
(2007) 12 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24647 of 2007

Devadas, K. and Others

APPELLANT

Vs

Kerala State Financial Enterprises and Others

RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Citation : (2007) 12 KL CK 0038

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : P. Ravindran and K.P. Satheeshan, Sivan Madathil, Pareeth and Sreedevi Kailasanatha Pillai, for the Appellant; A.M. Shaffique and E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathai, P. Benny Thomas and Anil D. Nair, for the Respondent

Judgement

V. Giri, J.—Common issues arise for consideration in these writ petitions. Therefore, they have been heard together and are being disposed of by this common judgment. For the sake of convenience, W.P. (C) No. 24647/07 is taken as the leading case.

2. The Petitioners are employees of the Kerala State Financial Enterprises Limited (for short "the KSFE"), the first Respondent. The first Petitioner is a Deputy Manager and other Petitioners are Assistant Managers. Recruitment Rules have been framed by the first Respondent regulating appointments and other service conditions. The posts are divided into Officers Cadre, Assistant Managers Cadre and Subordinate staff cadre. The posts of Assistant Manager come under the category of Junior Officers. It was originally known as Junior Executive and later redesignated as Assistant Managers. The promotion post of Assistant Manager is that of Officer Grade IV. What is involved in this case is the selection process undertaken by the first Respondent for promotion to the post of Officer Grade IV.

3. Appointment to the posts of Officer Grade IV can be by way of promotion or by direct recruitment. There is a ratio prescribed in relation thereto. 75% of the posts will have to be filled up by promotion from the category of Assistant

Managers. In Ext. P-1 Recruitment Rules, it is stated that 75% of vacancies in the post of Officer Grade IV is to be filled up by promotion "by a selection process based on competitive written test and interview from qualified and suitable officers in the Junior Officer's Cadre." In the absence of such candidates, the same could be filled up by direct recruitment.

4. Ext. P-2 notification was issued by the 1st Respondent with regard to the conduct of qualifying written test for the year 2006. The notification is dated 26-5-2006. In the centres at Thiruvananthapuram, Kochi and Kozhikode, the written test was to be held on 8-7-2006. Ext. P-2 also provided the syllabus for the promotion test. Part I was to consist of two papers and Part II was to consist of group discussion and interview with personality test. Apparently, Ext. P-2 did not notify a separate minimum for the written test or for group discussion or interview.

5. Subsequently, Ext. P-3 was issued. Ext. P-3 is styled as the "syllabus for the promotion test." Apart from containing the details which are mentioned in Ext. P-2, it also prescribed the maximum marks that could be obtained in part I and the minimum marks that is required for a pass. So is the case with Part II. Though Ext. P-3 produced by the Petitioners does not contain a data, the fact that Ext. P-3 apparently was publicised adequately earlier, does not seem to be specifically challenged in the writ petitions. Subsequently, a written test was held. A group discussion and an interview was also held.

6. It is seen from the counter-affidavit of the 1st Respondent that 201 persons were successful in the written test out of 272, who had participated (according to the Petitioners more than 400 persons had participated in the written test. Precise number may not be relevant at this stage). After completion of the written test, Ext. P-4 list of those persons, who were found eligible to be called for group discussion and interview, was published on 25-8-2006. Subsequently, the persons included in Ext. P-4 were called for interview and personality test and group discussion. Those persons, who secured the minimum in Part II viz., group discussion, interview and personality test were then found to be eligible. The aggregate marks secured by persons, who were successful in Parts I and II viz., in the written test, group discussion and interview with personality test, were taken and then they were included in a list on the basis of the aggregate marks obtained by them. This list was published as Ext. P-5 on 25-4-2007. Ext. P-5 also declared that the rank list will be valid for a period of two years. Ext. P-5 is challenged in these writ petitions.

7. The principal grounds of challenge in the writ petitions are:

(a) Ext. P-2 notification relating to recruitment to the post of Officer Grade IV is on the basis of a long term settlement arrived at between the management on one hand, and the Unions representing the employees of the first Respondent, on the other. The first long term settlement is dated 9-4-1977. Clause 9(b)(iv) of the long term settlement dated 9-4-1977 provided that appointment for higher

posts for which eligibility is determined based on competitive written test and interview will be in the order of merit as determined in the test and interview. This will be the basis for their seniority. The position continued to be the same even in the subsequent settlement arrived at in 1985. The standing orders issued by the 1st Respondent company also provide that the selection for appointment by promotion to Classes A and B shall be made by the Staff Selection Committee of the Board. Ext. P-1 Recruitment Rules also emphasizes that insofar as 75% of the vacancies in Officer Grade IV are to be filled up by promotion, selection will be based on written test and interview. It is, therefore, contended that merit will have to be assessed by taking into account the results of the written test and the interview together and then arranging the candidates in the order of merit with the aggregate of the marks obtained in the written test and the interview taken as a basis therefor.

(b) That the prescription of minimum of 15 marks for the interview and group discussion is unauthorized. Ext. P-2, which is a circular issued by the company, notifying the selection did not contain any such minimum prescription of marks.

(c) That the marks obtained in the interview should not have been held to be decisive as happened in this case, in circumstances where a minimum percentage obtained in the group discussion and interview turned out to be essential for a candidate to be eligible for being included in the list of persons found suitable for promotion to the post of Officer Grade IV.

8. There are certain other contentions, which will be duly referred to at the appropriate stage.

9. In the counter-affidavit filed by the 1st Respondent, it is contended that it is a part of the long term settlement that there has to be assessment of the merit and suitability of those persons who are desirous to be promoted as Officer Grade IV. Therefore, it was decided that even if a list is prepared for one year, it might be necessary to conduct a fresh written test for the next year or every two years as such. The written test and interview and group discussion was part of the selection process. It was so notified. Petitioners had participated in the selection process. There is nothing arbitrary in the prescription of a minimum marks for the interview and group discussion. Such prescription is contained in Ext. P-2. The assessment was of merit and suitability. This could be done in the method as notified in Ext. P-2. This was all, what was done in this case. There is nothing illegal about the selection procedure or about Ext. P-5.

10. A reply affidavit has been filed by the Petitioners.

11. I heard Senior Counsel Mr. P. Ravindran, learned Counsel Dr. K.P. Satheesan, Mr. Sivan Madathil, Mr. Pareeth and Smt. Sreedevi Kailasanatha Pillai on behalf of the Petitioners and Mr. A.K. Jayasankar Nambiar on behalf of the first Respondent.

12. The first contention, which was put forth quite forcefully by Mr. Ravindran, was that since the Recruitment Rules and the long term settlement provide for

assessment of merit of the candidate by a written examination as well as by interview, the prescription of a minimum percentage of marks in the interview should be held to be unauthorized and inconsistent with the terms of the notification. It, therefore, led to arbitrariness, according to him.

13. Mr. Jayasankar submits that the Recruitment Rules only contemplated a written test and an interview as a mandatory part of the selection process. The authority, which is empowered to conduct a selection process, is obviously entitled to prescribe minimum marks for the written test. If that be so, a similar power for prescribing the minimum marks in an interview cannot be denied.

14. In my view, the provisions in the Recruitment Rules which provides that assessment will have to be on the basis of a written test and an interview means that a written and interview are both an integral and an indispensable part of the selection procedure as such. Once it is accepted that there has to be a written test, then it follows that there has to be a minimum mark to be obtained by a candidate to be considered as having passed the written test. What is prescribed is a competitive written test. If this principle is accepted, and that does not seem to be disputed by any of the Petitioners, there is nothing wrong in prescribing a minimum mark for the group discussion and interview as well. No doubt, the notification issued by the first Respondent should have brought to the notice of the candidates the prescription of the minimum marks in the written test, group discussion and interview. If Ext. P-3 satisfies this requirement, the selection, based on a competitive written test, group discussion and interview cannot be called in question. To uphold the contention that there shall not be a prescription of minimum marks, could result in the possibility of empowering the authority to consider a candidate as suitable, even if he fails to pass the written test or the interview. The nature of the post and therefore, the desirable qualities expected of a person, who is selected to the post, are obviously relevant in deciding whether interview should be part of the selection process. What is involved in the present case is the selection to a managerial cadre. Therefore, the selecting authority would legitimately be entitled to decide that a minimum mark is required of a candidate, who aspires to the post of Officer Grade IV. Prescription of minimum marks in the interview cannot be considered as arbitrary or otherwise illegal.

15. The further contention taken up by Mr. Ravindran and adopted by the other learned Counsel for the Petitioners, is that Ext. P-2 did not notify the prescription of minimum marks for the interview or for the written examination. If that be so, Ext. P-3 which only notified the syllabus, as such, is inadequate for the purpose of notifying those persons, who aspire for selection. In my view, in circumstances where the publication of Ext. P-3 has not been specifically assailed in the writ petitions, it may not be open to the Petitioners to plead inadequate knowledge of the prescription in Ext. P-3, prior to their participation in the selection procedure. As a matter of fact, though there is a vague contention that Ext. P-3 does not bear a date, it is not the contention of any one of the Petitioners that Ext. P-3

was kept in the dark. Therefore, they were not subjected to any prejudice due to inadequate knowledge. In my view, Ext. P-3 will have to be read in conjunction with Ext. P-2 and if that be so, the prescription of minimum marks for the written test, group discussion and interview will have to be treated as part of the notification.

16. I also take note of the fact that even in Ext. P-2, it was made clear that Part I will consist of written test and Part II will consist of group discussion and interview with personality test. In Ext. P-3 which, as I have already held above, will have to be read in conjunction with Ext. P-2, it is further made clear that the minimum marks to be obtained is 50%. The minimum mark for each paper is 15. The Petitioners and others were successful. Obviously they had adequate knowledge of what the Rules of the game were and it cannot be contended that there was any arbitrary change in the Rules after the game started. Thus, the second contention raised by the Petitioners, in my view, does not have any merit.

17. Mr. Ravindran then contends that till Ext. P-2, the practice adopted by the KSFE, was to conduct a written test and interview, but without minimum marks to be obtained in the interview, as a bench mark for being considered eligible for promotion to the post of Officer Grade IV. No doubt, a departure has been made in Ext. P-2. But there is material on record to show that it was a deliberate decision arrived at by the 1st Respondent. It was after taking into account the relevant facts and with a view to secure better talent. Exts. P-1 and P-2 are not inconsistent with the provisions in the Recruitment Rules or in the long term settlement. They are consistent with each other. If therefore the basis of the selection is otherwise authorized and consistent with the Recruitment Rules, there is nothing wrong in the selecting authority or the appointing authority in deciding upon prescribing minimum marks for the written test, group discussion and interview as part of the selection process. Since I have already found that Ext. P-3 must be taken in conjunction with Ext. P-2 notification of a revision in the method of selection, insofar as it relates to prescribing minimum marks for the interview, in my view, there is adequate adherence to the principles of fair play and justice.

18. The other learned Counsel, apart from adopting the contentions of Mr. Ravindran, also contended that 75% marks alone seem to have been available as the maximum that could be obtained in the written test. But nevertheless, the marks obtained by the candidates in the written test seems to have been subject to a maximum of 100 marks. Mr. Jayasankar Nambiar, on instructions, submits that 75 question of objective type are included in each paper in the written test and marks were allotted to each question. But for the sake of convenience, the said marks were raised to percentage. The product was, therefore, taken as the marks obtained by the candidates. Obviously, the procedure has been uniformly adopted for all candidates so as to avoid any detriment being suffered by any candidate. In my view, by adopting this method, no prejudice has been caused to anyone of the Petitioners. It is after all, a mode of assessment. It is only a

convenient method. There is no tinkering with the notified selection procedure.

19. There is a further contention that what is contemplated by the Recruitment Rules is only a written test and an interview. But, nevertheless, there has been a group discussion. This again is contended to be unauthorized.

20. Firstly, group discussion is essentially treated as another method of assessing the personality of the candidate concerned and though the format of a personal interview and group discussion are different, going by the selection procedure, an assessment with the aid of a group discussion along with the interview does not in any manner vitiate the selection procedure as such.

21. At any rate, I am inclined to hold that the Petitioners are not entitled to challenge the selection process on the ground that group discussion was included as part of the selection process unauthorizedly for a very pertinent reason. Group discussion is part of the notified selection procedure and therefore, the Petitioners and many others were definitely aware of the same. They had participated in the selection process and they had even accepted Ext. P-4 by which they were declared to have successfully passed the written test. They had participated in the interview and group discussion with the knowledge that there is a minimum marks for the group discussion and interview. They had not raised any objection at that point of time. When they found themselves to be unsuccessful, they turned around and have challenged the selection process. This, in my view, the Petitioners are not entitled to do, in view of the decision of the Supreme Court in *K.H. Siraj Vs. High Court of Kerala and Others*, , *Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others*, and *Union of India and Anr. v. N. Chandrasekharan and Ors.* 1998 (3) S.L.J. 21

22. Mr. Ravindran, relies on the decisions of the Supreme Court in *K.K. Parmar and Others Vs. H.C. of Gujarat thr. Registrar and Others*, and *Rajesh Kumar Gupta and Others Vs. State of U.P. and Others*, , which according to him takes a contrary view. In the first among the decisions, the Supreme Court was considering a case where merit was the sole criterion in selection to the post of Section Officer of the Gujarat High Court. Apparently, past performance was one of the factors which should have been taken into consideration, under the Rules. When marks were allotted for written test and viva voce, the selecting authority did not allot any mark for past performance. The Supreme Court held that ignoring past performance is a contravention of the Recruitment Rules and allotment of marks for past performance will have to be done by the authority concerned. The selectees obviously did not have any role in that regard. The participation of the candidates in the selection process obviously did not entail any disability on their part to subsequently challenge the selection process for reason that appropriate marks were not allotted for their past performance.

23. In my view, the decision rests on a different footing and it cannot have application to a case like the present one where a selection procedure was adopted and prescription of minimum marks for group discussion and interview

was notified well before the selection procedure started.

24. The decision in *Rajesh Kumar Gupta and Others Vs. State of U.P. and Others*, dealt with a case where the Rules were apparently challenged subsequent to the receipt of the application by the candidates concerned. Again, the challenge was essentially a plea of contravention of the selection Rules. Significantly, the Supreme Court having upheld the said contention, also came to the conclusion that in such circumstances, the rule of estoppel cannot bar consideration of the said contention. This was because there was a change of the Rules subsequent to the submission of the application. Candidates are obviously not responsible for the same. It is legitimate on their part to wait till the completion of the selection process and then challenge the same. I also think it is significant to note that in both the aforementioned cases, the Supreme Court had negated the feeble contention of estoppel on the part of the Respondents being in cases where the court had also come to the conclusion that there is convention of statutory rules in the selection procedure adopted and impugned in the case.

25. Learned Counsel for the Petitioners then contended that the prescription of 100 marks for group discussion and interview out of a total of 300 is arbitrary and it results in exclusion of meritorious candidates. The question as to what could be the percentage of marks that could be allotted for interview out of the total marks which the candidate could obtain will depend upon several factors including the nature of the post to which selection is conducted. Obviously, the parameters are different in cases where the interview is part of the process for selection to the post in a managerial cadre and cases where the interview is part of the selection for admission to academic institutions. The subtle difference in the same have been considered by the Supreme Court in several decisions. Those have been placed before me by Mr. Jayasankar Nambiar. Suffice to refer to those decisions for the sake of completion. *Lila Dhar Vs. State of Rajasthan and Others*, , *Mohinder Sain Garg Ors. Vs. State of Punjab and Others*, , *Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others*, . *Anzar Ahmed Vs. State of Bihar and others*, , *Munindra Kumar and others Vs. Rajiv Govil and others*, and *Union of India and Anr. v. N. Chandrasekharan and Ors.* 1998 (3) S.L.J. 31.

26. For all the reasons stated above, I hold that, the prescription of 100 marks altogether for group discussion and interview out of a total 300 marks has not vitiated the selection process. There is yet another contention which is taken in the writ petitions relating to the prescription of two years as validity of Ext. P-4. I have considered this contention in W.P. (C) No. 27146/07 and certain directions have been issued therein as well. In such circumstances, all that required is to declare that the directions issued in the said judgment will be applicable to the present cases also.

For all these reasons, I do not find any ground to interfere with the select list Ext. P-5 published by the first Respondent. Writ petitions are bereft of merits and the same are, therefore, dismissed, subject to the declaration as regards the period of validity of Ext. P-5 list.