

**K.J. Antony Vs. State**

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**Court :** Kerala

**Decided On :** Oct-21-1957

**Reported in :** AIR1958Ker59

**Judge :** Sankaran and; T.K. Joseph, JJ.

**Acts :** [Constitution of India](#) - Articles 226 and 311

**Appeal No. :** O.P. No. 20 of 1955 (T)

**Appellant :** K.J. Antony

**Respondent :** State

**Advocate for Def. :** Government Pleader

**Advocate for Pet/Ap. :** M.N. Parameswaran Pillai and; P. Ramakrishna Pillai, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Sankaran, J.**

1. The petitioner was employed as a clerk in the Joint Stock Companies department of the Travancore-Cochin State. The first Respondent is the State represented by the Chief Secretary to the Government. The 2nd Respondent is

the officer who was functioning as the Registrar of Joint Stock Companies department during the relevant period. From the year 1950 onwards the Joint Stock Companies department of the State was being run by the State on an agency basis under the Central Government and under that arrangement the members of the staff of the department were for all purposes treated as State Government servants and governed by the Service Regulations of the State.

The petitioner was selected by the State Public Service Commission, for appointment as a clerk in the Joint Stock Companies department. This selection was made in December 1952 and the petitioner joined duty in the Registrar's Office at Trivandrum on 15-12-1952. Another candidate one Shry. Vijayamma was subsequently recruited by the Public Service Commission for appointment as clerk in the same department and she joined duty on 2-1-1954. Some time later, one Kumara Pillai a permanent clerk of the department who was on deputation in the Civil Supplies department of the State, was ordered to be reverted to his permanent place in the Joint Stock Companies department. As a consequence of his reversion to the department, the juniormost clerk had to be thrown out for want of a vacancy as per the Standing Orders of the Government. The Government Proceedings regulating this matter have been produced in this case and marked as Ext. IX and it contains the following directions:

'Government consider that it would certainly be an anomaly if, after the integration, two sets of rules are to operate simultaneously in one and the same department to govern the staff of the same department. They are therefore pleased to order that the following procedure which was being followed in the Travancore area be adopted throughout the United State; (1) the most junior person in any department should be relieved in the event of an appointment terminating; (2) a person recruited on the advice of the Commission to a vacancy in one appointment may be transferred without break of service to another vacancy in a similar type of appointment as that to which he was recruited on the advice of the Commission, even reverting his junior who happens to be in a longer vacancy, if such a course is necessary in order to retain a senior candidate in preference to his junior i. e., a candidate should not be relieved automatically on the termination of the vacancy to which he was recruited if there is a possibility of continuing him in service

without a break in another vacancy in a similar type of appointment. Such an arrangement should be made with the approval of the Commission.'

Consistent with the above rules, the juniormost clerk to be thrown out on the reversion of cleric Kumara Pillai from the Civil Supplies Department to the Joint Stock Companies department, was Vijayamma whose recruitment was subsequent to the recruitment of the petitioner & who also joined duty some time after the petitioner had joined duty. This Vijayamma has been impleaded as additional 3rd Respondent in this petition. The 2nd Respondent chose to totally ignore the clear and specific rules governing the matter and in utter violation of these rules he retained Vijayamma in service and relieved the petitioner from service on 5-2-1955 on the ground that the vacancy in which he was acting and terminated.

The memo to that effect served on the petitioner has been produced by him and it has been marked as Ext. A. The petitioner has challenged the 2nd Respondent's order relieving him from service as illegal and also ultra vires of his powers. It is also alleged that the 2nd Respondent has been acting with mala fides in showing undue preference to Vijayamma to the prejudice of the legitimate claims of the petitioner.

The 2nd Respondent is stated to have suppressed all material facts from the superior authorities and to have managed to retain Vijayamma in service in violation of the Standing Orders and without even consulting the Public Service Commission as required by the rules. The complaint of the petitioner is that he has been illegally and wrongfully removed from service and accordingly he has filed the present petition under Article 226 of the Constitution praying for the issue of a writ of certiorari or other appropriate orders to quash the order Ext. A and also for a writ of mandamus directing Respondents 1 and 2 to reinstate the petitioner in service with arrears of pay and to give him his due rank and place in service.

2. In opposing the petition, the stand taken by Respondents 1 and 2 is practically the same. The main contentions raised by them is that there has been no removal or dismissal of the petitioner from service so as to attract Article 311 of the Constitution. It is stated that there has only been a natural termination of the

petitioner's service in the ordinary course and in accordance with the relevant rules and conditions of service.

It is further stated that the two offices of the Joint Stock Companies department at Trivandrum and Trichur were functioning as two separate units for purposes of recruitment, promotion and Seniority of the members of the staff employed in these two offices and that the petitioner who was recruited to the, Trivandrum office could not claim any seniority over Vijayamma who was recruited to the Trichur office. It is also contended that the petitioner is not also entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution to interfere with the executive orders passed by the Respondents in the exercise of the administrative functions of the Joint Stock Companies department.

3. The stand taken by the Respondents that the petitioner was thrown out of service on 5-2-1955 on account of the termination of the vacancy in which he was acting and also on account of the fact that ho was the juniormost hand to be relieved in that connection, is seen to be against all facts as disclosed by the records produced in this case. According to the Respondents no question of seniority as between the petitioner and the 3rd Respondent Shry. Vijayamma could arise at that stage, because they were working in two independent offices.

In support of that position the 2nd Respondent has stated in paragraph 4 of his affidavit that 'even after the integration of the Travancore and Cochin Stales on 1-7-1949. the departments of Joint Stock Companies in the Travancore and Cochin areas were 'working separately as two units under two Registrars.' But the further averments made by him in the other portions of the affidavit are by themselves sufficient to make out that for the integrated State of Travancore-Cochin there was only one department for the Joint Stock Companies and that this department was under a single Registrar who was none other than the 2nd Respondent himself.

Pending integration of the members of the staff belonging to the Travancore Section and the Cochin Section of the department on the date when the two States were integrated, it may be said that the, respective ranks to be assigned to these members could not be defintely known. But this has nothing to do with the petitioner and the 3rd respondent who were both recruited as clerks subsequent to

the integration of the two States. The petitioner was recruited to the clerical post in the Joint Stock Companies department of the integrated State only towards the close of the year 1952.

The memo to that effect issued by the Public Service Commission has been marked as Ext. VI. As per the order made by the 2nd Respondent on the back of this memo, the petitioner is seen to have joined duty on 15-12-1952 in the Registrar's Office at Trivandrum. It may be noted in this connection that the petitioner was advised as a clerk in the scale of Rs. 30-45 which was the scale of pay in force on that date in the Travancore area. The corresponding scale of pay of the clerks employed in the Cochin area was Rs. 30-75.

The communication issued by the Public Service Commission advising the 3rd Respondent Shry. Vijayamma for appointment as a clerk in the Joint Stock Companies department, has been produced and marked as Ext. VIII. This shows that she was also advised for appointment as a clerk in the scale of Rs. 30-45 only, thereby indicating that she was recruited for appointment in the Registrar's Office at, Trivandrum. If she had been recruited for appointment in the Cochin Office, the recruitment would have been for appointment as a clerk on Rs. 30-75. Thus it is clear that the 2nd Respondent has been misrepresenting facts when he stated that Sry. Vijayamma was recruited for appointment to the Cochin Office.

4. From the notes and orders on the back of Ext. VIII it is further seen that Shry. Vijayamma was actually posted to the Trivandrum Office in the first instance. The memo of appointment issued by the 2nd Respondent from his office at Trivandrum and which has been marked as 'Ext. III makes this position clear beyond any doubt. The memo stated that she had been recruited as an acting clerk in that office on the scale of Rs. 30-45 and she was also directed to join duty on 2-1-1954.

On the back of Ext. VIII itself the 2nd Respondent had passed an order that after the two candidates mentioned therein have joined duty in the Trivandrum office, the Trichur office will be advised to include the name of one of them in the establishment of that office for the purpose of drawing salary etc. This was followed by another Order on 2-1-1954 after Shry. Vijayamma had joined duty in

the Trivandrum Office. This order also finds a place on the back of Ext. VIII and it runs as follows: 'She may be posted against the vacancy of Shri M.P. Loufs promoted, to act as clerk on Rs. 30-75 in the Trichur Office. She may be allowed to work in the Trivandrum Office and her name borne on the Trichur establishment.' Thus, as against the petitioner who had joined duty more than a year earlier, Shry. Vijayamma was the recipient of a special favour at the hands of the 2nd Respondent on the very date of her joining ser-vice. Even though she continued to work in the Trivandrum office, she was unable (enabled?) to draw the higher salary of Rs. 30-75, by means of some paper adjustment under which her name was also included in the establishment of the Trichur office.

All the same it cannot be said that she can be (deemed to be senior to the petitioner, particularly an view of the fact that the initial recruitment of both of them was, to the Trivandrum office in the same scale of Rs. 30-45. Naturally, therefore, when one of them had to give place to a permanent hand who was returning to this department, from deputation in another department, the mere fact that the junior hand's name was included in the establishment of the Trichur office could not be put forward as an excuse for violating the rule which was particularly emphasised in the Government proceedings Ext. IX. But the 2nd Respondent is seen to have ignored these proceedings altogether when he relieved the petitioner who was definitely senior to the 3rd Respondent as per the order evidenced by Ext. A, while retaining the junior in service.

5. When the petitioner complained to Government about such a patent injustice done to him by the 2nd Respondent, the 2nd Respondent sought to justify his action by representing to Government that the petitioner was recruited to the Trivandrum office while Shry. Vijayamma was recruited to the establishment of the Trichur Office and that since the two establishments were being kept separate, the petitioner could not claim seniority over Shry. Vijayamma. As already pointed out, this was a wrong representation of facts. However, the Government appears to have been misled by that representation in issuing the order marked as Ext. VII dated 8-2-1955. In paragraph 1 of that order it was conceded that the petitioner having been recruited earlier, he had to be treated as senior to Shry. Vijayamma according to the ordinary rules. But in paragraph 2 it is stated that as the

establishments of the offices at Trichur and Trivandrum were kept separate, the petitioner has to take his chances in the Trivandrum office establishment alone. It is obvious that such an order happened to be passed without adverting to the real state of affairs. The mistake committed in passing such an order appears to have been realised by Government when the subsequent order Ext. XIII dated 10-3-1955 was passed on a representation being made by the petitioner. In this order it is definitely stated that 'according to the orders of recruitment by the Public Service Commission Shri Antony is senior to Shry. B. Vijayamma.' It was also pointed out that the vacancy in which Shry. Vijayamma was acting was available even then, and a query was raised about the propriety of posting the petitioner in that vacancy. (6) The Registrar's specific attention was also drawn to the Government proceedings Ext. IX. By this time Shry. Vijayamma was transferred to the office of the Regional Director at Madras on 1-11-1954. According to the petitioner, Shry. Vijayamma got that appointment on the recommendation of the 2nd Respondent. But the version given by the 2nd Respondent in his affidavit is that she was selected for that post by the Regional Director. It is unnecessary to examine here as to which of these conflicting versions is true. But there is one significant fact to be noticed in this connection. If, up to the time of Shry. Vijayamma's appointment in the office of the Regional Director at Madras, she could be retained in a suitable post under the Joint Stock Companies department of the Travancore-Cochin State, that post must have fallen vacant with the transfer of Shry. Vijayamma to the Madras office. In fairness to the petitioner he could have been appointed to that post at least. But even this was not done by the 2nd Respondent, He was maintaining the position that even at that stage there was no place in which the petitioner could be absorbed. But Government in the Official Memorandum dated 30-3-1955, which has been marked as Ext. XIII, pointed out to the 2nd Respondent that the vacancy in which Shry. Vijayamma was acting as clerk, was lying vacant with her transfer to the Madras office and that the statement of the 2nd Respondent that there is no available vacancy in the clerical cadre is untenable. Nothing came out of this order also, so much so, the petitioner had to continue without a job even when the staff of the Joint Stock Companies department of the State was brought directly under the Central service, and the result has been that his name could not find a place in the list of surplus personnel

thrown out of employment as a result of such centralisation.

7. The position that the petitioner's case was a hard one appears to have been realised by Government, as is evident from the memo marked as Ext. XV issued to him by Government on 26-5-1955. In that memo it was stated that the petitioner's case will be considered along with other surplus personnel thrown out of employment from the department of Joint Stock Companies as a result of the centralisation of the administration of the Indian Companies Act. Such a hope given to him has not yet been fulfilled.

The above facts clearly indicate the sad predicament in which the petitioner has been placed on account of the 2nd Respondent's wrongful act of disregarding the directions contained in the Government Proceedings Ext. IX and in throwing the petitioner out of service and at the same time retaining his junior Shry. Vijayamma in service. The repeated attempts made by the petitioner were being resisted by the 2nd Respondent at all stages. In the meanwhile, he was trying his best to help Vijayamma and to see that her position is secure.

After she had been taken over to the office of the Regional Director at Madras, there appears to have been a move to post her again to Trivandrum. A copy of the D. O. letter dated 21-4-55 sent by the 2nd Respondent to the Regional Director at Madras in connection with that proposal, is seen among the records produced on the Respondents' side. In that letter he has pointed out that the transfer of Shry. Vijayamma to the Trivandrum office at that stage may be prejudicial, to her interests. The possible risks attending on such a transfer were explained by him as follows :

'On her transfer to this office she fills a place with the surplus personnel and may have to continue in that category till she is absorbed elsewhere or here probably on the State Government's scale of pay all the time. There is also pending before Government the representation of Shri. K.J. Antony, who has been relieved. He has represented to Government for reinstatement claiming that he is senior to Shry. Vijayamma. I feel therefore that times are not propitious for the transfer, The question may be taken up later if necessary.'

The feelings and sentiments thus expressed by the 2nd Respondent undoubtedly go a long way in support of the petitioner's complaint that it was the 2nd Respondent's determination to specially favour Shry. Vijayamma that induced him to ignore the legitimate claims of the petitioner to continue in service in the last available vacancy and to retain her in service while throwing him out of service on 5-12-1955 in clear violation of the directions to the contrary as contained in the Government Proceedings Ext. IX. There can be no doubt that the petitioner had been very badly treated and has been put to great hardship for no fault of his.

8. But the question is whether his grievance could be redressed by this Court by the issue of any writ as prayed for by him. It cannot be said that he has been dismissed or removed from Service as a penal step. All that happened was that he was relieved from service on 5-2-1955 on the ground that the vacancy in which he was acting terminated. This was purely an administrative act by the head of the department. If the authority concerned had strictly followed the directions contained In the Government Proceedings Ext. IX, the petitioner could have been retained in service by posting him to another vacancy after relieving the junior who was acting in that vacancy.

The failure to do so could only be deemed to be an irregularity committed by the head of the department. The jurisdiction of this court under Article 226 cannot be invoked for interfering with matters of this kind relating to the interpretation of administrative rules and directions. It is for the superior authorities in the administrative department itself or for Government to rectify mistakes and irregularities committed by subordinate officers in the matter of implementing such rules and directions.

9. There is yet another reason also why no writ as prayed for by the petitioner could be issued by this court. The Joint Stock Companies department is now a department administered by the Central Government and not by the State Government. The Central Government could alone reinstate or entertain the petitioner in service in that department. But the Central Government is not a party to this petition.

The first Respondent i.e., the State Government, has very little to do at this stage in the matter of securing the petitioner's place in the Joint Stock Companies department. Thus in the present petition it is not possible for this Court to pass any effective order in the matter of redressing the petitioner's real and legitimate grievance. But we have no doubt that the authorities will bestow serious consideration to the case of the petitioner and will do everything possible to undo the wrong done to him and thus redress his grievance.

10. In the result this petition is dismissed. In the circumstances of this case we make no order for costs.

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