

(2021) 01 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13433, 13460 Of 2020

Ajay Krishnan And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0035

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : Sadchith P. Kurup, C.P. Anil Raj, P. Vijayakumar, V. Vijitha, N.S. Daya Sindhu Shree Hari

Judgement

1. The prayers in these writ petitions are with regard to rejection of candidature for the post notified by the 3rd respondent on 21.7.2018. In W.P.(C) No.13433/2020, Ext.P3 is the notification. It is submitted that the petitioner in W.P.(C) No.13433/2020 had submitted Ext.P4 application pursuant to the notification. It is stated that by an inadvertent mistake, the gender of the petitioner was wrongly shown as 'female' in the application. The petitioner was called for a written examination, the admit card of which is produced as Ext.P5. Thereafter, a call letter for a physical standard and efficiency test was also received by the petitioner, who participated in the said test. Ext.P6 is the report of the test. It was only at this stage that the petitioner became aware of the mistake in the application. Ext.P7 representation, therefore, was filed before the 3rd respondent. However, the petitioner's candidature was rejected on the ground of mistaken gender in the application.

2. The learned counsel for the petitioner submits that the mistake in the application was a result of an inadvertent omission which occurred in the Akshaya Centre when the application was uploaded and that the petitioner, who is otherwise fully eligible for participating in the selection, cannot be denied a chance to do so only on account of an inadvertent and insignificant error. A decision of the High Court of Rajasthan is produced as Ext.P9 and relied on by

the petitioner. It is submitted that though Ext.P10 judgment was rendered directing a consideration of the issue in the light of Ext.P9 judgment, by Ext.P11 order, the claim of the petitioner has been rejected without considering any of the relevant facts. It was found that the notification was categorical that no corrections would be permitted after the submission. It is stated that the notices uploaded in the website had also specifically declared that requests for change of any data filled wrongly by the candidate in their online application forms like category, gender, domicile state/district, etc. shall not be entertained by the Commission. It is further stated in Ext.P11 that recruitment is made separately for 'male' and 'female' candidates and cut off marks and criteria are decided separately. It is stated that the change of data including that of gender at any stage of the recruitment would disrupt the normal recruitment process and cause serious administrative problems.

3. The learned counsel for the petitioner submits that the issue has been decided in several cases and the High Court of Delhi had permitted the correction even in the date of birth where the mistake was purely involuntary and no advantage was derived from the same. A decision of the Apex Court in *State of Haryana and others v. Dinesh Kumar* [2008 (1) KHC 715] is relied on to contend that the understanding of facts by a layman has to be considered by the court while deciding their conduct and highly technical interpretation should be avoided. It is, therefore, contended that the slight error is liable to be overlooked and the petitioner is to be included in the selection process which is ongoing.

4. In W.P.(C) No.13460 of 2020 also, the petitioner was an applicant pursuant to the notification dated 21.7.2018. In the said case, he had wrongly entered the domicile district. It is submitted that the petitioner is a native of Mavelikkara in Alappuzha District. But, he had wrongly shown his domicile district as Pathanamthitta because he was born in Panthalam. It is submitted that the candidature was rejected by Ext.P9. The learned counsel for the petitioner submits that the petitioner is aged 23 years and that an insignificant error in the filling up of his domicile district, which has no impact on the selection, should not be relied upon to deny the benefits to the petitioner.

5. In W.P.(C) No.13460/2020, a counter affidavit has been placed on record by the respondents. It is submitted that the candidates had been specifically notified of the caution necessary in filling the online application forms and it was specified that any mistake in providing information about the domicile State and District would result in the rejection of the candidature summarily. It is contended that there are a large number of applicants to the post notified on 21.7.2018 and that the extension of any relaxation in respect of mistakes in application forms to the petitioners will result in derailing the entire selection process. It is contended that in view of the specific caution raised in the notification itself, the petitioners, who are aspirants for uniform post in the Armed Services ought to have been careful in the filling of their application forms. The learned counsel for the petitioner relies on a decision of the High Court of Bombay in *Rajesh Sominath*

Nilakha v. The Union of India and others [W.P.(C) No.4761 of 2020] to contend that orders of disqualification on the ground of wrong mentioning of domicile district had been set aside by a Division Bench of the Bombay High Court and the petitioner's application was directed to be considered in identical circumstances.

6. I have considered the contentions advanced on either side. The petitioners contend that their candidature is being rejected on highly technical grounds relying on insignificant errors which have occurred in the filling up of the applications. The learned Assistant Solicitor General appearing for the respondents, on the other hand, contends that the selection is conducted for a large number of posts and there are several applicants from all over the country for the same. It is contended that the admitted mistakes in the applications, however minor, would result in the candidature being forfeited. It is stated that this aspect was specifically mentioned in the notification itself, the full text of which has been made available by the learned Assistant Solicitor General for a perusal before this Court.

7. It is not in dispute before me that the petitioner in W.P. (C) No.13433/2020 had wrongly mentioned the gender in the application form. A reading of Ext.P3 notification would show that there were no fees prescribed for the application, if the candidate is a woman or one belonging to Scheduled Caste, Scheduled Tribe or Ex-Servicemen. Clause 7(i) states that Rs.100/- would be payable as fee for the application. Clause 7(iv) states that applications received without the prescribed fees shall not be considered and shall be summarily rejected. No representation against such rejection will be entertained. Ext.P4 is the application admittedly submitted by the petitioner. It would show that not only was a gender shown as 'female', but the application was submitted without any fee since the fee was shown as exempted in Ext.P4.

8. The Apex Court in T. Jayakumar v. A. Gopu and another [(2008) 9 SCC 403] has specifically considered the rejection of an application at the interview stage. It was held that a defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part of the selection process. However, it was held that, that does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It was held that the Tribunal and the High Court erred in permitting the petitioner to participate in the selection process.

9. In W.P.(C) No.13433/2020, it is not in dispute before me that the application was submitted with the gender shown as 'female'. The contention of the petitioner is that there would be no difference in the process even if there is a mistake in the gender in the application. However, I find that the said submission has to fail in the initial scrutiny itself. The application, if submitted as a 'male' candidate, was liable to be accompanied by a fee of Rs.100/-. Ext.P4 would show that no such fee had been paid as the petitioner's application was submitted as a 'female' candidate with an exemption in the fee. If that be so, the later correction

of the gender by itself would not cure the defect since the application would be defective as one submitted without payment of fees.

10. This Court, in a series of decisions, had held time and again that the defects in applications, however insignificant they may appear, cannot be permitted to be corrected during the course of the selection since laxity in one case will leave open the floodgate of request to condone irregularities or omissions. It was held that cases of mistakes in applications cannot be decided on sympathies or by extending any other extenuating considerations. The decisions of the Division Bench of this Court in Rangaswamy v. Kerala Public Service Commission [1982 KLT 574] and Susheela v. Kerala Public Service Commission [2010 (4) KLT 986] and of learned Single Judges of this Court in Binimil K. G. v. PSC [1997 KHC 262], Asha Manju K. M. v. KPSC, Rep. By its Secretary and Another [2010 KHC 104], Shaiji Cherukkattil v. The Kerala Public Service Commission and another [2010 (4) KHC 805] and Neena N. K. v. The Kerala Public Service Commission and another [2010 (1) KLT 258] are but a few of the decisions on the point. I find that all the contentions of the petitioners including the judgment referred to in Ext.P9 has been specifically considered while passing Ext.P11 order. For the above reasons, I am of the opinion that the contentions of the petitioner cannot be accepted.

11. However, the learned counsel for the petitioner in W.P. (C) No.13460/2020 brought to my attention a decision of the Division Bench of the High Court of Bombay in Rajesh Sominath Nilakha v. The Union of India and others [W.P. No.4761 of 2020]. It is contended that for the same mistake of wrongly mentioning the domicile district, the Bombay High Court had set aside the order disqualifying the petitioner and had directed the consideration of his application. In the light of the binding decisions of the Apex Court and of this Court, I am of the opinion that the claim of the petitioners for acceptance of their candidature cannot be accepted. However, since the selection is a nation wide exercise, the respondents obviously cannot adopt different standards in different states. In the circumstances, I make it clear that in case the candidature of any candidate who had committed the same error is being considered in the selection process, the case of the petitioners shall also be considered.

The writ petitions are ordered accordingly.