M. KAMALAMMA AND ORS. A

v.

HON'BLE CHIEF JUSTICE OF THE HIGH COURT OF KERALA AND ORS.

FEBRUARY 24, 1995 B

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Constitution of India, 1950—Art. 229(2)—Power of Chief Justice of the High Court to make rules for its officers and servants—Amendment in Rule 16(d) of the Kerala High Court Service Rules, 1970—Rule not violative of Art. 14 and 16 of the Constitution. C

The staff (non-law graduates) of the Kerala High Court made representations to the Chief Justice of the High Court ventilating certain grievances. The Chief Justice heard the representatives of the staff on 24.03.1984 and on 14.06.84 issued a notification amending Rule 16(d) of the High Court Service Rules, 1970. The amended rule envisaged that only such non-law graduates would be considered for promotion who had completed 20 years of service or attained 50 years of age and who had capacity for bench work, which capacity had to be certified by a committee consisting of the Registrar, the Joint Registrar and the Deputy Registrar (Judl.). The amendment had shut out further promotion of the non-law graduates as court officers. The respondents (law graduates) assailed the validity of Rule 16(d) of the High Service Rules, 1970 before the Kerala High Court as being violative of Art. 14 and 16 of the Constitution. D E

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The High Court struck down the Rule as being violative of Articles 14 and 16. The petitioners (non-law graduates) for whose benefit the aforesaid amendment had been made contended before this Court that a law degree as a qualification for appointment as court officer came to be prescribed only in 1960 and in some High Courts of the country a law degree was not a prescribed qualification for appointment as court officers, termed as Bench Clerks there. The respondents contended that the incumbents must be law graduates for promotion to the post of court officers. G

Allowing the appeal, this Court H

A **HELD : The amended rule had taken care to see that only such non-law graduates would be considered for promotion who had capacity for bench work, which was required to be certified by a committee consisting of the Registrar, the Joint Registrar and the Deputy Registrar (Judl.). This showed that the rule making authority had taken full precaution to see that only a person of tested capacity was promoted to the post of court officer. Out of 40 posts of court officers not more than 8 were made available to the non-law graduates and that too to those who had completed 20 years of total service. This promotional avenue was opened for those who were at the fag end of their service, as, in the alternative, age of fifty years was required, to become eligible for the post. The amendment had shut out further promotion of non-law graduates promoted as court officers. The amended rule is valid. [306-G-H, 307-A]**

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Mohd. Sujat Ali **v.** *U.O.I.,* **AIR (1974) SC 1031, distinguished.**

T.R. Kothadaraman **v.** *Tamil Nadu Water Supply and Drainage,* **JT (1994) SC 657, relied on.**

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2951 of 1985.

From the Judgment and Order dated 2.4.85 of the Kerala High Court E in O.P. No. 5242 of 1984-M.

P.P. Rao, K.M.K. Nair and E.M.S. Anam for the Appellants.

Seetaramiah, P.K. Manohar, Ms. Shanta Vasudevan and R. Sasiprabha, (N.P.) for the Respondents.

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The Judgment of the Court was delivered by

HANSARIA, J. Article 229(2) of the Constitution has provided that the conditions of service of officers and servants of a High Court shall be such as may be prescribed by the rules made by the Chief Justice of the G Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose. The staff of the High Court of Kerala made certain representations to the Chief Justice of that Court ventilating various grievances. The representatives of the staff were heard by the Chief Justice on 24th March, 1984 and after applying due mind to H various aspects involved in the matter, which were recorded in the Minutes

which run to almost 12 pages, it was felt that a need for amendment of the Kerala High Court Service Rules, 1970 existed. A Notification was issued accordingly on 14.6.1984, by which the existing provision in sub-rule (d) of Rule 16 was substituted to read as below :-

> "16(d) Not more than eight posts of Court Officers (category 6A in Division II) may be filled by promotion of non- law graduates working in the feeder categories (categories 1, 1A, 1B and 3 to 10 in Division II) subject to the following conditions :
>
> (i) they must have completed 50 years of age or 20 years' of total service, the service being calculated after taking into account the service from the date of appointment as Assistant Grade II, Typist Grade II and Shorthand Writer Grade II, as the case may be.
>
> (ii) they must be willing to be appointed as Court officers.
>
> (iii) their capacity for bench work must be certified by a committee consisting of the Registrar, the Joint Registrar and the Deputy Registrar (Judl.)
>
> (iv) all the non-law graduates in the feeder categories will together from a separate class. As between the qualified law-graduates and the non-law graduates forming the separates class there shall be a ratio of 1:1 for promotion to the post subject to what is stated in clause (v) below :
>
> (v) a law graduate who is senior to a non-law graduate coming within the separate class at the time of filling up of the vacancy will not be superseded by the application of the ratio. The seniority as between the law-graduate and the non-law graduate will be determined with reference to the total length of service in the manner indicated in clause (i) above.
>
> (vi) promotion from among the non-law graduates shall be on the basis of their total length of service. It shall be calculated in the same manner as total service is calculated under clause (i) above.
>
> (vii) non-law graduates promoted as Court Officers shall not be

A eligible for any further promotion based only on their promotion follwing the above provisions."

2. The aforesaid shows that by the amendemnt not more than eight posts of Court officers (their number was 40 at the relevant time) could be filled by promotion of non-law graduates working in the feeder categories. B The law-graduates working in the High Court assailed the validity of the amendment and a Division Bench of the High Court struck down the same being violative of Article 14 read with 16 of the Constitution. The non-law graduates for whose benefit the aforesaid amendment had been made have preferred this appeal.

C

3. The Division Bench relied principally on the decision of this Court in *Mohammad Sujat Ali* v. *Union of India,* AIR (1974) SC 1031, in striking down the aforesaid Rule. A bench of this Court had occasion to consider the ratio of *Sujat Ali's* case along with other important decisions on the D question as to when educational qualification can form basis of classification in matters relating to promotion in the case of *T.R. Kothandaraman* v. *Tamil Nadu Water Supply & Drainage,* JT (1994) SC 657. It has been concluded in this decision the higher educational qualification is a permissible basis of classification, not only for barring promotion, but also for restricting scope of promotion. Reliance on *Sujat Ali's* case by the Bench E of the High Court to hold that the aforesaid amendment having provided ratio 1:1 between two classes was violative of Articles 14 and 16 is, therefore, not sustainable. In *Kothandaraman's* case even ratio of 3:1 was upheld for some service because of historical background etc.

F 4. Shri Seetharamiah, appearing for the respondents, who were the writ-petitioners before the High Court, has streneously urged that incumbents must be law-graduates for promotion to the post of Court Officer. There can be no dispute with this proposition; but a perusal of the amended Rule shows that the same has taken care to see that the only such non-law graduates would be considered for promotion who had capacity G for bench work, which is required to be certified by a Committee consisting of Registrar, the Joint Registrar and the Deputy Registrar (Judl.) This shows that the rule making authority had taken full precaution to see that only a person of tested capacity is promoted to the post of Court Officer. It has also been noted by us that out of the 40 posts of Court Officers not H more than 8 were made available to the non-law graduates; and that too

to those who had completed 20 years of total service. This promotional avenue was opened for those who were at the fag end of their service, as, in the alternative, age of fifty years was required to become eligible. The amendment has shut out further promotion of the non-law graduates promoted as Court Officers. A

5. It is contended by Shri Rao that the present case is squarely covered by the ratio of this Court's recent decision in *Kothandaraman's* case inasmuch as there is historical background also for what has been provided in the amended Rule - the same being that law degree came to be prescribed for qualification for appointment for Court Officer only in 1960, before which this qualification was not essential. It has been brought to our notice that in some other High Court of the country, law degree is not a prescribed qualification for appointment as Court Officers, who are termed as Bench Clerks in those High Courts. B C

6. Keeping in view the aforesaid decision and the salient points of the amended rule noted above, we are of the opinion that the impuged judgment cannot be sustained. We, therefore, set aside the same and uphold the validity of the aforesaid Rule. D

7. The appeals are allowed accordingly. No order as to costs.

A.G. Appeals allowed.