
(2014) 06 KL CK 0134

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 12948 of 2014

Ali Mohammed

APPELLANT

Vs

Kerala State Road Transport Corporation

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Citation : (2014) 3 KLT 776

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, Advocate for the Appellant; Babu Joseph Kuruvathazha and P.C. Sasidharan, Advocate for the Respondent

Judgement

C.K. Abdul Rehim, J.—The petitioner is a candidate who participated in the selection conducted by the 3rd respondent for appointment to the post of Painter Grade II in the 1st respondent Corporation. He was successful in the written test conducted for the selection. Based on direction issued by the 3rd respondent, the petitioner had produced Ext. P4 Experience Certificate, within the time stipulated. His name was included in Ext. P5 short list prepared for the selection. Thereafter he was directed to be present for verification of Certificates, on 20.12.2012. When he was present for the certificate verification, no objection was raised with respect to admissibility of any of the documents produced. But when Ext. P8 rank list was published the petitioner's name was not included. In Ext. P9 list published enumerating the names of candidates rejected for selection, specific reason mentioned for the rejection of candidature of the petitioner is that, "experience certificate as daily wages". The petitioner is challenging Ext. P9 to the extent it rejected his candidature and Ext. P8 rank list to the extent it had not included the name of the petitioner. Contention of the petitioner is that, at no point of time any defect was pointed out with respect to the Experience Certificate produced. It is contended that the petitioner had gained the requisite experience from the 1st respondent Corporation itself, by working as empanelled employee (Painter) on daily wage basis. The reason for

rejection that the Experience Certificate with respect to daily wage employment cannot be accepted is contrary to provisions contained in R. 10(ab) of Part II of K.S. and S.S.R., is the contention.

2. In the counter affidavit filed on behalf of the 3rd respondent it is mentioned that, it is only due to an inadvertent mistake that the reason for rejection is shown as "experience certificate as daily wages" in Ext. P9 list/Actually the reason for rejection was due to the defect that the name of the "Attesting Officer" was not stated in the Experience Certificate produced. The Experience Certificate is not in conformity with the prescribed format contained in the general conditions of the notification, is the contention.

3. Question arises as to whether daily wage employment can be considered as experience prescribed under the recruitment Rules. R. 10(ab) of Part II K.S. and S.S.R. provides that where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or unpaid apprentices, trainees and casual labourers in Central or State Government Service or in Public Sector undertaking or in registered private sector undertaking, after acquiring the basic qualification prescribed for the post. Therefore it is evident that, experience gained in all capacities other than paid or unpaid apprentices, trainees and casual labourers should be accepted as requisite experience, whether it is by virtue of permanent or temporary or other appointment. Further, proviso to R. 10(ab) prescribe that experience gained as a factory workers on daily wages of a permanent nature may be accepted if the service is continuous and not of a casual nature. In the case at hand Ext. P4 Experience Certificate produced would indicate that the petitioner had worked as empanelled Painter under the 1st respondent Corporation itself, on a daily wage basis, for a period of 5 years and 3 days. The certificate was issued by the Works Manager of the 1st respondent Corporation at the Regional Workshop at Edapal and it was attested by the very same officer. The certificate bears signature, date, designation seal of the officer and also office seal of the establishment. Therefore it is evident that the petitioner had worked on a daily wage basis for a continuous period in the 1st respondent Corporation. As held by a Division Bench of this court in Sulochana, A.C. Vs. Kerala Public Service Commission, the main part of R. 10(ab) provides that the experience gained by a person on temporary or regular appointment otherwise than in the capacity of paid or unpaid apprentices, trainees or casual workers is eligible to be reckoned as experience gained for the purpose of the said rule. It is held therein that it would be a mockery of justice in terms of the socio-economic goals of the Constitution to say that a person who had worked for nearly six years, that too, in an institution of the State Government, cannot be treated as one who had gained six months experience merely on the ground that wages due to that person was paid on daily rated basis. For all intents and purposes, the quality of employment and experience gained thereby is the experience gained as one employed on temporary appointment in a capacity other than paid or

unpaid apprentices, trainees or casual workers.

4. On the basis of the situation as mentioned above and on the basis of dictum contained in the ruling cited, it is clear that the reason mentioned in Ext. P9 is not sustainable. The reason for rejection mentioned in the counter affidavit is that there is an omission to mention name of the person who had attested the certificate. As already mentioned, it is a certificate issued by the Works Manager of the Regional workshop of the 1st respondent Corporation. The certificate bears his signature, date and designation seal. It also bears the Office Seal of the establishment. Therefore this court is of the opinion that the reason mentioned that the particulars contained are not in conformity with the format prescribed, cannot be accepted. The omission to mention the name of the "Attesting Officer" is totally insignificant in the context as far as genuineness of the certificate is not at all doubted. Under the above mentioned circumstances the Writ Petition is allowed. Ext. P9 is hereby quashed to the extent it rejected candidature of the petitioner. The 3rd respondent is directed to include name of the petitioner in Ext. P8 rank list in appropriate position and to advise his name for appointment in accordance with the seniority and eligibility based on the rules of the reservation and rotation. Needful steps in this regard shall be taken within two weeks from the date of receipt of a copy of this judgment.