

(2010) 11 KL CK 0348

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23958 of 2006 (B)

Bindumol Joseph

APPELLANT

Vs

Kerala Public Service Commission and Kerala State Electricity Board

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0348

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : S. Easwaran, J, for the Appellant; Alexander Thomas, SC, KPSC, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The Petitioner was an applicant for selection to the post of Overseer (Civil) in the Kerala State Electricity Board pursuant to a notification inviting applications by the Public Service Commission. The Petitioner was not included in the rank list. The Petitioner approached this Court by filing O.P. No. 11637/1997. By Ext.P1 judgment, this Court held thus;

2. Similar claims have been upheld by this Court. Consequently, I direct that if the Petitioner has secured the necessary cut off mark, she has to be assigned the due position in the existing rank list. She will be entitled to be reckoned for appointment when her turn reaches. If appointments have been given to candidates below her as per the permissible reckoning, Petitioner may be advised to the next position as might be advisable. The advice and appointment will not affect the rights of persons already appointed.

2. The Petitioner claims advice to one of the vacancies reported after Ext.P1 judgment. According to the Petitioner, in Ext.P2 judgment this Court found that there were 12 non-joining duty vacancies reported and in Ext.P2 judgment, the Petitioner therein was directed to be advised against one of those vacancies. The

Petitioner, therefore, seeks advice to one of the vacancies reported after Ext.P1 judgment.

3. The Public Service Commission has filed a counter affidavit wherein, the stand taken is that after Ext.P1 judgment no vacancies were reported to which the Petitioner could have been advised.

4. I have considered the rival contentions in detail.

5. Ext.P1 is dated 9.12.2003. Ext.P2 judgment is dated 21.10.2003. Therefore, simply because in Ext.P2 judgment 12 NJD vacancies were taken note of, it does not automatically follow that those 12 vacancies were available after Ext.P1 judgment in favour of the Petitioner was rendered. The Petitioner can succeed in this writ petition only if the Petitioner shows that after Ext.P1 judgment any vacancies in the open category arose for advising the Petitioner in accordance with her rank assigned, which is 22A. Of course 61 persons in the open category were earlier advised, which were prior to Ext.P1. In Ext.P1 judgment it has been specifically made clear that if appointments have been given to candidates below the Petitioner's rank, the Petitioner may be advised to the next position as might be advisable and the advice and appointment will not affect the rights of persons already appointed. Therefore, for accommodating the Petitioner, the persons, who have been already advised and appointed cannot be disturbed. As such, for succeeding in this writ petition, the Petitioner has to necessarily prove that after Ext.P1 judgment a vacancy for advice from the open category was reported to which she could have been advised. The Petitioner has not produced any material to prove the same. On the other hand, the Public Service Commission in their counter affidavit has specifically stated that after Ext.P1 judgment no vacancies were reported in the open category so as to accommodate the Petitioner in accordance with her rank in the rank list. Therefore, the Petitioner is not entitled to any relief in this writ petition and accordingly, the same is dismissed.