

**Muraleedharan Vs. Principal**

**Muraleedharan Vs. Principal**

**SooperKanoon Citation :** [sooperkanoon.com/727845](http://sooperkanoon.com/727845)

**Court :** Kerala

**Decided On :** Feb-09-1989

**Reported in :** (1989)IILLJ119Ker

**Judge :** Bhaskaran Nambiar and; Thomas, JJ.

**Appellant :** Muraleedharan

**Respondent :** Principal

**Judgement :**

**Bhaskaran Nambiar, J.**

1. The petitioner is a candidate for admission to the part-time LL.B. (evening course) in the Government Law College, Calicut. 30% of the total number of seats are reserved for the State Government employees. It is the petitioner's case that he is a State Government employee, that he is entitled to one of the 30% seats so reserved and that he has obtained more marks than those persons who are included in that category and he has been wrongly denied admission to the LL.B (evening course). The question for consideration is whether the petitioner is a Government employee entitled to claim one of the reserved seats for admission to the first year LL.B in the Government Law College (evening), Calicut.

2. The petitioner was initially appointed in the Public Health Engineering Department of the Government of Kerala. Subsequently he was transferred to the

Kerala Water Authority constituted under the Kerala Water Supply and Sewerage Act, 1986, Act 14 of 1986. The contention of the petitioner is that notwithstanding the fact that he is now an employee of the Water Authority constituted under the Act, he continues to be an employee of the Government and he is entitled to one of the reserved seats. There can be no doubt that the petitioner is a not a Government employee as long as he is an employee of the Kerala Water Authority, a corporation constituted under the Act, and after he has been transferred from the Government service to the service of the Corporation. This matter is settled by the decision of the Constitution Bench of the Supreme Court in *Sukhdev Singh v. Bhagatram* 1975-I-LLJ-399 where it has been held thus in paragraph 67:

For the foregoing reasons, we hold that rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. By way of abundant caution we state that these employees are not servants of the Union or the State..

3. The Water Authority is a State within the meaning of Article 12 of the Constitution amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India for enforcement of fundamental rights. But its employees cannot be deemed or treated as government employees.

4. However, contends counsel for the petitioner, in view of the provisions of the Kerala Water Supply and Sewerage Act, 1986 the petitioner and the employees of the Kerala Water Authority continue to be the employees of the State Government. He also relies on certain provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 in support.

5. It is under Section 3 of the Act that the Government have constituted 'an autonomous authority to be called the Kerala Water Authority'. The Authority is a body corporate having perpetual succession and a common seal. The Authority is for all purposes deemed to be a local authority. Under Section 8 of the Act the

Authority may, with the previous approval of the Government, appoint on deputation a servant of the Central Government or the State Government as an employee of the Authority on such terms and conditions as it thinks fit. The appointment and conditions of service of the officers and employees of the Authority shall be governed by rules made by the Government from time to time. This is mentioned in Section 8(3) of the Act. Section 19 provides for transfer of Government employees to the Authority. It says that every person who was employed in the Public Health Engineering Department of the Government shall, on and from the appointed day, become an employee of the Authority and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions, and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day if the Act had not come into force and shall continue to do so until his employment in the Authority is terminated or until his remuneration or other terms and conditions of service are revised or altered by the Authority. Based on these provisions it is contended that the employee of the Water Authority is also a Government servant. It has to be noted that the Water Authority is a separate entity and has a separate legal existence. The Act itself provided for transfer of an employee of the Government to the Water Authority. When the transfer is effected under the provisions of the Act the Government employees became employees of the Water Authority. The employees of the Authority have therefore ceased to be the employees of the Government under the provisions of the Act. The fact that the conditions of service applicable to them as Government employees are preserved even-after they became employees of the Water Authority does not clothe the petitioner, or persons similarly situate, with the status of a Government servant. It is because the employees of the Water Authority are not government servants that a special provision in Section 19 had to be made preserving and protecting their earlier rights as Government servants.

6. It was then contended that under Section 19 of the Act the terms and conditions and the rights and privileges to pension, gratuity and other matters of a Government servant are preserved and therefore the right to be admitted to the Government Law College is also conserved. The right to admission to a Law College is not a condition of service of a Government employee; nor can it be

treated as a 'privilege' to pension and gratuity available to a Government employee. The rights and privileges regarding matters other than pension and gratuity referred to in Section 19 have to be understood in the context as referring to the rights and privileges available to a Government servant in the discharge of his duties as a Government servant. There is no right inherent in a Government servant to be admitted to the LL.B. (evening) Course, nor is there any such right or privilege preserved under Section 19.

7. The petitioner, if at all, can only make a claim for admission to the College. Till the claim is recognised, there is no right or privilege. A mere application for admission to a professional College does not ripen into a right or privilege to be admitted to a college. The petitioner claimed to be admitted in 1988, long after he ceased to be a Government employee. Section 19 of the Act cannot be invoked to claim new rights, arising for the first time after the coming into force of the Act, when no such right or privilege existed or accrued to the petitioner even as a Government employee. We may also advert to the decision of a Full Bench of this Court in *Bhaskaran v. Addl. Secretary* 1988-II-LLJ-307, where the distinction between 'right' and 'privilege' has been noted. The right to seek admission to any professional course and the admission to that course are regulated by the rules framed by the appropriate authorities and not by the rules relating to the conditions of service of the Government, servant. The Act does not confer on petitioner, an employee of the Corporation, a status as a Government employee and the reservation for admission to the Law College is confined to a Government employee and not to a servant of a statutory Corporation.

8. Counsel for the petitioner also relied on the definition clause of Rule 2(d) of the Kerala Civil Services (Classification, Control and Appeal) Rules, which reads thus:

Government Servant means a person who is a member of a service, State or Subordinate, or who holds a civil post under the Kerala Government and includes any such person on foreign service or whose services are temporarily placed at the disposal of any other Government, Central or State, or a local or other authority and also any person in the service of any other Government, Central or State, or a local authority whose services are temporarily placed at the disposal of

the Kerala Government.

Under this definition a Government servant whose Services are placed temporarily at the disposal of a local authority is deemed to be a Government servant, just as an employee of the local authority whose services are placed at the disposal of the State Government is also treated as a Government servant. The definition clause does not state that an employee of the local authority is a Government servant. It is true that the Water Authority is a local authority under Section 3 of the Act. But its employees do not become Government servants even invoking the definition clause in the Kerala Civil Services (Classification, Control and Appeal) Rules. Moreover this definition clause has only a limited application to proceedings governed by the Kerala Civil Services (Classification, Control and Appeal) Rules and not for any other purposes. There is no merit in the writ petition and it is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**