit motive, or gainful objective is irrelevant whether the venture be in the public, joint, private or other sector. The true test is the nature of the activity where there is employer-employee relationship. And a trade or business does not cease to be one because of philanthropy behind the undertaking. When one goes by the principle formulated in the judgment of Justice Krishna Iyer who speaks for the majority of the Court an establishment can be taken out of the pale of industry only if it exercises inalienable Government functions/sovereign functions strictly understood.

The question that has now arisen before us concerns the nature of the functions of the Public Service Commission. The Petitioners in these cases are temporary employees appointed on advice by the Employment Exchange. Whether they would also be entitled to claim that the Industrial Disputes Act would govern them is the controversy and that controversy has arisen evidently because of the stand taken by the Kerala Public Service Commission that its employees will not be workmen as the Kerala Public Service Commission is performing functions envisaged by the Constitution, functions which cannot be performed by another body and cannot be assigned to any other. This, it is said, is the real test to determine whether the Industrial Disputes Act should apply.

2. Summarising the decisions on the question, the Full Bench had said in the passage extracted earlier that an establishment can be taken out of the pale of the industry only if it exercises inalienable governmental functions. The decisions on the question the Full Bench had occasion to review in the judgment had repeatedly referred to the oft quoted passage in the dissenting judgment of Justice Isaacs in *Federated State School Teachers' Association of Australia v. The State of Victoria* (1928) 41 G.L.R. 569 which read:

The material question is: What is the nature of the actual function assumed, is it a service that the State could have left to private enterprise and if so fulfilled, could such a dispute be "industrial"?

Hence whenever such a question arises it is proper to ask oneself the question whether the services of the body or the functionary are of such a nature that it could be left to private enterprise. If it could be it is not performing inalienable functions or sovereign functions, strictly understood.

3. Part XIV of the Constitution deals with services under the Union and the States. Chapter II of the Part relates to Public Service Commissions. Article 315(1) of the

Constitution makes it obligatory that the Union and each State must have a Public Service Commission. It is an essential State organ performing functions envisaged in the various articles in chapter II of Part XIV. Particular mention be made of Article 320 of the Constitution which deals specifically with the functions of the Public Service Commissions. These functions are envisaged for the Commissions inter alia in order to secure proper selection for recruitment to the services of the States or the Union. The guarantees envisaged in Part III of the Constitution particularly in matters relating to service would be rendered illusory unless they are backed by a proper machinery which ensures to the citizen that in the matter of recruitment to services there is a body which gives opportunities of a proper selection so that candidates who seek recruitment are given just and fair treatment. With this end in view the Public Service Commission is conceived as a high power body, the members of which suffer disabilities in the matter of holding offices on ceasing to be Public Service Commission members, enjoy certain amount of security of tenure by reason of Article 317 of the Constitution and are beyond the purview of control by the Executive in the matter of their services. Thus it is an independent functionary which secures to the citizens the benefit of the guarantees envisaged in Articles 14 and 16. It is true that under the proviso to Article 320(3) of the Constitution, the President and the Governors are empowered to make regulations specifying matters in which either generally or in any particular class of case or in particular circumstance it shall not be necessary for the Public Service Commission to be consulted. In other words it is open to the Governor or the President to exclude the operation of the Public Service Commission in particular circumstances or particular cases. That is not to say that the functions of the Public Service Commission can be substituted by another functionary by any regulation made by the Governor. The proviso cannot operate so as to nullify the substantive part of the article. Despite the proviso it is the Public Service Commission that operates in matters envisaged in chapter II of Part XIV.

4. There are functions performed by various departments of the State which functions could very well be performed even by private enterprise. In fact some of the functions of such departments are even now partly performed by private enterprises too. There are some functions which by their very nature cannot be so assigned to private bodies. We have already held in the case of administration of justice that there is no scope for alienating that function and that must necessarily be exercised by the judiciary of the country. The functions of the Public Service Commissions, that at the centre or those in the States, are also inalienable as all these functions are envisaged by the Constitution itself and the functions are exercised in order to safeguard constitutional rights of the citizens. As such the Public Service Commission cannot be termed an "industry". In this view we hold that the provisions of Chapter V-A will not be available to the employees of the Kerala Public Service Commission.

In O.P. No. 7162 of 1981 the Petitioner has a further claim that being a handicapped person whatever may be the decision on the main point he cannot be sent out of service because the Government has allowed handicapped persons to continue until further orders. As held by us earlier since the Petitioner is said to have been appointed prior to 31.12 1981, until further orders which the Government may pass in respect of handicapped persons the Petitioner may nevertheless continue in service.

The original petitions are disposed of accordingly.