
(2012) 08 KL CK 0257
In the High Court Of Kerala
Case No : WP (C) . No. 23536 of 2011 (N)

Gopakumar P. Pillai

APPELLANT

Vs

The Kerala Public Service Commission and Others

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0257

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : C. Unnikrishnan Kollam and Sri. S. Harikrishnan, for the Appellant; P.C. Sasidharan, SC, KPSC for R1 and R2, Sri. Jacob P. Alex, SC for R3, Sri. K.B. Pradeep, for R4 and Smt. Lisha M.G., Govt. Pleader for R5, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J

1. Petitioner is an applicant to the post of General Manager in Pathanamthitta District Co-operative Bank. According to the petitioner, he is aggrieved by the rank list published by the KPSC by making the 4th respondent as rank No. 1 after changing the earlier stand of KPSC that the experience of the 4th respondent in Reliance Life Insurance Company Limited is not sufficient. According to the petitioner, he applied to the said post since he had requisite qualification and he was ranked No. 1 in the rank list of KPSC which is evident from Ext.P2 with reference to District Co-operative Bank, Pathanamthitta District. He was also issued with an advice memo Ext.P3. In the meantime, 4th respondent filed W.P.C.12895/2011 alleging that though he was qualified he was not included in the rank list. By an interim order dated 27/5/2011 produced as Ext.P4, this Court directed not to fill up the said post until further orders. The petitioner contended that the 4th respondent does not have the prescribed experience since the experience certificate produced by him related to the one issued by the Reliance Life Insurance Company Ltd. in which he was only a Territory Manager (Branch Manager) and KPSC has not accepted such an experience certificate with

reference to the 4th respondent. The petitioner also contends that Ext.P6 experience certificate of the 4th respondent is not genuine and that Reliance Life Insurance Company Ltd. is not a public limited company and therefore according to him, the 4th respondent does not have the prescribed qualification.

2. During the pendency of the said W.P.C. No. 12895/2011, KPSC published the rank list of Deputy General Manager in the Pathanamthitta DCB in which the 4th respondent was ranked as No. 1, which according to the petitioner was in total deviation from the stand taken by KPSC in Ext.P5. Therefore, the 4th respondent has withdrawn W.P.C. No. 12895/2011 and the same is dismissed as withdrawn. It is the further contention of the petitioner that KPSC revised Ext.P2 rank list of General Manager by including the name of 4th respondent as rank No. 1 without notice to the petitioner. Ext.P13 is the said notification. In that view of the matter, the petitioner challenges Exts.P11 and Ext.P13 and seeks for a declaration that the 4th respondent is not qualified to apply pursuant to Ext.P1 notification as he is not having the sufficient experience and for consequential reliefs.

3. The main argument of the petitioner is that the experience certificate produced by the 4th respondent cannot be taken into consideration by KPSC for the notified post as Reliance Life Insurance Company Ltd. is not a public limited company and secondly when KPSC themselves have not considered the experience from the said company as sufficient experience, KPSC cannot have changed its stand on a later occasion. The petitioner also produced certain additional documents along with additional reply affidavit as Exts.P15 to P18.

4. 4th respondent has filed a counter affidavit inter alia contending that in so far as the qualification criteria prescribed in Ext.P1 clearly indicates that experience gained can be from a public limited company, Reliance Life Insurance Company Ltd. being a public limited company, the application cannot be rejected merely for the reason that it is not acceptable to KPSC for the said post. When the prescribed qualification is made in terms with the notification, there cannot be an automatic rejection of the said application. He also produced Ext.R4(a) to show that Reliance Life Insurance Company Ltd. is a public limited company registered under the Companies Act 1956. Exts.R4(b) and R4(c) are the certificates issued showing his experience. The 4th respondent also filed another affidavit dated 26/3/2012 producing Ext.R4(d) along with I.A. No. 4824/2012, a certificate of experience from Reliance Life Insurance Company Ltd. which was attested by the District Labour Officer.

5. Respondents 1 and 2 have filed a counter affidavit stating that in respect of the 4th respondent, the Commission had re-examined the acceptability of the experience and qualification of several candidates including the 4th respondent and decided to accept his qualification, consequent to which the 4th respondent was also given the rank position as No. 1 for the post of General Manager and the petitioner was re-assigned as rank No. 1A. They denied the fact that there was any partisan attitude in respect of the 4th respondent. It is contended that

the application of Mr. Dixon Jose Wilfred was rejected since his experience as Assistant Branch Sales Manager was not sufficient whereas the 4th respondent was the Territory Manager. Hence KPSC supported their stand in considering the application of the 4th respondent. It is further stated that when certain complaints were received by the Public Service Commission stating that the 4th respondent is lacking the experience as stated, the Commission has ordered a Vigilance Enquiry in the matter and in that view of the matter, District Co-operative Bank, Pathanamthitta has not issued any memo. In the meantime, according to them, Vigilance enquiry is continuing.

6. In the additional documents, the petitioner relies upon the annual income and tax returns of the 4th respondent for the period from 2006 to 2012 to indicate that he was not having sufficient income and therefore it cannot be believed that he was working in managerial/supervisory cadre.

7. The short issue to be considered in the case is whether acceptance of the qualification of 4th respondent by KPSC is valid or not. The question is only regarding the experience of the candidates. The experience as stated in Ext.P1 notification is not less than 3 years experience in managerial/supervisory cadre in corporate institutions/scheduled banks/Government/semi-Government institutions or Public Limited Companies. Going by Ext.R4(a) it is clear that Reliance Life Insurance Company Ltd. is a public limited company registered under the Companies Act 1956. If the said company certifies that the candidate was working in the managerial/supervisory capacity for not less than 3 years, KPSC is bound to consider their applications. However, if the KPSC is not satisfied with the experience gained by the candidates in the said managerial/supervisory post, there is an opportunity to consider their competence during interview. But, if the application is proper and the candidates have produced the required certificates, they are bound to be considered by the KPSC.

8. When the designation of the 4th respondent as Territory Manager (Branch Manager) by itself speaks for his position, it is not known as to how the application can be rejected on the ground that the said candidate was not having the required qualification. Whether he is suitable for the post can be decided only during further selection process either by way of written test or during interview. In the present case, it appears that candidates were selected by interview. One may be qualified and he will not be suitable for the post. That can be considered only during the selection process and not by rejecting the application at the outset.

9. KPSC has already accepted the experience certificate of the 4th respondent which is challenged by another candidate who was originally ranked as No. 1 and now ranked as No. 1A. According to the said petitioner, Reliance Life Insurance Company Ltd. is not a public limited company and that the experience certificate produced does not amount to proper experience. As already indicated, Reliance Life Insurance Company Ltd. is a public limited company and the 4th respondent apparently was working as a Territory Manager. As indicated above, when

applications are invited from candidates by prescribing a qualification and required experience, KPSC has to primarily consider whether the persons applying for the post has the required qualification and experience. No doubt, experience in managerial/supervisory cadre in a public limited company is also treated as valid experience and therefore it is proper on the part of KPSC to consider such applicants. The suitability of such candidates and the veracity of the documents produced will be considered only during further selection process which in this case is the interview. If KPSC had already decided to accept the experience of the 4th respondent and having considered the same and had given him the first rank as against the petitioner, the said selection process cannot be declared as illegal. The petitioner relies upon the income tax returns of the 4th respondent to indicate that he does not have sufficient income and that he was not in a managerial capacity. These are all materials which do not arise for consideration when a pre-qualification criteria is considered. At any rate, income tax returns will not prove that the 4th respondent was not in a managerial or supervisory capacity. His employer had certified his position in the company and when it is stated to be a Territory Manager, definitely it is a case where KPSC is bound to consider his application and KPSC having considered the same and had published the rank list even subsequently, I do not think that there is any reason to interfere with such a rank list.

In that view of the matter, I do not think that there is any merit in this writ petition and the same is dismissed.