

**(1987) 01 KL CK 0012**  
**In the High Court Of Kerala**

Indira Bai and Others

APPELLANT

Vs

Kerala State Water and Waste Water Authority

RESPONDENT

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**Date of Decision :** 01-01-1987

**Acts Referred:**

Constitution of India, 1950 — Article 12  
Industrial Disputes Act, 1947 — Section 25F

**Citation :** (1987) 2 LLJ 391

**Hon'ble Judges :** V. Sivaraman Nair, J

**Bench :** Single Bench

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**Judgement**

Sivaraman Nair, J.—These Original Petitions relate to the appointments in the Kerala Water and Waste Water Authority, which has since been redesignated as the Kerala Water Authority. The first of these petitions is filed by a candidate who had appeared for the examination conducted by the third respondent therein, who has been a reader in the department of Education of the University of Kerala, on 26th November 1984 at various centres in the State for selection of candidates for appointment to the posts of Lower Division Clerks, Confidential Assistants and Last Grade Servants. Petitioners in O.P. No. 11417 & 11504 of 1985, and O.P. Nos. 228 and 256 of 1986 are provisional employees in the service of the Authority. They seek regularisation of their provisional services. They oppose regular appointment of candidates selected after the conduct of the examination on 26th November 1984, since they are likely to be replaced by such candidates. The other four Original Petitions are filed by persons who were selected and included in the rank list prepared by the Chief Examiner appointed by the Authority. Their complaint is against the decision of the Authority, which was communicated in Letter No. KWWWA/NO./E1/778/86, dated 4th July 1986, to the effect that "no further regular appointments should be made to the entry cadre, in the Kerala Water and Waste Authority Office until further orders" Petitioner in OP. No. 11118 of 1985 alleges that there were serious irregularities in the conduct of the examination and the select list was prepared without regard to the performance of candidates in the examination. It is her case, that the then

Chairman of the Authority had influenced the third respondent to include many undeserving persons in the select list due to extraneous considerations like political or personal influence and other such factors. The then Public Relations Officer of the Authority, whose appointment itself was effected under quite extraordinary circumstances, is said to have influenced the selection of undeserving candidates. Many relations in the personal staff of the then Chairman of the Authority are said to have been smuggled into the list and appointed through the back-door. It was on these allegations that the petitioner filed the Original Petition seeking the issue of a writ of certiorari to quash the rank list of last grade employees published by the third respondent on 11th December 1985.

2. There are five petitioners in OP. No. 11504/1985, four petitioners in OP. No. 11417/1985, three petitioners in OP. No. 108/1986, three petitioners in O.P. No. 228/1986 and one petitioner in O.P. No. 256/1986. They were provisionally appointed as Lower Division Clerks/Lower Division Typists/Class IV Servants in the erstwhile Public Health Engineering Department in 1981 and later. Some of them were appointed after the formation of the Authority on 1st April 1984 under Ordinance 14 of 1984. Their case is that all of them had completed more than 240 days of work under the Authority and were therefore entitled for regularisation. It is stated that such regularisation was promised by the Chairman of the Authority. They also claim that they were entitled to be given opportunities to compete in the next selection to be conducted by the Authority in terms of the decision of the Supreme Court reported in 1984 KLT. 17 and the Government Orders and Circulars issued pursuant thereto. It is stated that applications were invited by publication of a notification in the local newspapers without specifying the Authority under which the appointments were to be made. Even after the invitation of applications, the Authority had considered a proposal for regularisation of services of provisional employees like the petitioners. Their case is that they were not aware of the fact that applications were being invited for regular appointment in posts which were being held by them on a provisional basis, since the notification did not give any indication to that effect. It is also their case that this sleight of hand was adopted so as to avoid open competition, to restrict applicants and to resort to malpractices and nepotism. They refer to a list of 439 Lower Division Clerks, 136 Last Grade Servants, 40 Lower Division Typists and 19 Confidential Assistants prepared by the Chief Examiner appointed by the Authority, as a result of the notification and from which regular appointments to displace the petitioners were being made. Reference is also made to regularisation of services of 19 persons who were appointed through Employment Exchanges to various posts as per order No. KW & WWA/206/84, dated 7th June 1984. The services of these 19 provisional appointees were regularised in Order No. KW & WWA/IHO/EI/1640/85, dated 24th January 1985. Such fortunate persons are said to include M/s. Mukundan Nair Rajalakshmi, Ajayakumar, Rahtna Kumari, Ramdas. Amina (all L.D. Clerks) and Abdulla and Parameswaran (peons). They assail the refusal of regularisation in the case of the petitioners. They also challenge the method adopted by the Authority in

picking and choosing undeserving candidates on the basis of personal and political influence alone. They, therefore, seek the issue of a writ of certiorari to quash the notification inviting applications for regular appointment under the Authority in the posts of Clerks/Typists/Confidential Assistants and Last Grade Servants, and a writ of mandamus directing regularisation of their service as in the case of the 19 persons recruited through Employment Exchanges.

3. The last batch of four Original Petitions are filed by 11 candidates who had appeared for the examination conducted by the Chief Examiner acting on behalf of the Authority pursuant to the notification inviting applications for appointment as L.D. Clerks/Typists/ Confidential Assistants and Last Grade Servants under the Authority. They assail the decision of the Authority not to effect any further appointment on the basis of the select list prepared by the Chief Examiner.

4. The validity of the process of selection of candidates comes up for consideration in all these Original Petitions. It is beyond dispute that the notification inviting applications was issued in quite an extra-ordinary manner. It is evident that the Authority was formed for the purpose of discharging the functions, which were formerly entrusted with the Public Health Engineering Department. Appointments to such posts were being made till the formation of the Authority on 1st April 1984 on the advice of the Public Service Commission. Qualifications necessary for appointments had been prescribed by the relevant statutory rules, supplemented by executive orders. Recruiting agency was known, standards of proficiency were pre-determined, the process of selection was regulated by rules, and every qualified and eligible candidate had a fair and equal opportunity of competing for appointment in that Department.

5. It is true that the Authority was constituted as an autonomous Authority which shall be a body-corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to enter into contracts. But that did not detract from the character of the Authority as "State" as defined in Article 12 of the Constitution of India, because the preamble itself provided that it was being established, "for the development and regulation of water supply and waste water collection and disposal in the State of Kerala, and for matters connected therewith," which have essential and inalienable functions of the State. Constitution of the Authority as provided in Section 4 clearly indicates that it is an instrumentality of the State. Other provisions in Chapter II of the Ordinance further emphasise this aspect of the Authority.

6. Section 8 of the Ordinance, which has been re-enacted on 4th August, 1986, as Kerala Water Supply and Sewerage Act, 1986 deals with appointment of officers and staff and enables the Government to frame rules in that regard. Section 19 deals with transfer of employees under the Authority. In G.O. Ms. 287/84/LA & SWD dated 13th November 1984, rules relating to administrative, ministerial and last grade services were issued by the Government. The method of appointment for Lower Division Clerks, Lower Division Typists and for

categories of last grade servants is by direct recruitment. Clause 4 of the rules provided that the appointing authority shall be the Managing Director or any other Officer to whom power is delegated by the Authority from time to time. Recruiting agency was not notified, nor were any rules framed relating to the manner in which applications shall be invited or the applications shall be processed for the purpose of selecting candidates. It has normally to be presumed that appointments in the Authority which was constituted out of a Department of the Government would follow the pattern of public employment in civil services of the State. This is not to say that a different method cannot be prescribed by independent autonomous authorities incorporated by a statute. But, it is normally to be expected that fairness and equality of opportunity to all eligible, deserving and qualified candidates will be provided by prescribing definite standards, ascertainable norms and invariable procedure in such matters. Unfortunately, however, this did not happen in the case of the Authority. The counter affidavit filed on behalf of the Authority in the earlier batch of Original Petitions states that the third respondent in OP. No. 11118 of 1985 was designated as the Chief Examiner. It is not specified whether such appointment was made by the Authority by resolution. None such is referred to; nor any such record relating to the designation of the third respondent therein as Chief Examiner has been produced. The date on which such appointment was made is not known. There seems to be some justification in the complaint of the petitioner, that all processes relating to appointment of the Examiner, invitation of applications, procedure for the conduct of the examination etc., were shrouded in mystery. This is amply illustrated by the notification already issued. Scrupulous care appears to have been taken not to mention the name of the Authority in which job opportunities were available and for which applications were being invited. If employment opportunities in public services and other public undertakings can be made by inviting applications indicating the Authority under which appointments are to be made, there is no justifiable reason why in the case of the respondent Authority alone applications should have been invited by publication in some newspapers, scrupulously avoiding the gazette and carefully avoiding any specification of the Authority in such notification. It is significant that the petitioners in five of the Original Petitions were themselves provisional employees in the Authority, at least some of them were working as such provisional employees since 1981. Many of them were in service on 23rd November 1983 and were entitled to the benefits of the observations of the Supreme Court in the decision reported in 1984 KLT. 17, that they shall be given a further opportunity of applying for appointment by relaxing the age restriction, if need be, in their cases. There is considerable force in the submission of such of the petitioners as were in service on the relevant date on a provisional basis that they were kept completely in the dark as to whether the notification related to appointments in posts in which they were appointed on provisional basis and in relation to which they were given some sort of a right to file applications when those vacancies were notified, after the disposal of the writ petitions by the Supreme Court. The counter affidavits do not disclose the reason why such

approach should have been adopted by the Authority. In spite of my best efforts, I am not in a position to see any reason why the Authority should have adopted this curious course. Whatever explanation which may be gleaned from the counter affidavits disclose that they were anxious to keep the identity of the Authority out of the public eye for reasons which are left out of mention.

7. There are serious allegations relating to appointments in the Authority. I have already referred to the provisional appointment of 19 persons through the Employment Exchanges and their subsequent regularisation while many others who were similarly appointed for short periods were left in suspended animation. A definite averment is made in the reply affidavit in OP. No. 11118 of 1985 that they included relatives of the personal staff of the then Chairman of the Authority. No attempt has been made to controvert these allegations.

8. I have already referred to the fact that the Authority has refused to disclose the circumstances under which the third respondent was appointed as the Chief Examiner to conduct the examination at 64 centres all over the State. The third respondent has chosen not to file any counter affidavit. The averments in the counter affidavits filed on behalf of the Authority only disclose that she is an expert in education and she has adopted almost the same method of getting the question papers printed outside State, false numbering in answer scripts and centralised valuation etc., as adopted by the Public Service Commission. It is, however, evident that the Public Relations Officer of the Authority was very much concerned with the conduct of the examination. So were the Executive Engineers of the Authority. The manner in which the examinations were conducted seems to leave many things to be desired in the conduct of selection for appointment under a public authority. I need not go into any further details in view of the position adopted by the Authority itself that the select list prepared by the Chief Examiner need not be adopted for any further regular appointment under the Authority.

9. This takes us to the last batch of the four Original Petitions filed by persons who were selected and included in the rank lists. The list was valid upto 11th December 1985. Only a few out of the persons who were included in the list had been appointed by the time this court intervened and stopped any further appointment from the select lists. Petitioners state that they had applied for appointment as Lower Division Clerks pursuant to the notification which was published in Mathrubhumi daily on 19th, 20th and 21st June 1984. 13361 applicants for the post of Lower Division Clerks had appeared in 64 centres for the examination conducted on 26th November 1984, and that the select list was published on 1st December 1985. It was, thereafter, that by communication dated 4th July 1986, the Authority decided not to make any further appointments to the entry cadres in the Kerala Water and Waste Water Authority. What the petitioners seek in those Original Petitions is a writ of mandamus commanding respondents to appoint the petitioners on the basis of their inclusion in the ranked list and to quash the order dated 4th July 1986 stopping further regular

appointment.

10. I have already mentioned the mysterious circumstances under which the notifications were issued avoiding the gazette and any mention of the Authority under which the appointments were to be made. Admittedly, the method for the conduct of the examinations had not been specified at any time by the Authority. It has not been shown that the Chief Examiner was appointed by the Authority or when was she so appointed. No rules or orders have been issued providing an ascertainable standard for assessing the merits of the candidates. It is not shown as to who prepared the question papers or conducted the examinations or valued the answer scripts. It is not evident as to whether the valuation was on the basis of any uniformly applicable guidelines or standards. Apart from serious allegations relating to the impropriety in the conduct of the examinations, the very disclosures made in the counter affidavits filed on behalf of the Authority sufficiently disclose that there are many things to be desired in the issue of the notification inviting applications, preparation of question papers, conduct of the examination and the valuation of answer scripts. I am, therefore, not in a position to hold that the decision of the Authority, on wiser counsel, to leave all appointments to the Public Service Commission and to scrap the select list prepared by the Chief Examiner, is in any manner illegal, unfair, discriminatory or contrary to any of the constitutional rights of the candidates. The Standing Counsel appearing for the Authority assured me that all appointments under the Authority will hereafter be made on the advice of the Public Service Commission and orders in this regard have been issued by the Government and the Authority. I am also assured that such appointments will comprehend all existing vacancies which are at present available under the Authority.

11. The relief sought by the provisional employees for their regularisation in service cannot, however, be considered. The only relief which they can legitimately claim is for a fresh opportunity to apply for appointment in terms of the decision of the Supreme Court reported in 1984 KLT. 17. They cannot claim continuance in service as a matter of right. But, their services could be terminated only in compliance with the provisions of Section 25F of the I.D. Act as was held by this Court in the decision reported in 1902 KLT. 829. It is, however, made clear that if they are being replaced for purposes of appointing candidates selected by the Public Service Commission against vacancies which were in existence prior to 31st March 1984 they shall give place to such candidates and their entitlement for compensation will be determined and the amounts so found due u/s 25F of the I.D. Act will be paid to them within a period not exceeding one month from today.

12. There seems to be some basis in the complaint of the petitioners in the last batch of 4 petitions (O.P. No. 5629, 6137, 8168 and 8175 of 1986) who had been included in the select list prepared pursuant to the notification published by the Authority on 19th, 20th and 21st of June. 1984, that some of them may not be able to apply afresh when applications are invited by the Public Service

Commission for appointment under the Authority as they would have passed the maximum age limit. There also seems to me some basis for similar complaints raised by provisional appointees who would have been entitled to the benefits of the observations of the Supreme Court reported in 1984 KLT. 17 in the matter of relaxation of age limits. I need only state that if any of the applicants who had applied pursuant to the notification or any of the provisional employees who were in service as on 23rd November 1983 (when the Supreme Court rendered its judgment) are likely to be over-aged by the time the applications are invited afresh by the Public Service Commission for appointment under Authority, the Public Service Commission may consider relaxation of the age limit in their cases with reference to the observations of the Supreme Court in the judgment referred to above.

13. Petitioners have assailed regularisation of appointment of 19 persons effected in Order No. KW & WWA/IHO/EI/1640/85 dated 24th January 1985. None of the persons whose services were so regularised have been impleaded as party-respondents in these Original Petitions. No relief can, therefore, be granted against them. However, it is a matter for consideration by the Authority, in view of the stand taken by it that all appointments under the Authority should be made only through the Public Service Commission, to consider whether such orders of regularisation shall not be reviewed. Any decision to review the orders of regularisation shall be finalised only with notice to such persons as are likely to be affected.

14. Since the entire selection has been set at naught by the Authority itself, the reliefs sought by the petitioner in O.P. 11118/85 have effectively been granted. There is no need to pass any further orders in that Original Petition.

15. O.P. Nos. 11417 and 11504 of 1985, 108, 228 and 256 of 1986 are allowed to the extent of declaring that their services are liable to be terminated only in compliance with the provisions contained in Section 25F of the I.D. Act, with a rider that if they are sought to be replaced by candidates selected by the Public Service Commission for appointment against vacancies which were available in the erstwhile Public Health Engineering Department as on 31st March 1984, they can be replaced by such candidates and compensation and other amounts due to them shall be paid within a period not exceeding one month from today. Those Original Petitions are dismissed in other respects.

16. O.P. Nos. 5629, 6137, 8168 and 8175 of 1986 are dismissed, since it appears to me that the decision taken by the Authority not to make any regular appointment from the select list prepared by the Authority pursuant to the notification which is marked as Ext. P1 in the first of those petitions is eminently fair, legal and proper.

The Original Petitions are disposed of as above. The parties will bear their respective costs.