

(2001) 08 KL CK 0055

High Court Of Kerala

Case No: O.P. No. 15757 of 1999

Meena Kuruvilla

APPELLANT

Vs

High Court of Kerala

RESPONDENT

Date of Decision: Aug. 13, 2001

Acts Referred:

- Kerala Family Courts (Procedure) Rules, 1989 - Rule 17, 18, 23

Citation: (2001) 2 KLJ 464

Hon'ble Judges: J.B. Koshy, J

Bench: Single Bench

Advocate: N.N. Sugunapalan, for the Appellant; Rajashree M.J., Govt. Pleader and V. Giri, for the Respondent

Judgement

J.B. Koshy, J.

Petitioner had acted as Counsellor in the Family Court, Ernakulam. By Ext. P2 notification issued by the High Court of Kerala applications were invited for appointment as Principal Counsellors in Family Courts in the State. Age limit prescribed as per clause 5 of the above notification is as follows:

"Shall not have completed 35 years of age on 1st January".

2. The power of appointment by the High Court etc. were not questioned. The only question now in challenge is regarding fixation of maximum age limit as 35. Originally, the powers to appoint Counsellors were vested in the State Government. However, with regard to appointment of Principal Counsellors, the following proviso was added by S.R.O. dated 18.12.1997:

"Provided that the Principal Counsellor attached to the Counselling Centre shall be appointed by the High Court from a panel prepared by the High Court in consultation with one or more professionally qualified experts in Family and Child Welfare, preferably working with a recognised institution of social science or social

work".

3. Therefore, for appointment of Principal Counsellor, it is for the High Court to prepare the panel. Ext. P2 notification was issued in accordance with the above power.

4. R. 18 deals with qualification. Originally, R. 18 was as follows:

"18. Qualification:- Persons above the age of thirty five who have Masters Degree in Social Work or persons above the age of thirty five working in the field of Social Service and welfare activities and engaged in promoting the welfare of family and child care or who by their education and experience are considered competent by the Government shall be eligible for appointment as counsellors. Preference shall be given to woman".

5. As can be seen from the original Rule, the minimum age for appointment as Counsellor was fixed as 35 years. It is submitted by counsel for the petitioner that this was done in accordance with the similar Rules prevailing in other States. It is also submitted that being a Principal Counsellor one should be a matured person as there will be difficulty for youngsters if posted as Principal Counsellors in divorce matters. R. 18 was also amended when proviso was added to R. 17 authorising the High Court to appoint Principal Counsellors. The present R. 18 reads as follows:

"18. Qualifications:- Persons to be appointed as Counsellors must have a Master's Degree in Social Work and experience for a minimum period of two years in family counselling. The conditions regarding minimum experience in family counselling may be relaxed in the case of candidates otherwise exceptionally qualified and found suitable. Preference shall be given to women."

6. In the present rule no age limit at all is prescribed. The contention of the petitioner is that in the absence of a specific rule regarding age limit, in the notification no age limit should have been given by the High Court. There is no power under the Act or Rules authorising the High Court to fix maximum or minimum age. Therefore, notification in so far as it provides the maximum age is illegal and beyond jurisdiction. Petitioner also referred to R. 23 which deal with power to the State Government to make Rules and argued that only State Government can frame Rules for qualification as per R. 23. The Rule framed by the State Government is silent about the age. Hence fixation of maximum age by the High Court in Ext. P2 notification is illegal and incorrect.

7. After amendment of R. 18, that is, after 18.12.1997, there is no age limit prescribed under the Act or Rules and appointment of Principal Counsellor has to be done from the panel prepared by the High Court. Therefore, for appointment, a panel has to be prepared by the High Court. The criteria for preparing the panel has to be fixed by the High Court taking into account the qualification prescribed by the Rules. it should not be contrary to the provision of the Act or Rules. Hence

prescription of some criteria with regard to age in shortlisting the applications and giving some guidelines for preparing that panel cannot be held to be illegal or contrary so long as no provision in the Act or Rules fixing maximum or minimum age. Since it is a Special post created by the Rules with specific functions and role in settlement of family disputes, minimum or maximum age for regular appointment of State or Central Government is also not applicable. In this connection provision in the old R. 8 itself is an example.

8. In this case it is submitted that even though notification was published as early as in May, 1999 no appointment had taken place. Two years have elapsed. In the above circumstances, I am of the opinion that the Court should publish fresh notice to prepare panel for appointment as Principal Counsellors. While preparing the above, High Court also should consider whether maximum age should be fixed and if so, what is the age that should be fixed or whether matured persons with experience should be appointed and hence fixation of minimum or maximum age is necessary etc. Criteria for preparation of the panel has to be evolved by the High Court subject to the qualification prescribed by the Rules as power of appointment and preparation of the panel is vested with the High Court.

9. With the above observations, the Original Petition is disposed of.