

Mini Vs. Director

Mini Vs. Director

SooperKanoon Citation : sooperkanoon.com/722818

Court : Kerala

Decided On : Mar-28-2006

Reported in : 2006(2)KLT550

Judge : Kurian Joseph, J.

Appeal No. : W.P. (C) No. 6593 of 2006

Appellant : Mini

Respondent : Director

Advocate for Def. : K.B. Pradeep, Adv. and; Rajasree, Government Pleader

Advocate for Pet/Ap. : Kurian George Kannanthanam, Adv.

Disposition : Petition allowed

Judgement :

Kurian Joseph, J.

1. The issue raised in this Writ Petition pertains to admission to the reserved category of teachers for the Post Graduate course in Ayurveda as per Ext.PI prospectus. The prospectus is issued on 9.12.2005 by the Government. As per Clause 2(b) 'Fifteen (15) seats are reserved for teaching staff of Ayurveda colleges in the State subject to a maximum of one seat in each speciality.' The dispute is

whether the expression 'teaching staff of Ayurveda colleges in the State' has to be understood in the restricted sense of teaching staff in Aided and Government Ayurveda colleges, as contented by the learned Government Pleader. It will be profitable to refer to the chronology of events in order to appreciate the contentions. The prospectus was issued on 9.12.2005. The interview was on 6.3.2006. Classes commenced on 15.3.2006. There were only seven candidates from the Government and aided colleges. Petitioner is a member of the teaching staff of a Government approved and University affiliated self-financing Ayurveda college. Petitioner was refused to be interviewed under the reserved quota by the Director on the ground that the reservation is only for the teachers of Government and aided colleges. The Writ Petition was filed on 6.3.2006 itself. There is an interim order to keep vacant one seat in the quota set apart for teaching staff of Ayurveda colleges in the State. In the meanwhile, by Ext. R1(a) order dated 16.3.2006. the Government modified the prospectus by amending Clause 2(b) in the prospectus. As per Ext. R1(a) 'teaching staff of Ayurveda Colleges' has been substituted with the words 'teaching staff of Government and aided Avurveda colleges'. There is a consequential amendment to Note (ii) under Clause 2 also which has no significance as far as the interpretation is considered. It is the contention of the learned Government Pleader that Ext.PI prospectus permits modification as per Clause 18. Clause 18 reads as follows:

The prospectus published in advance to enable the candidates to make their application in the proper manner, on the basis of their eligibility, will be subject to modification, additions as made to be considered necessary by Government that will be issued as executive orders/notifications.

2. There is no dispute on the power of the Government to add or modify. The dispute is only on the impact of such exercise. As on the last date of application, the prospectus permitted teachers of Ayurveda colleges in the State to apply under the reservation quota. The college where the petitioner works, it is not disputed, is one approved by the Government of Kerala and affiliated to the M.G. University. As on the date of interview viz. 6.3,2006 also, the prospectus permitted teaching staff of the Ayurveda colleges in the State to apply under the reservation quota and as on the date of starting the course viz. 15.3.2006 the prospectus

permitted the teaching staff of the Ayurveda colleges in the State to be considered under the reservation quota. There was no distinction as to whether they belong to aided or unaided colleges or Government colleges. The only requirement was that the teacher should belong to a college in the State. The restriction introduced by way of an amendment as per Ext. R1(a) dated 16.3.2006. Learned Government Pleader submits that Ext. R1(a) is not an amendment but a clarification. It is submitted that the Director had in fact addressed the Government as early as on 24.12.2005 requesting the Government to clarify the position. But the Government obviously did not clarify but amended the provision by order dated 16.3.2006. The order itself has used the expression 'modify' and not 'clarify' as contented by the learned Government Pleader. By the time, much water had flown down the bridge. The modification has to be understood with reference to the relevant events as on that date. That apart, it is now settled law that only what is implied alone can be expressed by way of clarification. By the very expression used in Ext. R1(a) that it is in substitution of the existing provision, it cannot be said that it is a clarification. Ext.R1(a) order dated 16.3.2006 does not clarify an implied provision. It is introducing a new provision.

3. Yet another contention of the learned Government Pleader is that the intention of the Government that the reservation is for the teachers of Government and aided colleges is clear from Note (ii) under Clause (2). The Note to the extent relevant reads as follows:

Selection under Clause 2(b) & (c) will be made by the selection committee strictly based on seniority in the case of Government Ayurveda College Teachers and length of service in various categories of posts taken together, in the case of Teachers from Private Colleges, in concerned discipline. If there are two applicants for one discipline from Government College and aided College, the length of service will be the criteria.

The Note apparently makes the position clearer for the petitioner, since the expression used there is 'private colleges'. The very purpose of the Note is only for deciding the inter se claims of the teachers in the respective categories of Government and private sector. It is the contention of the Director that the

Directorate intended reservation only for the teachers belonging to either the Government or aided sector. There is nothing wrong in such an intention. But the prospectus is issued not by the Directorate but by the Government. Modification and amendment is also done only by the Government. Though the Directorate intended reservation to be so, apparently the Government did not mean so and in any case did not express so while issuing the prospectus on 9.12.2005. The intention of the Directorate, at the request of the Directorate is expressed by the Government only after the commencement of the classes and that too by way of an amendment, by a modification, substituting the existing provisions. Such a substituted provision cannot have any effect on the events before the date of the amendment. When the language in Ext.PI is clear, precise, plain and unambiguous, I do not find any reason to strain for an interpretation deviating from the ordinary, natural and grammatical meaning, particularly since the interpretation as above does not lead to any absurdity. To quote Lord Atkin in the celebrated decision of the Privy Council in *Pakala Narayana Swamy v. Emperor* 'when the meaning of the words is plain, it is not the duty of the courts to busy themselves with supposed intentions'. I am also reminded of the words of S.R. Das, J. in *Rananjaya Singh v. Baijnath Singh* reported in : [1955]1SCR671 'The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act'.

4. The relevant and significant events of the application, selection and starting of the course, all were prior to Ext. R1(a) dated 16.3.2006. Therefore, the petitioner is entitled to be considered as against the reserved quota for teaching staff, the selection to which was conducted on 6.3.2006. Accordingly, the Writ Petition is allowed. Since there were only seven candidates against 15 seats reserved under Clause 2(b) of Ext.PI and admittedly since there is no other claim for reserved quota, the petitioner shall be admitted forthwith as against the reserved quota.