

(1991) 03 KL CK 0039

High Court Of Kerala

Case No: O.P. 2400/91 I

Lakshmikutty and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: March 6, 1991

Acts Referred:

- Constitution of India, 1950 - Article 14, 309, 335
- Kerala State and Subordinate Services Rules, 1958 - Rule 9

Citation: (1991) 1 KLJ 698

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Advocate: M.P.R. Nair, for the Appellant; M.C. Gopi, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.

Petitioners two in number are working as Lady Village Extension Officers. They were appointed temporarily for 180 days under Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, hereinafter referred to as the General Rules. In pursuance to the order of temporary appointment dated 31st March 1990, they, entered service in early September, 1990. The term of 180 days is due to expire on 8th March 1991. They want to continue in service even after the expiry of that term. Hence this Original Petition.

2. A copy of this Original Petition was served on the learned Government Pleader. He was also heard.

3. The main argument advanced by the learned Counsel representing the Petitioners is that the period of 180 days prescribed in the second proviso to Rule 9(a)(i) of the General Rules is arbitrary and violative of Article 14 of the Constitution of India. According to the Counsel, the state should not restrict the term of appointment even if it is a temporal y appointment. Consequently it is contended

that the fixation of 180 days as the term of appointment of a temporary appointee is arbitrary. I am not impressed with this argument. Rule 9(a)(i) of the General Rules comes into play, only in cases of emergency. Where it is necessary in the public interest, owing to an emergency which has arisen to fill up a vacancy immediately and there would be undue delay in making such appointment in accordance with the General Rules and the Special Rules, can the appointing authority by invoking the; power under Rule 9(a)(i) appoint a person de hors the provisions contained in the rules. This appointment made temporarily cannot be for indefinite duration. It is so because the temporary appointment is resorted to only to meet the emergency situation. Only when a regular appointment in conformity with the General Rules and Special Rules is found to be time consuming can the temporary appointment be resorted to. At the earliest opportunity that vacancy should be filled up in strict compliance with the provisions of the General Rules and the Special Rules. So as a stop gap arrangement the temporary appointments are effected, the temporary appointment are to be of indefinite duration, it will go to defeat the provisions of the General Rules and the Special Rules governing regular, appointment. Therefore it is highly necessary to fix a term of appointment under Rule 9(a)(i) of the General Rules. Government thought it fit to fix the term at 180 days. I do not find any illegality or impropriety in fixing the term. The wisdom in fixing that period is not open to judicial review because, the Government is bound to fix a term for the temporary appointment. It is not for the, court to substitute that period with another on the ground that it will be more appropriate. The fixation of this term of 180 days can by no stretch of imagination be considered as arbitrary because it applies to all temporary appointments under Rule 9(a)(i) of the General Rules. All temporary appointments are being treated equally, in the sense that the appointees have to vacate the post on the expiry of the period of 180 days So it is not violative of Article 14 of the Constitution.

4. Yet another argument advanced by the learned Counsel is that undue privilege has been given to the members of Scheduled Caste and Scheduled Tribe by allowing them to continue beyond 180 days as per the third proviso to Rule 9(a)(i) of the General Rules. This differential treatment shown to the members of the Scheduled Caste and Scheduled Tribe, according to the Counsel, is arbitrary and violative of the equality provision contained in the Constitution. This argument I am afraid is only to be stated to be rejected. Article 335 of the Constitution enjoins on the state to take into consideration the claims of the members of Scheduled Castes and Scheduled Tribes in making appointments to services and posts in connection with the affairs of the State. As per this provision a constitutional obligation is cast on the Union and States to protect the claims of the Scheduled Castes and Scheduled Tribes. In discharge of this obligation the State has made provision for allowing such persons to continue beyond 180 days. It is to uplift the down trodden who were denied employment in Government services for generations together. A small benefit now given to those who can get a temporary appointment to continue beyond 180 days

can never be termed as arbitrary or illegal. The State Government while framing the rules incorporated the third proviso giving, protection to them by allowing them to continue in service even beyond the period of 180 days. By this continuance in service they are not acquiring any right to the post either. This provision being in consonance with Article 335 of the Constitution, cannot be taken as sufficient ground to challenge Rule 9(a)(i) as violative of the equality provision contained in the Constitution. Further there is a presumption of validity of the state action. The burden of disproving this presumption is on the person who asserts that it is arbitrary. This can be done by showing that the action is based on no reason in as much as there is no discernible principle on which it is based. It may be shown that the action is contrary to the provisions of the Constitution or is unreasonable. The Petitioners herein have not succeeded in establishing any of these grounds. So I repel the argument advanced by the learned Counsel that Rule 9(a)(i) of the General Rules is violative of the provisions contained in Article 14 of the Constitution.

5. In *Sini P. Kuriakose v. State of Kerala* 1987 (2) KLT 425 and *Dr. Santhosh Babu v. State of Kerala* 1990 (1) KLT 68, Division Bench of this Court took the view that provisional employees under Rule 9(a)(i) of the General Rules have no right to continue in service beyond the terms of their appointment and that they cannot be allowed to remain in service against the statutory rule. Rule 9(a)(i) is one framed in exercise of the powers under proviso to Article 309 of the Constitution. The State's power to frame rules under that provision of the Constitution is not in dispute. So, the Rule framed in exercise of that power cannot be considered as one framed without jurisdiction. Rule 9(a)(i) has not been shown to be in violation of the provisions of the Constitution either. So Petitioners who are, provisional appointees cannot continue in service beyond the period of 180 days for which they were appointed. This view taken by this Court in the above mentioned decision and O.Ps. 4977/90 and 7011/90 were not interfered with by the Supreme Court when Their Lordships dismissed SLP Nos. 11528/90 and 11669/90 respectively.

6. In view of what has been stated above Petitioners who were appointed under Rule 9(a)(i) of the Kerala State and Subordinate Service Rules are not entitled to hold on to the post beyond the term for which they were appointed.

Petitioners are not entitled to any of the, reliefs asked for. Original Petition fails. It is accordingly dismissed.