

Paulose Vs. State of Kerala

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Court : Kerala

Decided On : Feb-18-1993

Reported in : (1993)IILLJ491Ker

Judge : Mathews P. Mathew, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 7A

Appeal No. : O.P. Nos. 3251 and 3753/1992

Appellant : Paulose

Respondent : State of Kerala

Advocate for Def. : Cyriac Joseph, Addl. Advocate General

Advocate for Pet/Ap. : T.A. Ramadasan and; T.G. Rajendran, Advs.

Disposition : Petition dismissed

Judgement :

Mathews P. Mathew, J.

1. The petitioners in these Original Petitions are advocates. They challenge the procedure adopted by the 1st respondent-State Government for selection of candidates for appointment of Presiding Officers of the Industrial Tribunals proposed to be set up at Idukki and Palghat and seek to set aside the selection.

Section 7A of the Industrial Disputes Act prescribes the method of appointment and qualifications for the Presiding Officers of the Industrial Tribunals as follows-

'7A. Tribunals (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule (and for performing such other functions as may be assigned to them under this Act).

2. A Tribunal shall consist of one person only to be appointed by the appropriate Government.

3. A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless-

(a) he is, or has been, a Judge of a High Court; or

(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge.'

It is contended on behalf of the petitioner that the 1st respondent, in variance to the earlier practice followed, has sought to fill up the two posts of Presiding Officers of the Industrial Tribunals by choosing the candidates from the panel of names respectively furnished by the existing Industrial Tribunals and Labour Court as also the Advocate General. From the names of persons submitted by the Industrial Tribunals, Labour Courts and the Advocate General, a short listing was effected by the Advocate General and such of those persons who were included in the short listed panel were called for an interview which was held on March 14, 1992. The petitioner in O.P. 3251/92 was not included in the panel at all. The petitioner in O.P. 3753/92 was included in the preliminary panel sent by the Labour Court, however, his name was dropped by the 2nd respondent in the process of short listing.

2. Both the petitioners claim to possess the qualifications prescribed for the post. The case of the petitioners is that the posts of the Presiding Officer of Industrial Tribunals being public posts, the Government is bound to make appointment to the

said posts after giving an opportunity to all eligible persons to be considered for appointment. According to the petitioner, such an opportunity could be effectively given to all eligible persons namely, all those who possess the prescribed qualifications to be appointed to the posts, by giving proper publicity to the matter through advertisement in news papers, so that all those persons who are eligible as per Section 7A of the Industrial Disputes Act could get the opportunity to offer themselves for selection to the said post. As such opportunity was not given to all the persons having the prescribed qualifications to be appointed to the posts, the method of selection adopted by the 1st respondent is unfair and arbitrary and therefore violative of Articles 14 and 16 of the Constitution of India. Petitioners have a further case that the method of selections adopted by the 1st respondent on the whole is unfair.

3. Sri. Cyriac Joseph, the learned Additional Advocate General, appearing on behalf of the respondents submitted that it was true that a deviation was effected from the erstwhile practice followed in the matter of appointment of the Presiding Officers of the Industrial Tribunals inasmuch as appointments used to be made in the post even without reference to any panel. However, the Government in its wisdom thought that a more rational method should be adopted in order to obtain the best possible talents by preparation of a panel on the basis of the recommendations of the Industrial Tribunals, Labour Courts and the Advocate General who are closely and intimately connected with the administration of justice in the labour front. According to the learned Additional Advocate General, people who are experienced in the field of industrial law could be easily identified by the existing Labour Courts and the Industrial Tribunals, before whom the advocates practise in that particular branch of law. So is the case of the Advocate General by virtue of his pre-eminent position in the administration of justice in the State. A pro forma was also to be filled up by the person to be included in the panel by giving the relevant bio-data and a written consent to accept the appointment, if offered. The names of candidates included in the preliminary panel by the existing Labour Courts and Industrial Tribunals as also the Advocate General were found to be quite large in number. The Advocate General being the Constitutional functionary vested with the duty of advising the Government on important legal matters was given the responsibility of short listing the panel based on the data furnished in

respect of those who were included in the panel and 11 candidates so short listed by the 2nd respondent Advocate General, were interviewed by a selection committee consisting of the Chief Secretary, Advocate General, Secretary for Law and the Secretary to Labour Department. In view of the interim order of stay passed in O.P. 3753/92, however, the appointments have not been effected. The learned Additional Advocate General submitted that in the absence of any legislation on the subject, the State can regulate its public services in the exercise of its executive powers and the method of selection adopted by the 1st respondent in the instant case is fair and just and not violative of Articles 14 and 16 of the Constitution. In the light of the arguments advanced in the case, the main question that arises for consideration is whether the alleged failure on the part of the appointing authority to invite applications from all the eligible candidates to the posts vitiates the selection as violative of Articles 14 and 16 of Constitution. It is not disputed that no specific mode of selection to the post of Industrial Tribunal is laid down either by the Industrial Disputes Act or by any Rule made thereunder or under any other law. It is well settled that in the absence of any statutory regulations or Rules, the State Government can regulate its public services in the exercise of its executive powers. (See the decisions in *Rajendra Narain Singh v. State of Bihar*, 1980-II-LLJ-138, *B.N. Nagarajan v. State of Mysore* (1961) 3 SCR 682 and *Sant Ram Sharma v. State of Rajasthan* (1968) 1 SCR 111). In the instant case, the selection and appointment are being made in exercise of the executive powers of the State. The Government has entrusted the work of selection of candidates to those who are best suited for that job insofar as Industrial Tribunals, Labour Courts and the Advocate General were asked to identify the candidates for the purpose of inclusion in the preliminary panel and a dignitary of the status of the Advocate General was given the responsibility of short listing the names in the preliminary panel. The action taken by the Government in this regard is undoubtedly within the powers enjoined by law.

4. In *Mathew Vaidyan v. Kerala Minerals and Metals Ltd.* (1986 (2) ILR 342), a Division Bench of this Court had the occasion to examine the validity of selection and appointment to the post of General Manager of a prestigious State undertaking when the same was challenged on the ground that the selection was made without calling for applications and therefore bad and arbitrary and violative

of Articles 14 and 16 of the Constitution. It was contended for the petitioners in that petition that the petitioners themselves were qualified to be appointed to the post of General Manager but they were not considered for the post, that the method of scouting resorted to for selection was illegal and arbitrary and therefore the appointment was liable to be set aside. Dismissing the petition the Division Bench observed that recruitment to the executive posts can be made either by searching within the establishment or by looking for them outside the Company. In relation to recruitment of such top executives, techniques other than advertisement could be resorted to. Taking the view that entrusting the work of selection to those who know best as to what is wanted in a situation and who have the keenest and most direct interest in the results has been accepted as a safe method, the Division Bench held that the Company was justified, in the peculiar circumstances of the case, in not effecting an advertisement in filling up the post of General Manager.

5. Therefore, it is clear that in the manner of selection of persons to important posts, invitation of applications by an advertisement need not be resorted to invariably. There are many other methods legitimately available to the appointing authority. Contacts with that section of public who could usefully contribute to the selection-such as lawyers, accountants, bankers, financial firms and business brokers with their broad and varied acquaintance with potential candidates is also one of such recognised methods and in the instant case, the preparation of the preliminary panel of candidates was made in consultation with the Industrial Tribunals, Labour Courts and the Advocate General who could usefully contribute to the selection for the posts in question.

6. Does the absence of an advertisement or wide publicity result in infraction of equality clause of the Constitution? This question was considered by a Full Bench of the High Court of Punjab and Haryana in *Daljit Singh v. State*, (AIR 1978 P & H 117). After discussing the requirements of Articles 14 & 16 of the Constitution it was held that 'it is not the requirement of the Constitution under Article 16 that for direct recruitment to an office under the State, there must be an advertisement in the public press, so as to reach every conceivable candidate within the country'. It is further held that such a requirement is both doctrinaire and also impossible of actual implementation.

In State v. Bhola Nath (AIR 1972 All. 460) it was held as follows: -

'Articles 14 and 16(1) do not require any positive act on the part of the State to give equal opportunity to all citizens, they only prohibit the State from doing anything, whether by making a rule or by executive action, which would deny equal opportunity to all citizens. It is not necessary that the State must, in every case of public employment, issue an advertisement or notice, inviting applications for the office....'

I am in respectful agreement with the views expressed by the High Courts of Punjab and Haryana, and Allahabad in the above cited decisions.

7. In the instant case, the State Government did not do anything by which equal opportunity was denied to any citizen. Therefore, the contention urged on behalf of the petitioner to the effect that the mode of selection adopted by the State Government is hit by Articles 14 and 16 of the Constitution is without any substance and unsustainable in law. In the facts and circumstances of the case, the petitioners have no right to compel the State to issue invitations to them to offer their candidatures by way of advertisements or otherwise before any appointment is made merely because they possess the qualifications prescribed for the post.

8. In National Institute of Mental Health & Neuro Sciences v. Kalyana Roman 1992-II-LLJ-616, it was held that the 'fairness' or 'fair procedure' in the administrative action implied that a decision should be taken without being guided by extraneous or irrelevant considerations and took the view that before interfering with the selection made by a selection committee consisting of experts who are men of high status and also of unquestionable impartiality the court should be extremely slow. In the instant case, the members of the selection committee consisted of men of high status. No allegation whatsoever is made in the O.Ps against any of the members of the selection committee. Neither is there any allegation of malpractice; nor is there is a case that a particular method is adopted for selecting a particular person or avoiding any one. Therefore the contention urged on behalf of the petitioners that the method of selection on the whole was unfair is also without any merit. No other ground was urged before me.

9. In the circumstances, I do not find any reason to interfere in the matter inasmuch as the method and procedure for selection to the posts of Industrial Tribunals cannot be said to be unfair or arbitrary. The Original Petitions are devoid of any merit and the petitioners are not entitled to the reliefs sought for. Both the Original Petitions are dismissed.

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