

**(2014) 11 KL CK 0045**

**In the High Court Of Kerala**

**Case No :** Writ Petition (Civil) No. 11117 of 2014 (L)

A. Sageer

APPELLANT

Vs

Kerala State Public Service Commission

RESPONDENT

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**Date of Decision :** 18-11-2014

**Acts Referred:**

**Citation :** (2014) 11 KL CK 0045

**Hon'ble Judges :** Dama Seshadri Naidu, J

**Bench :** Single Bench

**Advocate :** Georgekutty Mathew, Advocate for the Appellant; P.C. Sasidharan and M. Gopikrishnan Nambiar, SCs, Advocate for the Respondent

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## **Judgement**

Dama Seshadri Naidu, J.—The issue in this writ petition concerns itself with the rejection of the petitioners' candidature for the post of Painter Grade II. Complaining that the rejection is based on either curable minor defects or without any substantial reason at all, the petitioners have approached this Court.

2. Briefly stated, all the petitioners, five in number, having the requisite experience of varying periods, applied to the post of Painter Grade II under the 2nd respondent Corporation based on Ext. P1 notification dated 14.05.2008, issued by the first respondent. Initially, through Ext. P13, the first respondent published the list of rejected candidates, which included the names of the petitioners at serial Nos. 55, 128, 417, 503, 399 and 508 respectively. The reason assigned for the rejection of the candidature of all the petitioners is that their experience certificates reflect that they worked on daily wage basis. Assailing the action of the first respondent that the rejection is not in accordance with the recruitment regulations, the petitioners filed the present writ petition.

3. The learned counsel for the petitioners has primarily contended that the petitioners' working as daily wagers is no bar as experience for considering them to the post of Painter Grade II in terms of the notification and the regulations governing the recruitment. He has further submitted that the first respondent

has kept on improving or changing its stand at every turn after the petitioners" filing the writ petition: it supplemented reasons by citing one ground after another in justification of its action in rejecting the candidature of the petitioners. According to him, the first respondent has virtually abandoned its first ground of rejection that the petitioners produced experience certificates showing them as daily wagers and has gone on adding so many other extraneous grounds which never were in the contemplation of the first respondent. The learned counsel has strenuously contended that all the petitioners have more than five years" experience and that they have been eminently suited to be considered for the post of Painter Grade II.

4. The learned counsel for the petitioner has submitted that insofar as the first petitioner is concerned, in terms of Exts. P2 and P3 experience certificates, he has more than five years of service. Concerning Ext. P2 certificate produced by the first petitioner, in the counter affidavit filed by the 1st respondent, contends the learned counsel, a new reason was assigned that the certificate did not contain the date of registration of the institution in which the petitioner worked and gained his experience. The learned counsel would contend that Ext. P2 clearly reveals the registration particulars, save the date of registration, which according to him, is a curable defect. To bolster his submissions, the learned counsel has further stated that concerning many applicants, including the petitioners three to five, the first respondent, having pointed out certain shortcomings or defects in their applications or annexures filed along with the applications, gave opportunity for all of them to cure them, but the same was denied to the petitioner. Eventually, the learned counsel has contended that had the petitioner been given an opportunity, as had been done in respect of others, he would have certainly cured the defect, which, according to the learned counsel, is very minor and technical.

5. Regarding the second petitioner, the objection is that Ext. P4 experience certificate was not attested. In this regard, the learned counsel has submitted that the issuing authority i.e., one of the officials of the 2nd respondent is the Head of the very Division, and as such, there is no other superior authority to attest.

6. Regarding the third petitioner, the objection is that he did not have five years" experience. In response thereto, the learned counsel has submitted that he, in fact, has 63 months 15 days" experience, and as such, the contention of the first respondent cannot be sustained.

7. Insofar as the 4th petitioner is concerned, the first respondent raised an objection that Ext. P7 experience certificate shows the commencement of the petitioner"s service as 10.01.2005, and by the date of filing the application i.e., 18.05.2008, the 4th petitioner did not complete 5 years. In that regard, the learned counsel has contended that Ext. P8, which was subsequently submitted by the 4th petitioner, clearly shows that the commencement of his service, though on temporary basis, in the 2nd respondent Corporation was on

17.01.2002, and by the date of submitting the application, he did complete more than 66 months.

8. Eventually, concerning the 5th petitioner, the objection on the part of the first respondent is that the 5th petitioner is said to have worked at two different places at the same time, as was evident from Exts. P9 and R1(f) experience certificates. According to the learned counsel for the petitioners, on both the occasions, the petitioner worked in different depots of the very 2nd respondent Corporation at different points of time. According to him, there was no substance in the contention of the 1st respondent that the 5th petitioner worked at the same time in different depots.

9. To repel the objections that the experience certificates have not been countersigned or attested and that the petitioners worked on a daily wage basis, the learned counsel for the petitioners has placed reliance on an unreported judgment dated 18.06.2014 in W.P. (C) No. 12948 of 2014 rendered by a learned single Judge of this Court. Summing up his submissions, the learned counsel for the petitioner has urged this Court to allow the writ petition.

10. Mr. E.S. Ashraf, the learned counsel representing the learned Standing Counsel for the 1st respondent, has strenuously opposed the claims and contentions of the petitioners. He has initially contended that going by Ext. P2 experience certificate, the 1st petitioner had only 3 years 6 months" service by the time of his applying for the post. Insofar as Ext. P3 certificate is concerned, it cannot be accepted for the reason that the date of registration of the Institution has not been specified.

11. Concerning the 2nd petitioner, the learned Standing Counsel would contend that Ext. P4 is not a valid certificate as it is not in the proper format in terms of Ext. P1 notification. Elaborating on his submissions, the learned Standing Counsel has submitted that Ext. P4 does not contain the attestation by the Controlling Officer or Head of the Department, as the case may be.

12. Concerning the 3rd petitioner, the learned counsel would contend that Ext. P6, the experience certificate produced by him, shows the petitioner as a part time worker for the period from 04.05.2005 to 16.12.2013. According to the learned Standing Counsel, since the experience under Ext. P6 does not come to five years, the petitioner also produced another certificate dated 19.02.2013 allegedly issued by Reliance Automobiles, Kochi, for the period from 08.02.2003 to 08.04.2005. In that certificate, the nature of assignment was shown as part time. The learned Standing Counsel has strenuously contended that in terms of the eligibility criteria prescribed by the first respondent, the experience as a part time worker cannot be considered.

13. Insofar as the 4th petitioner is concerned, in terms of Ext. P7 experience certificate produced by him, he admittedly worked only on daily wage basis and further the period of experience has not been specified. According to the learned Standing Counsel, Ext. P7 is defective.

14. Insofar as the 5th petitioner is concerned, the learned Standing Counsel has submitted that both Exts. P9 and R1(f) experience certificates were issued by the Assistant Transport Officer, Kattappana. Elaborating on Exts. P9 and R1(f), he has submitted that in Ext. R1(f) the breakup of different phases of the petitioner's experience in different depots of the 2nd respondent was given. While Ext. P9 shows that the 5th respondent worked continuously in one depot, Ext. R1(f) shows he has worked in different depots. Thus, the very genuineness of Exts. P9 and R1(f), contends the learned Standing Counsel, is doubtful.

15. The learned Standing Counsel has drawn my attention to Kerala Public Service Commission, rep., by its Secretary v. Abhishek A.S., (O.P. (KAT) No. 3013 of 2013) an unreported judgment, dated 13.10.2014, rendered by a learned Division Bench of this Court. Based on the said judgment, he contends that once the first respondent, as a recruitment agency, has prescribed particular procedure and any deviation therefrom by the candidates is required to be viewed strictly; ipso facto, whatever corrective steps could be taken should be left for the discretion of the first respondent itself. According to the learned Standing Counsel, laxity in one case will open floodgates of requests to condone irregularities or omissions by various other candidates. Accordingly, he has urged this Court to dismiss the writ petition.

16. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents, apart from perusing the record.

17. The singular issue that falls for consideration is with regard to the validity of the experience certificates produced by the petitioners.

18. At the outset, it is to be placed on record that during the course of scrutiny of applications, petitioners 3 to 5 were given an opportunity by the 1st respondent to rectify what are said to be minor defects in their experience certificates. Those three petitioners have submitted more than one experience certificate covering the same period. Ironically, the process of curing the defects in the experience certificates of the petitioners 3 to 5 seems to have given rise to more discrepancies, as could be seen later.

19. Indeed, this Court, either per a learned single Judge or per a learned Division Bench, has time and again held that this Court cannot sit in appeal over the discretion exercised by the first respondent in accepting or rejecting the applications. In other words, once a particular procedure is prescribed, it is incumbent on the part of the applicants to follow the said procedure. The question that craves an answer is whether the said procedural compliance is to a perfection or whether it admits of any leverage to the applicant. One view is that by devising a dichotomy of minor defects and substantial defects, it should not lead to confusion and chaos, resulting in utter uncertainty.

20. Keeping the above principle in mind, I proceed to decide the claims of the petitioners 1 to 5. In that process, I may address the issues of the petitioners 2 and 5 first. The 2nd petitioner produced Exts. P4 and P14 experience certificates.

Ext. P4 experience certificate is for the period from 09.05.2002 to 19.07.2003 i.e., for 37 months and 10 days, whereas Ext. P14, another experience certificate, is for the period from 01.01.2006 to 31.01.2008, i.e., for a period of 25 months. The experience covered by both certificates put together comes to 62 months 10 days. The fact, however, remains that Ext. P4 has not been attested or countersigned by the Controlling Officer or Head of the same Institution. In this case, Ext. P4 was issued by the Works Manager of the 2nd respondent Corporation. By any stretch of argument it cannot be contended that the Works Manager is either the Controlling Officer or the Head of the Institution. At best, he may be the authority exercising control over the particular depot in which the 2nd petitioner is said to have worked. All other certificates emanating from the 2nd respondent Corporation, as can be seen, have the attestation of the District Transport Officer, who is said to be the superior officer of the District concerned to ratify or authenticate the certificates issued by the individual depots.

21. In fact, clause 21 of the general conditions in Ext. R1(g) notification contains the method of producing the experience certificate. That apart, clause 22 provides the format in which the experience certificate is required to be produced. As per the said proforma, under clause 22, it is mandatory that a designated officer is required to certify the certificate issued by the employer. In the present instance, Ext. P4 does not contain any such certificate of authentication by a superior officer. In my considered view, especially going by the ratio laid down in *Abhishek A.S.* (supra), it is a major incurable defect. Thus, by excluding Ext. P4, if we take into consideration the experience under Ext. P14, it does not come to 5 years. Accordingly, in my considered view, the claim of the 2nd petitioner cannot be accepted and his challenge to the 1st respondent's selection process cannot be sustained.

22. In the case of the 5th petitioner, Exts. P9 and R(f) are the experience certificates. The 5th petitioner worked from 06.05.2004 to 06.04.2006 at Perumbavoor Depot; from 25.05.2006 to 15.06.2008 at Kottayam Depot; from 24.09.2009 to 04.07.2012, at Kattappana Depot. The certificate was issued on 04.07.2012 by the Assistant Transport Officer, KSRTC, Kattappana. It is pertinent to note that though the 5th petitioner is said to have worked in 3 different depots, the experience certificate was issued by the Assistant Transport Officer, Kattappana, Idukki, alone. Ext. P9 certificate was also issued by the very same authority. As per this certificate, the petitioner is said to have worked continuously for 10 years 11 months and 16 days i.e., from 23.01.2003 to 09.12.2013. Ext. R1(f) shows a different period to the effect that the petitioner worked from 06.05.2004 to 04.07.2012. Since Ext. R1(f) was produced at an earlier point of time, the 5th petitioner may have subsequently realised that on the date of his filing the application, he did not complete five years of experience. Accordingly, when the 1st respondent gave an opportunity for him to rectify certain minor defects in Ext. R1(f) experience certificate, he produced Ext. P9 showing a different date of commencement of his service in the respondent Corporation, thus ensuring that he completed 5 years by the date of his filing the

application. In my considered view, no convincing reason has been forthcoming as to the discrepancy in Ext. R1(f) regarding the date of his initial entry into the service of the 2nd respondent Corporation. Accordingly, there is every justification for the 1st respondent to suspect the genuineness of Exts. P9 and R1(f) and thereby disallow the claim of the 5th petitioner from being considered for the post of Painter Grade II. Accordingly, the 5th petitioner's challenge, too, fails.

23. Now I may consider the issue of the other petitioners: Insofar as the first petitioner is concerned, he has produced Ext. P2 and P3 experience certificates. Ext. P2 was issued by KSRTC, whereas Ext. P3 was issued by Pazhavady Engineering Works, Nedumangad. The reason that weighed with the 1st respondent for rejecting Ext. P3 experience certificate is that though it contains registration number of the employer, it did not contain the date when the said entity was registered. As I have already observed, many applicants, including petitioners 3 to 5, were earlier given an opportunity at the time of scrutinizing the applications to rectify minor defects concerning the omission of registration numbers or dates thereof or such other minor discrepancies. In the present instance, the first respondent has never doubted the genuineness of Ext. P3 certificate. In W.P. (C) No. 12720 of 2014, the petitioner therein was given an opportunity by the first respondent to rectify the mistake of not mentioning the registration number of the employer. As a matter of parity of treatment, the first respondent ought to have given the same benefit to the first petitioner as well, but it was denied. Indeed, in *Abhishek A.S. (supra)* a learned Division Bench has delineated on the scope of judicial review over the official discretion in the matters of selection, especially in the matters of scrutiny of applications. Nevertheless, the first respondent cannot allow one person to cure the defect and another to perish on the same defect. Had it been an invariable stand of the first respondent with regard to all applications, the action of the first respondent very well accords with the ratio of *Abhishek A.S. (supra)*. I am, therefore, of the view that the rejection of the 1st petitioner's application on the ground alone cannot be sustained. On the other hand, the said experience certificate was attested by the Assistant Labour Officer, Nedumangad, thus authenticating its genuineness. Accordingly, in my considered view, the objection of the first respondent regarding the validity of Ext. P3 cannot be sustained and his candidature is required to be considered, provided he is suitable in all other respects, going by Ext. R1(g) general conditions and other eligibility criteria.

24. Moving on to the issue of the 3rd petitioner, we can see that he produced Exts. P5 and P6 experience certificates. It is the contention of the first respondent that apart from Exts. P5 and P6 experience certificates, the 3rd petitioner also produced another experience certificate dated 19.02.2013. That certificate allegedly showed the nature of experience as part-time worker. In terms of Ext. R1(g) general conditions, a part-time worker is not eligible to be considered for the post in question. The first respondent, apart from taking the said plea in its additional counter affidavit, has however not produced the alleged

certificate said to have been produced by the third petitioner. It is pertinent to observe that the first respondent has filed its defence - counter affidavits - incrementally, more than one time, taking different stands at different times. In other words, the first respondent has in phases introduced different grounds for rejecting the applications of the petitioners, thus exposing its stand to being vulnerable and susceptible to the dictum of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

25. Be that as it may, despite repeated opportunities having been availed, the first respondent has not produced the alleged experience certificate dated 19.02.2013. Thus, in my considered view, in the absence of the said discrepant experience certificate, no conclusion can be arrived at affecting the right of the 3rd petitioner. I am, therefore, of the opinion that the first respondent is required to consider the candidature of the 3rd petitioner, provided he is otherwise eligible in terms of Ext. R1(g) general conditions and other eligibility criteria.

26. Insofar as the 4th petitioner is concerned, he has produced Exts. P7 and P8 experience certificates. The objection raised by the first respondent is that it reflects the nature of the 4th petitioner's employment as daily waged. This objection, however, need not detain us any longer in the light of the judgment rendered by this Court in W.P. (C) No. 12948 of 2014, wherein it is clearly held that a daily wager is also required to be considered for the post in question. At the same time, even Ext. R1(g) general conditions also accept the experience of a daily wager in a factory as valid experience.

27. Looking at Ext. P7, we can see that the 4th petitioner is said to have commenced his service on 10.01.2005 and he was continuing therein by the date of issuance of certificate i.e., 30.11.2013. As such, it was mentioned as "from 10.01.2005" "onwards". The gap immediately following was required to be filled up with the quantum of the period, but it was left blank. On this ground, the first respondent seems to have rejected Ext. P7. In my considered view, it cannot be treated even as a minor defect unless one is inclined to take a hyper technical view. It is very clearly mentioned that the 4th petitioner commenced his service at one particular point of time and continued to be in service by the time the certificate was issued.

28. "Onward(s)", functionally an adverb, is defined in Concise Oxford English Dictionary as: 1. in a continuing forward direction; ahead. Forward in time. Cambridge Advanced Learner's English Dictionary defines it as: beginning at a particular time and continuing after it. It is not in dispute that the 4th petitioner had more than five years' experience by the time he applied for the post and that he continued in service even by the time Ext. P7 certificate was issued. Omission to quantify the period, which is a matter of arithmetic, cannot, in my considered view, be fatal to the case of the 4th petitioner. Thus, I do not see any valid reason to sustain the objection of the 1st respondent regarding the validity of the certificate produced by the 4th petitioner. I am, therefore, inclined to direct, and accordingly direct, the first respondent to consider the candidature of

the 4th petitioner, too, in terms of Ext. R1(g) general conditions, as well as other eligibility criteria.

29. Needless to observe, the first respondent may expedite the process in the manner indicated above and include the name of the petitioners 2 to 4 in the rank list as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. It is further made clear that if "advices" have already been issued to any other candidates by this point of time, the direction of this Court in the present writ petition shall not affect their career prospects adversely.

With the above observation, the writ petition is disposed of.