
(2004) 03 KL CK 0049

High Court Of Kerala

Case No: Writ Petition (C) No. 22413 of 2003

Raghunathan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: March 27, 2004

Acts Referred:

- Kerala Civil Services (Vigilance Tribunal) Rules, 1960 - Rule 3
- Kerala Public Services (Raising of Upper Age Limit for Appointment) Rules, 1978 - Rule 2, 2(1), 2(2), 2(3)

Citation: (2004) 3 ILR (Ker) 1 : (2004) 3 KLT 403

Hon'ble Judges: Navudip Kumar Sodhi, C.J; K.K. Denesan, J

Bench: Division Bench

Advocate: K. Ramakumar, for the Appellant; Roy Chacko, Government Pleader and V. Giri, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Sodhi, C.J.

Challenge in this Writ Petition is to the appointment of respondent 4 as Vigilance Tribunal, Kozhikode solely on the ground that he was more than 50 years of age on the date of appointment. The short question that arises for consideration is whether any upper age limit is prescribed for appointment to this post and whether the 4th respondent was over age at the time of his appointment. Since the question involved is purely legal, it is not necessary to refer to the facts in detail.

2. The 4th respondent had been working as Additional Legal Advisor and was attached to the Vigilance Court, Thiruvananthapuram. His date of birth is 18th May 1952. By Order dated 14th July, 2003 (Ext.R-4(a) with the counter affidavit filed by the 4th respondent), he was appointed as Vigilance Tribunal, Kozhikode. It is common case of the parties that he was more than 50 years of age at the time of his appointment.

3. The Kerala Public Services Act, 1968 has been enacted by the State Legislature 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. Section 2 of this Act enables the Government to 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. The Rules then existing which had been framed under the proviso to Article 309 of the Constitution regulating the recruitment and conditions of service of persons appointed to public services and posts were allowed to continue till they were superseded by the Rules made under the aforesaid Act. The Kerala Civil Services (Vigilance Tribunal) Rules, 1960 (hereinafter called the Vigilance Tribunal Rules) were one set of Rules which were in existence in the year 1968 which had been framed under the proviso to Article 309 of the Constitution and are still in operation. Rule 3 of the Vigilance Tribunal Rules deals with the appointment of Vigilance Tribunals in the State and it reads as under:

"3(a) The Government may, by order, appoint one or more Tribunals for such areas as may be specified in the order.

(b) A Tribunal shall consist of:

(i) a person who has been or is eligible to be appointed as District and Sessions Judge; or

(ii) a person with not less than 7 years experience in the conduct of criminal cases or disciplinary cases".

A reading of the aforesaid Rule makes it clear that the Government may, by order, appoint one or more Tribunals for such areas as may be specified in the order and Clause (b) prescribes the conditions of eligibility of persons who could be appointed as Vigilance Tribunals. There are two categories of persons who could be appointed --(1) a person who has been or is eligible to be appointed as District and Sessions Judge; and (2) a person with not less than 7 years experience in the conduct of criminal cases and disciplinary cases. It is common case of the parties that the 4th respondent was appointed under Rule 3(b)(ii) of the Vigilance Tribunal Rules inasmuch as he has more than 7 years experience in the conduct of criminal/disciplinary cases. We have carefully gone through the Vigilance Tribunal Rules and these do not provide for any age limit for the appointment of a Vigilance Tribunal. In fact, these are totally silent in regard to the maximum age up to which a person could be appointed as a Vigilance Tribunal.

4. Apart from the Vigilance Tribunal Rules under which a Vigilance Tribunal is set up, there is another set of Rules called the Public Services (Raising of Upper Age Limit for Appointment) Rules, 1978 (for short "the Upper Age Limit Rules") which were framed under Sub-section (1) of Section 2 of the Kerala Public Services Act, 1968 with a view to raise the upper age limit prescribed for appointment in various State Services and Subordinate Services. Since the arguments of the learned Counsel for the petitioner

hinge on the interpretation of these Rules, it is necessary to reproduce them for facility of reference:

"1. Short title and commencement--

(1) These rules may be called the Public Services (Raising of Upper Age Limit for Appointment) Rules, 1978.

(2) They shall come into force at once.

2. Raising of Upper age limit prescribed for appointment in Public Service--

(1) With effect on and from the commencement of these rules the Special Rules for the various State Services and Subordinate Services, in force at such commencement, shall stand modified as if the upper age limit prescribed in those Special Rules for eligibility for appointment to posts included in the various services had been raised by five years.

Explanation.-- For the purposes of this sub-rule, upper age limit prescribed in the Special Rules at the commencement of these rules shall where such upper age limit has been modified by the Public Services (Raising of Upper Age Limit for Appointment) Rules, 1972 means the upper age limit as so modified.

(2) To avoid any possible misapprehension, it is hereby clarified that nothing contained in Sub-rule (1) shall be deemed to affect the provisions of Sub-rule (c) of Rule 10 of the Kerala State and Subordinate Services Rules, 1958 and accordingly the upper age limit as modified by Sub-rule (1) of this rule shall be raised as provided in the said Sub-rule (c) in the case of candidates belonging to any of the Scheduled Castes or Scheduled Tribes or Other Backward Classes.

(3) Notwithstanding anything contained in Sub-rule (1) and (2), the maximum upper age limit for direct recruitment to any post shall in no case exceed 50 years except in the case of widows/widowers who were dependents of Government Servants died-in-harness.

3. Rules not to affect Judicial Services Rules.-- Nothing contained in these rules shall affect the provisions of --

(c) The Special Rules in respect of the Kerala State Higher Judicial Service;

(b) The Kerala Civil Judicial Service Rules, 1973;and

(c) The Kerala Criminal Judicial Service Rules, 1973".

The aforesaid Rules as their name suggests were framed with a view to raise the upper age limit prescribed in the Special Rules for various State Services and Subordinate Services for eligibility for appointment to posts included in the various services and by Rule 2, the upper age limit had been raised by 5 years. Every service in the State had its

own Rules governing it and wherever those Rules had prescribed an age limit for eligibility for appointment, then on and from the commencement of the Upper Age Limit Rules the Special Rules stood modified and the upper age limit for eligibility for appointment to posts included in various services stood raised by 5 years. Rule 10(c) of the Kerala State and Subordinate Services Rules, 1958 provides that the upper age limit prescribed in the Special Rules shall be raised by 5 years in the case of candidates belonging to Scheduled Castes or Scheduled Tribes and by 3 years in the case of a candidate belonging to any Other Backward Class. Sub-rule (2) of Rule 2 of the Upper Age Limit Rules clarified that Sub-rule (1) will not affect the provisions of Rule 10(c) of the Kerala State and Subordinate Service Rules, 1958 and in the case of candidates belonging to Scheduled Castes or Scheduled Tribes or Backward Classes, the benefit of relaxation in the upper age limit provided in Sub-rule (1) shall be given to such candidates after their upper age limit for eligibility for appointment has been raised under Rule 10(c) of the aforesaid Rules. Then comes Sub-rule (3) of Rule 2 of the Upper Age Limit Rules. It starts with a non obstante clause and states that notwithstanding anything contained in Sub-rules (1) and (2), the maximum upper age limit for direct recruitment to any post shall in no case exceed 50 years. There is an exception carved out in the case of widows/widowers who are dependents of Government servant who died-in-harness. We are not concerned with this exception in the present case. A conjoint reading of the three sub-rules of Rule 2 makes it abundantly clear that whether the relaxation is granted in the upper age limit under Sub-rule (1) or to the candidates belonging to Scheduled Castes or Scheduled Tribes or Backward Classes under Sub-rule (2), the maximum upper age limit for direct recruitment to any post shall in no case exceed 50 years. The non obstante clause in Sub-rule (3) has to be read in the context of what is said in Sub-rules (1) and (2). The proper way to construe the non obstante clause is first to ascertain the meaning of Sub-rules (1) and (2) on a fair construction of the words used therein and then Sub-rule (3) is to be taken as overriding anything inconsistent contained in the earlier two sub-rules. In other words, Sub-rule (3) with the non obstante clause shall prevail despite anything to the contrary in Sub-rules (1) and (2) of Rule 2 of the Upper Age Limit Rules. Sub-rule (3) by virtue of the non obstante clause clarifies Sub-rules (1) and (2) of the Upper Age Limit Rules and will apply by imposing the embargo of 50 years only to those cases where a relaxation in the upper age limit has been granted under Sub-rule (1) or (2). To put it differently, the ceiling of 50 years as prescribed by Sub-rule (3) shall apply only to those cases where the Special Rules for different State Services and Subordinate Services have prescribed an upper age limit for which relaxation has been provided in Sub-rule (1) or Sub-rule (2). It necessarily follows that where the Special Rules governing a service do not prescribe any upper age limit, the question of raising the upper age limit does not arise and the embargo of 50 years as prescribed in Sub-rule (3) of the Upper Age Limit Rules would not apply. In the case before us, the 4th respondent was appointed as Vigilance Tribunal under the Vigilance Tribunal Rules which do not prescribe any upper age limit for appointment and, therefore, the provisions of Sub-rule (3) of Rule 2 of the Upper Age Limit Rules are not applicable. In this view of the matter, it cannot be said that the 4th respondent was ineligible to be appointed merely because he

had crossed the age of 50 years.

5. Another ground on which the appointment of the 4th respondent was challenged is that he was appointed on political considerations as he is a known activist of the Congress Party and is said to be a close associate of Shri Vakkom Purushothaman, the Speaker of the Kerala Legislative Assembly. We are afraid, this argument cannot be accepted. Except for the ipse dixit of the petitioner, there is no material on the record to substantiate this plea. Allegations of mala fides are easier levelled than proved. Moreover the Speaker of the Legislative Assembly has not been impleaded as a party.

6. No other point was raised.

In the result, the Writ Petition fails and the same is dismissed with no order as to costs.