
(2011) 05 KL CK 0063

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 497 and 7679 of 2010

Abdul Salam, N. P.

APPELLANT

Vs

Executive Engineer and Others

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Citation : (2011) 3 ILR (Ker) 86

Hon'ble Judges : P. Q. Barkath Ali, J;A. K. Basheer, J

Bench : Division Bench

Advocate : K. R. B. Kaimal, Dr. V.N. Sankarjee, Sri Anil K. Nair, Sri B. Unnikrishna Kaimal and Sri V. Madhusoodanan, for the Appellant; S. Radhakrishnan, S.C. for Lakshadweep Administration for respondents 1 and 2, Sri T. Ravikumar, Smt. G. Ambili, Sri R. Ramadas, Sri P. V. Mohanan, Smt. Athira Raveendran and Smt. M.K. Aswathi for other respondents, for the Respondent

Final Decision : Allowed

Judgement

Basheer, J.—The Judgment of the Court was delivered by --Since the issues involved in these writ petitions are common and closely inter related and also since they arise from the common order passed by the Central Administrative Tribunal, Ernakulam Bench in a batch of Original Applications, they are being heard and disposed of through this common judgment.

2. Bereft of unnecessary details, the facts which are essential for disposal of these cases may be briefly noticed.

3. Department of Electricity under the Administration of the Union Territory of Lakshadweep issued Annexure A-1 notification on April 22, 2008, inviting applications from eligible candidates for appointment to the post of Oilman/ Mazdoor. In fact, ten vacancies were notified in the said notification. Later, a corrigendum notification was issued on July 24, 2008 indicating that only seven vacancies were available. (We will deal with this issue a little later).

4. The educational qualifications prescribed for the post in the notification are

extracted hereunder:

1. SSLC pass.

2. ITI Certificate in Electrician, Wireman or Mechanic Diesel.

(Emphasis supplied)

5. It is beyond controversy that candidates holding Diploma in Electrical and Electronics Engineering and Mechanical Engineering were also considered for selection to the post. Ultimately, Annexure A-4 select list dated October 3, 2008 was published by the Executive Engineer (Electrical). The list comprised of ten selectees in the main list and six in the wait list.

6. This select list was challenged before the Tribunal by I.T.I Certificate holders contending inter alia that the entire selection process was vitiated in as much as the candidates who possessed higher and different qualifications, namely, Diploma in Electrical and Electronics Engineering and Mechanical Engineering, were not only brought within the zone of consideration illegally, but also many of them were in fact selected in total violation of the qualifications prescribed and notified in Annexure A-1 notification. It was further contended that Diploma holders could not have been considered at all for selection, going the the Recruitment Rules.

7. In the other two Original Applications, the primary challenge was against clubbing of the vacancies for the recruitment years 2006, 2007 and 2008 under a single notification and also against granting of age relaxation by two years to all candidates. In O.A.No. 17/2009, the applicant, who had submitted his application against the vacancy for the year 2006, raised a further contention that the selection process was completed in total violation of the orders issued by the Administration in Annexure A-7 and also that the select list prepared by the Recruitment Committee was shelved and a new list was published by the Executive Engineer who had no authority to do so.

8. The Administration and the Departmental Officers stoutly denied the allegation that the selection process was vitiated in any manner. It was contended that the educational qualification indicated in the notification was "the minimum requirement" and this did not debar the persons with higher qualifications being considered for appointment. It was further contended that "candidates possessing higher qualifications were not given any preference over the candidates who were having only essential qualifications and that the percentage of marks secured in Degree/Diploma exams were only considered for selection and it was reported that no additional mark was allowed for their higher qualification". The allegation that age relaxation to the extent of two years was given to some of the candidates in violation of the Rules was also denied. According to the Administration, age relaxation was given in tune with the amended Rules. We will deal with the other contentions raised by the Administration a little later.

9. The Tribunal, after considering the rival contentions of the parties, gave its seal of approval to the selection process held by the Administration. The Tribunal took the view that since the Diploma holders were not given any additional mark for their higher qualification and since they were treated on par with ITI Certificate holders, there was no room for any heart burn for the latter. Similarly, the Tribunal took the view that since age relaxation was given in a uniform manner, there was no room for any grievance for any of the candidates.

10. The challenge against clubbing of the vacancies for three recruitment years in a single notification and competing the selection under a single process was also repelled by the Tribunal. According to the Tribunal, there was no mala fide in the above action. Thus, the Tribunal dismissed the Original Applications holding that the process of selection had been completed by the Administration in tune with the Recruitment Rules and also in a fair and transparent manner.

11. The first question that has to be considered is whether the Administration was justified in deviating from the prescriptive clause relating to educational qualification as notified in Annexure A-1 notification. It has been noticed already that the minimum educational qualification fixed for the post is "pass in SSLC and ITI Certificate in Electrician. Wireman or Mechanic Diesel". It is the admitted position that several candidates who possessed Diploma in Electrical and Electronics Engineering as well as Mechanical Engineering have been included in the select list (Sl. Nos.1, 2, 7 and 9). In this context, it may be noticed that no written test or viva voce was held in the selection process. It is on record that the select list was prepared on the basis of the marks obtained by the candidates in the SSLC Examination and the ITI or Diploma, as the case may be.

12. It is fairly conceded by the learned standing counsel for the Administration and the other contesting respondents that the syllabus or subject content of course of study for ITI Certificate and Diploma Certificate would be totally different. In the counter-affidavit filed by the Administration, before the Tribunal, it was fairly conceded that Diploma is a higher qualification. But, according to the Administration, no additional marks were given to the Diploma holders nor were they given any preference over the ITI Certificate holders. To a query put by us as to what was the true element of selection that had gone into the exercise carried out by the Department, there was no response at all. It appears that the marks obtained by the candidates, whether he is an ITI Certificate holder or Diploma holder, were added up and those who obtained higher percentage were placed at the top of the list. How could an ITI Certificate holder be treated on par with a Diploma holder in Engineering subjects? There is no clue. Still further, going by the essential qualification prescribed for the post, ITI Certificate must be in Electrician course or Wireman course. In other words, the candidates must be a proficient Electrician or he must be having proficiency in wiring. The Diploma holders, who were included in the select list, had obtained their Diplomas in Electrical and Electronics or in Mechanical Engineering. The Administration and the Department concerned have not been able to give a

proper explanation as to how these two categories could have been treated on par with each other and selection made on the basis of the marks obtained by them in two different streams. In our view, the appointing authority has made a fundamental mistake in following such a procedure of selection. On that short ground, the selection process is liable to be set at naught

13. The next question to be considered is whether the Administration was justified in clubbing the vacancies for three recruitment years, namely 2006, 2007 and 2008, in a single selection process. It is not in dispute that two vacancies to the post of Oilman/Mazdoor were notified for the year 2006 and yet another vacancy for the year 2007 was notified later. However, no selection process was held pursuant to those notifications. It appears that seven more vacancies arose for the recruitment year 2008. All these vacancies (2+1+7) were notified under Annexure A-1 notification on April 22, 2008. A little later, in July 2008, a corrigendum notification was issued clarifying that the number of vacancies notified in Annexure A-1 has to be treated as only seven. But the Administration admitted that all the applications received for the three recruitment years referred to above (46 for the year 2006, 22 for the year 2007 and 90 for the year 2008) were considered together, since the post in question and the educational qualifications and the criteria for selection for the three recruitment years were the same.

14. But, as rightly contended by the petitioner in W.P.(C) No.497/2010, who is the applicant in O.A.No. 17/2009, the appointing authority had denied a level playing field to the candidates who had applied against the vacancies for the years 2006 and 2007. According to the petitioner, he would have stood a better chance if the applications received for the recruitment year 2006 were considered separately. In fact, it is pointed out by the petitioner that in Annexure A-11, the Recruitment Committee had placed him at Sl. No.2 in the select list prepared for the year 2006. But, this list never saw the light of the day. Surprisingly, Annexure A-4 select list was published in which petitioner could not find a place for reasons unknown.

15. But, according to the Administration, Annexure A-4 list was prepared strictly on the basis of the marks obtained by all the candidates. However, it is admitted that no separate lists for the three recruitment years were prepared. No explanation has been offered why that was not done especially in view of the corrigendum notification issued by the Administration after publication of Annexure A-1 notification. If, in fact, only seven vacancies were available, those seven vacancies related to the recruitment year 2008 only. The Administration has not given any reasons as to what happened to the two vacancies for the recruitment year 2006 and one vacancy for the year 2007. But, curiously, Annexure A-4 select list contains the names of ten selectees which obviously indicates that all the ten vacancies are proposed to be filled up.

16. There is yet another aspect of the matter. In Annexure A-7 order dated April 28, 2007, the Administration had issued certain directions with regard to the

selection of candidates to Group "C posts. Going by these guidelines, not less than 85% of the total marks have to be earmarked for the essential qualifications stipulated in the Recruitment Rules and the remaining 15% to "desirable qualifications/experience/higher qualifications".

17. More importantly, it has been further directed in the said order that a Recruitment Committee in each and every case of recruitment shall be constituted before the notification of the posts for recruitment. Though there is nothing on record to indicate that a Recruitment Committee had been constituted prior to the issuance of Annexure A-1 notification, it is submitted by Sri Radhakrishnan, learned standing counsel for the Administration, that such a Committee was, in fact, constituted and it was entrusted with the task of selection. Annexure A-11 will show that the Recruitment Committee, comprising of Executive Engineer (Electrical), Director (Agricultural) and Assistant Executive Engineer (Electrical), had, in fact, carried out the assignment entrusted with them. After enlisting the candidates who were included in the select list for the three recruitment years, the Committee had recommended two candidates from the rank list of 2006 [Sl. No.2 is the petitioner in W.P.(C) No.497/2010], one candidate from the rank list of 2007 and seven candidates from the rank list of 2008. But, as has been mentioned earlier, the recommendation of the Selection Committee was apparently overruled and Annexure A-4 select list was prepared and published. Who completed this elimination/ selection process? There is no answer. Under what authority was it done? Yet again there is no answer. What is the sanctity of the Recruitment Committee? No clue.

18. Having considered the above aspects of the matter, we find considerable force in the submissions made by the learned counsel for the petitioner in W.R(C) No.497/2010 that Annexure A-7 order issued by the Administration was totally overlooked by the appointing authority. For that reason also, the select list is liable to be nullified and quashed.

19. What remains is the question of age relaxation. We do not find any merit in the contention raised by the petitioners in this regard since, obviously, the relaxation was given in terms of the order issued by the Administration. However, we do not propose to pronounce on this issue at this stage. We make it clear that said question shall also be looked into by the Administration at the appropriate level and if there is any anomaly, it shall be rectified.

20. Several decisions have been cited before us by learned counsel for the parties on either side. In *Sunil v. Public Service Commission* 2008 (3) KLT 384, a Division Bench of this Court, while considering the relevant Rule in Survey and Land Records Subordinate Services Rules, held that holding of Diploma or Degree in Civil Engineering will not pre-suppose acquisition of ITI Certificate in Surveyor Trade. The Court further held that the Degree/Diploma in Civil Engineering is not a prescribed or equivalent or alternate qualification for the post of Surveyor Grade II.

21. In *Suma v. Kerala Public Service Commission* ILR 2010 (4) Ker 974 : 2011 (1) KLT 1, the question that came up before a Full Bench of this Court was whether the Public Service Commission could recognise a Master's Degree in any other branch as an equivalent to the qualification prescribed under the Kerala Chemical Examiner's Laboratory Service Special Rules, 1997. The above question was answered by the Full Bench in the negative.

22. However, Sri Radhakrishnan, learned standing counsel for the Administration, invites our attention to the decision of their Lordships of the Supreme Court in *Jyoti, K. K. and Others v. Kerala Public Service Commission and Others* J.T. 2002 (Suppl.1) S.C. 85 and contends that the legitimate right of a candidate for selection to a post cannot be denied to him on the ground that he is over qualified. The following observation of their Lordships has been highlighted by the learned counsel in this context:

If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post.

(Emphasis supplied by us).

23. It may at once be noticed that the above dictum will have no application to the facts available in the case on hand. As has been noticed already, the Diploma obtained by the selected candidates can, by no stretch of imagination, be said to be in the same faculty. They have obtained their Diplomas in Electrical and Electronics Engineering and Mechanical Engineering. The ITI Certificate prescribed for the post of Oilman/Mazdoor is in Electrician and Wireman or Mechanic Diesel. Obviously therefore, a Diploma holder in Electrical and Electronics Engineering cannot be treated on par with an ITI Certificate holder in Wireman and Electrician course. In that view of the matter, we do not find any merit in the contention raised by the learned standing counsel for the Administration.

24. Yet another decision pointed out by the learned standing counsel is *Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others*, In this case, recruitment was made to the post of Peon in District & Sessions Court in the State of Maharashtra. A pass in Standard IV examination in the regional language was prescribed as the requisite minimum qualification. As many as 14,965 applications were received as against 66 vacancies which were notified. Therefore, the appointing authority had short listed the candidates. The question that arose was whether the short listing of the candidates was just and reasonable. In the peculiar facts and circumstances of the above case, their Lordships held that "a criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational". But, it was observed further that "the fact that those candidates who possessed qualifications equivalent to SSC Examination could also not be considered". Their Lordships hastened to add

that this view was being taken "on the facts of the case in hand and should not be understood as laying down a rule of universal application". The above observation is the apt answer to the contention raised by the learned standing counsel.

25. In the above facts and circumstances, the impugned order passed by the Central Administrative Tribunal is set aside. Annexure A-4 select list is quashed. It is made clear that it will be open to the Administration to complete the selection process on the basis of the notifications already issued. However, the vacancies for the three recruitment years shall be filled up separately after conducting separate selection process from among the eligible applicants who had applied for the post for the respective recruitment year.

Writ petitions are allowed.