
(2014) 03 KL CK 0129
In the High Court Of Kerala
Case No : W.P. (C) No. 5271 of 2014

Babu T.

APPELLANT

Vs

Kerala State Road Transport Corporation, Tvm and Another

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Road Transport Corporations Act, 1950 — Section 45, 45(1), 45(2), 45A

Citation : (2014) 2 ILR 511 : (2014) 2 KHC 130 : (2014) 2 KLJ 640 : (2014) 4 KLT 826

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : Sajeev Kumar and K. Gopal, Advocate for the Appellant; Babu Joseph Kuruvathazha, Standing Counsel, KSRTC, Advocate for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is working as an Inspector of the 1st respondent Corporation. His next promotion is to the post of Assistant Transport Officer. Hitherto, Inspectors like the petitioner were being given promotion to the next higher post on the basis of their seniority alone. However, the situation has been altered by the 1st respondent by bringing into force the Kerala State Road Transport Corporation [Qualification and Method of Appointment of Higher Division Officers] Regulations, 2012, which is Ext. P1. The Regulations have been framed u/s 45(2) of the Road Transport Corporation Act, 1950 (hereinafter referred to as "the Act" for short). They have been approved by the Kerala Public Service Commission also. Ext. P1 contemplates 3 modes of recruitments, namely, Direct Recruitment, Internal Recruitment and Promotion. The petitioner is concerned only with the recruitment by promotion. The only qualification prescribed by Ext. P1 for promotion, which is confined to 60% of the vacancies is the following:

Selection by DPC based on seniority and merit from among the feeder category of Transport Inspectors.

Since the petitioner satisfies the above qualifications, it is contended that he is

entitled to be promoted to the next higher post.

2. However, as per Ext. P3, it is insisted that for promotions after 01/01/2014, an additional qualification of a pass in the Manual of Office Procedure Test ("MOP" for short) and KSRTC Manual test is compulsory. Ext. P3, according to the petitioner, cannot alter the stipulations contained in Ext. P1. Therefore, it is contended that the petitioner is entitled to promotion, without a pass in the said tests.

3. According to Sri Sajeew Kumar K. Gopal, who appears for the petitioner, Ext. P1 which came into force on 16/10/2012 has got the approval of the Kerala Public Service Commission also. Ext. P3 had come into force on 22/05/2012. Therefore, it is contended that while bringing into force Ext. P1 Regulations, the authorities were fully aware of the bipartite settlement on the basis of which the additional qualifications are insisted upon, now. The fact that no stipulation regarding passing of any Departmental Test was incorporated into Ext. P1 leads to the irresistible conclusion that, the authorities had consciously decided not to insist on any such condition. At any rate, not having incorporated such a condition into Ext. P1, the same cannot be insisted upon additionally by the issue of a Memorandum like Ext. P4. Since Ext. P1 has been issued after Ext. P3 Bipartite Agreement was finalized it has to be held that Ext. P1 has to get precedence over the said agreement. Ext. P1 being a regulation that is issued u/s 45 of the Act, the stipulations therein can be altered only by a suitable amendment thereof by the competent authority. Even if it is assumed that the authorities are competent to insist on an additional qualification, it is contended that, sufficient time should be granted to the petitioner and others to acquire the said qualification.

4. A counter-affidavit as well as an additional counter-affidavit have been filed on behalf of the respondents. According to the respondents, the Departmental Tests that are required to be passed by the petitioner and other Inspectors are tests that are normally passed by Lower Division Clerks as a condition for the declaration of their probation. With the object of improving the efficiency of the organisation, a minimum requirement is insisted upon as a condition for promotion to the higher posts in the service of the 1st respondent. The post of Assistant Transport Officer is a key post, the said person being the officer-in-charge of an entire Depot. Each Depot has more than 1000 employees, all working under the Assistant Transport Officer. Therefore, it is necessary to ensure that the person is competent to discharge the onerous responsibilities of the post to which he is promoted, before a promotion is granted to him. The contention of the petitioner that himself and the other inspectors like him are not willing to acquire even the said minimum qualification, cannot be countenanced, it is contended. According to the learned counsel, the Memorandum Ext. P4 has been issued pursuant to the Bipartite Agreement, which is binding on all employees, irrespective of the Union to which they belong. The said agreement, having been published in the Gazette after approval of the Government, is per se

binding. According to the Standing Counsel, while Ext. P1 is dated 16/10/2012, Ext. P3 agreement was approved by the Government on 27/11/2013, which is after the date of issue of Ext. P1. Therefore, the contention that the authorities were aware of the provisions of Ext. P3 agreement while bringing into force Ext. P1, cannot be accepted. The learned counsel places reliance on the decision of the Apex Court in *Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., and I.T.C. Ltd. Workers' Welfare Assn. v. Mgmt. of I.T.C. Ltd.* 2002 (1) LLJ 848 (SC) in support of his contention that the Bipartite Agreement is binding on all parties. For the above reason, it is contended that, the contention of the petitioner is unsustainable.

5. Heard. Ext. P1 Regulations have been framed u/s 45(1) of the Act. The Government Order dated 16/10/2012, by which Ext. P1 has been brought into force, expressly declares that the same is "in supersession of any other previous recruitment regulations or set of rules in force for selection and appointment of Assistant Transport Officers/Administrative Officers/Depot Engineers in KSRTC." The above has been reiterated in Ext P1 again to make it clear that the regulations have been issued in exercise of the powers conferred by Clause (c) of sub-section 2 of Section 45 of the Act "and in supersession of all the existing regulations". It is further declared that, the regulations were being introduced with the approval of the Government. As per the regulations, 25% of the vacancies of Assistant Transport Officers are to be filled up by Direct Recruitment, 15% by internal recruitment and the remaining 60% by promotion. For all the above recruitments, separate qualifications are stipulated.

6. In this case we are concerned only with the third method of recruitment, namely, "promotion". As noticed above, 60% of the vacancies are to be filled up by promotion. The selection is to be made by the "DPC based on seniority and merit" from among the category of Transport Inspectors. The above provision therefore contemplates not merely seniority but also merit as a criterion for promotion from the feeder category of Transport Inspectors. Ext. P1 is silent regarding the content of the expression "merit". Therefore, the said expression confers or leaves considerable elbow room for the authorities to prescribe the stipulations that are necessary to be specified for the promotion.

7. The scheme of composition of the cadre contemplated by Ext P1 is also necessary to be noted in this context. As per Ext. P1, the cadre of Assistant Transport Officers is to comprise of persons selected through three different processes. Thus, Direct Recruitment accounts for 25%, persons selected through Internal Recruitment accounts for 15% and persons who are promoted, accounts for 60% of the total number of vacancies. The cadre therefore has to be a homogeneous one formed by merging all the 3 categories referred to above. The direct recruits are to possess a degree of B. Tech. in Mechanical or Automobile Engineering or an MBA in Marketing or Human Resources Development (HRD). Candidates recruited through internal selection are to be graduates with 10 years continuous service in the KSRTC. It is for appointment to the remaining 60%

vacancies that recruitment through promotions is contemplated. Therefore, it is necessary for the promotees also to possess sufficient merit so as to enable them to satisfactorily discharge the duties that are expected to be performed by the persons with superior qualifications, who are recruited through the other procedures that are contemplated. It is obviously for the above reason that the DPC is expected to make the selection not merely based on seniority but also taking into account "merit". Since Ext. P1 has not specifically set out the components that are necessary to constitute the expression "merit", the content of merit could certainly be prescribed by the authorities by formulating appropriate criteria. Insistence on such additional criteria would not conflict with any of the provisions of the regulations. Any proceedings therefore by which the content of the expression "merit" is supplied, cannot be described as amendment of the regulations or as being in conflict with them.

8. As per Ext. P3 what has been insisted upon as additional eligibility criteria is a pass in the MOP test as well as KSRTC Manual Test. These, according to the counter-affidavits, are additional stipulations introduced, with the object of bringing in efficiency to the superior cadres in the KSRTC. There is nothing in Ext. P1 that curtails the power of KSRTC to stipulate such additional qualifications or to insist upon additional conditions that are required to be satisfied for the purpose of promotion to the next higher post of Assistant Transport Officer. It is true that Ext. P1 regulations have been issued u/s 45(1) of the Act. It is also true that in view of Section 45A of the Act, the regulations are, as a matter of procedure, laid before the State Legislature. Consequently, Ext. P1 regulations cannot be altered without properly amending them. However, by Ext. P3 what has been done is only to insist on certain additional requirements as part of supplying the content that is required to be satisfied by the expression "merit" stipulated in Ext. P1.

9. The learned counsel for the petitioner has placed reliance on the decision of a Division Bench of this Court in *KSRTC v. Kalyanakrishnan* 1986 KHC 480 : 1986 KLT SN 106 : 1986 KLN 523, where it has been held that the power of making regulations dealing with the conditions of service of the employees of the Corporation is a legislative power and not executive power. My attention has also been drawn to the decision of a learned Single Judge of this Court in *Suresh Kumar Vs. State of Kerala*, to contend that, previous permission of the State Government is necessary to depart from the conditions stipulated by an order issued by the Government. However, in the present case, Ext. P3 has also been issued with the approval of the Government. For the above reasons, the contention that, since Ext. P1 has been brought into force the authorities have no power or competency to add any further qualification to it, cannot be sustained.

10. The next question is whether the petitioner should be granted sufficient time to acquire the additional qualifications that are stipulated by Ext. P3. It is pointed out by the learned counsel for the petitioner that the petitioner and others who seek promotion to the next higher posts are persons who have been in service

for more than two decades. They are persons who are approaching the age of 50 or who have crossed the said age. At their age, in order to acquire the additional qualification, grant of some time is necessary. Without granting them sufficient time, the present attempt of the respondents to grant promotion to their juniors, overlooking their claims on the ground that they have not acquired the additional qualification, would only lead to discontentment within the service. It is pointed out that, Rule 13A of Part II of the Kerala State and Subordinate Services Rules, 1958, stipulates the grant of two years' time for acquiring such qualification. They seek the grant of a similar period of time for acquiring the qualification. It is submitted that the petitioner herein has already appeared for the examination, but his results have not been published. Therefore, to convene a DPC (Departmental Promotion Committee) without waiting for the results to be published, is submitted to be with ulterior motives. I have by my judgment dated 13/02/2014 in W.P. (C.) No. 9 of 2014 directed the 2nd respondent herein to consider the issue as to whether any further time should be granted to persons like the petitioner for the purpose of acquiring the qualifications that are additionally insisted upon. It is only appropriate that the said authority considers the issue and takes a decision in the matter, before any promotions are effected to the post of ATO.

For the above reasons, this Writ Petition is disposed of holding that insistence on the additional qualification as per Ext. P3 is justified and directing the 2nd respondent to consider the question regarding the grant of sufficient time to persons like the petitioner to acquire the additional qualifications that are stipulated by Ext. P3. Orders in this regard shall be issued, as expeditiously as possible and at any rate, within a period of two months of the date of receipt of a copy of this judgment. Until a decision is taken in accordance with the above direction, no promotions to the post of Assistant Transport Officer shall be effected in violation of seniority.