

(2001) 03 KL CK 0076

In the High Court Of Kerala

Case No : W.A. No's. 1926, 1933 and 1934 of 1998

Indulekha and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Kerala Public Service Commission Rules of Procedure, 1976 — Rule 11, 14, 3, 4, 5
Kerala State Veterinary Council Rules — Rule 26
Veterinary Council Act, 1984 — Section 57

Citation : (2001) 03 KL CK 0076

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : K. Ramakumar, C.P. Sudhakara Prasad, Pirappancodn V. Sreedharan Nair and S.P. Aravindaksha Pillai, for the Appellant; O.V. Radhakrishnan, for 3rd Respondent, C.K. Pavithran, Govt. Pleader for Respondents 1 and 2, P.K. Suresh Kumar, for Respondents 4 to 8 and Deepu Thankan, for Respondents 9 to 12, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Petitioners are the Appellants. Common questions arise in all these cases. We shall deal with the facts in O.P. 22276 of 1997. Kerala Public Service Commission published a notification in the Kerala Gazettee, dated 4th June 1996 inviting applications for recruitment to the post of Veterinary Surgeon Gr. II in the Animal Husbandry Department. Petitioners applied for the post notified. They took the written test held on 30th May 1997 along with 487 candidates. After assessing the merits of the candidates in the written test the Public Service Commission published a short list containing 268 candidates, out of which 211 candidates were included in the main list and 57 candidates were included in the various supplementary lists. Petitioners were not included in any of the lists. Aggrieved by the same these writ petitions were preferred seeking a writ of mandamus directing the Public Service Commission to include the name of the Petitioners also in the short list and to call them for interview for final selection to the post of Veterinary Surgeon Gr. II. Learned Single Judge did not grant any of the reliefs prayed for. Aggrieved by the same these appeals -have

been preferred.

2. Counsel appearing for the Appellants Sri C. P. Sudhakara Prasad as well as Sri Pirappancode V. Sreedharan Nair submitted that the Public Service Commission has committed a grave error in not including them in the short list. Counsel submitted as a matter of fact, at the time when the written test was conducted 526 vacancies of Veterinary Surgeon Gr. II in the Animal Husbandry Department including the vacancies occupied by the provisional hands were available. Relying upon circular No. 20/86, dated 20th September 1986 counsel submitted when a written test is conducted the number of candidates to be included in the short list should be twice or thrice the number of candidates advised during three previous years. Counsel submitted since only 438 persons were available for recruitment pursuant to Est. P-I notification, Public Service Commission was duty bound to publish a short list containing all the 438 persons. Counsel submitted since Ext. P-5 governed the field at the time when Ext. P-I notification was issued, Public Service Commission has a statutory obligation to conduct the selection on the basis of Ext. P-5 circular.

3. Placing reliance on the decision of the Apex Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and B.S. Minhas Vs. Indian Statistical Institute and Others, counsel contended that the Public Service Commission must be regorously held to the standards by which it professes its action. Counsel also referred to the decision of the Apex Court in N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, and contended that the Petitioners have got a right to be considered on the basis of the terms and conditions prevailed at the time of the notification. Reference was also placed on the decision of the Apex Court in Upen Chandra Gogoi Vs. State of Assam and Others, and on the decisions of the Apex Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, , Durgacharan Misra Vs. State of Orissa and Others, and in T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others, .

4. Counsel submitted when a procedure has been laid down by the Public Service Commission they are duty bound to follow the procedure. Any deviation from the said procedure, according to the counsel, would be arbitrary and negation of rule of law. Counsel further submitted under Rule 4 of the Public Service Commission Rules of Procedure when a selection is based on written test and interview, the Public Service Commission has to announce its -procedure in the notification and the qualifications required of the candidates for the examination and the conditions of admission to the examination. Since Ext. P-I notification is silent with regard to the conduct of examination, counsel submitted, Public Service Commission was not justified in short listing the candidates on the basis of marks awarded in the written test. Relying upon Rule 14 of the Rules of Procedure counsel further submitted Public Service Commission is obliged to advise all the vacancies reported and Trending before them and the vacancies which may be reported to them for the period during which the rank lists are kept alive. It is

their case 526 vacancies were available in the Animal Husbandry Department. Therefore the Government was duty bound to report all the vacancies and a statutory duty is cast on the Public Service Commission to short list all the candidates who have taken the written test irrespective of the marks they scored in the written test.

5. Counsel appearing for the Public Service Commission Sri O.V. Radhakrishnan on the other hand, submitted that the Public Service Commission has got the freedom to weed out candidates on the basis of the marks awarded in the written test. Counsel took us exhaustively to the provisions of Kerala Public Service Commission Rules of Procedure. Relying upon proviso to Rule 5(ii) counsel submitted that Public Service Commission has got power to restrict the number of candidates to be called for interview on the basis of any one or more of the criteria which includes higher marks also. Counsel also made reference to Rule 11(iii) and submitted that the Public Service Commission has got the right to select candidates on the basis of minimum or minima of marks for inclusion in the ranked list. Counsel further submitted as per Rule 3 of Rules of Procedure of the Public Service Commission, Commission is entrusted with the power to assess the marks of the candidates by conducting written test, oral test (interview), etc. Referring to circular No. 20/86 counsel submitted that the circular itself permits the Public Service Commission to take appropriate decision in each case taking all the relevant aspects of the selection into account and that decision taken by the Public Service Commission to weed out candidates on the basis of marks is not in violation of circular No. 20/86.

6. Counsel also placed reliance on the decisions of the Apex Court in Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, , Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, and in Union of India and another Vs. T. Sundararaman and others, . In all these decisions Apex Court upheld the principle of shortlisting in the recruitment process. In the Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, the Court held it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification, so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher education to enter the zone of consideration. In the case of Union of India v. T. Sundararaman Apex Court held where the number of applications received in response to an advertisement is large and it would not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualification and experience higher than the minimum prescribed in the advertisement or by holding a screening test. We may also refer to the decision of the Apex Court in State of U.P. Vs. Rafiquddin and Others, . Apex Court while dealing with the U.P. Civil Service (Judicial Branch) Rules, 1951 held as follows:

These provisions conferred power on the Commission to fix qualifying marks in

the written test and if a candidate failed to obtain the minimum marks in the written test the Commission might refuse to call him for viva voce test. The enacting clause of Rule 19 provided guidance for the Commission in preparing the list of approved candidates on the basis of the aggregate marks obtained by a candidate in the written as well as in viva voce test. Clause (2) of the proviso to Rule 19 did not no doubt expressly lay down that the minimum marks for the viva voce had to be prescribed by the language used therein clearly showed that the Commission alone had the power to prescribe minimum marks in viva voce test for judging the suitability of a candidate for the service.

The Commission had therefore power to fix the norm and in the instant case it had fixed 35 per cent minimum marks for viva voce test. The viva voce test is a well recognised method of judging the suitability of a candidate for appointment to public services and this method had almost universally been followed in making selection for appointment to public services. Where selection is made on the basis of written as well as viva voce test, the final result is determined on the basis of the aggregate marks. If any minimum marks either in the written test or in viva voce test are fixed to determine the suitability of a candidate the same has to be respected. The court also noticed that the Commission had fixed qualifying marks and on that basis it had excluded candidates securing higher marks in written test. The selection process and practice of fixing the minimum marks for written test and interview is a well known procedure in the recruitment to civil services. The object and purpose is to find out the most suitable and meritorious candidates.

The Apex Court in a recent decision in Mohinder Lal Vs. Smt. Saroj Kumari Verma, relying upon the decision in Union of India and another Vs. T. Sundararaman and others, held as follows:

When the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualification and experience higher than the minimum prescribed in advertisement or by holding a screening test.

The Apex Court further held:

Laying of criteria when there are a large number of candidates is permissible but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made.

We may in this connection refer to the decision of the Apex Court in Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, . The court held as follows:

The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In

most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on the basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview.

We have already indicated that the Rules of Procedure enables the P. S. C. to adopt various methods by which they could screen candidates for the preparation of the rank list. Method of conducting written test is a well-known method for screening candidates for the purpose of interview. Rule 3 of the Kerala Public Service Commission Rules of Procedure provides so. Rule 11 also enables the P.S.C. to fix the minimum or minima of marks for inclusion in the ranked list. In this case P.S.C. conducted a written test in which all the Petitioners and Ors. participated. P.S.C. decided to weed out candidates on the basis of marks. The P.S.C. called for interview only those persons who have secured more than 40 per cent marks in the written test. Petitioners are persons who have got below 40 per cent. Consequently they were not included in the short list which was published on 26th November 1997.

7. We are of the view the selection committee has got the power to lay down criteria so as to find out the best and suitable persons for the post notified. The decision to short list candidates on the basis of the written test is to aid and help the process of selection of the best candidates among the applicants. The Commission could judge the suitability of a candidate on the basis of the marks obtained by him in the written test. The process of selection of suitable candidate to a responsible post may involve a minimum standard to be achieved. A written test basically assesses a candidates knowledge and intellectual ability while interview assesses a candidates overall personality and other traits.

8. We may in this connection refer to the decision of the Apex Court in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , where the court considered the question whether the appointments could have been offered to only those who had scored not less than 55 per cent marks, when rule provides 48 per cent as the eligible criteria for consideration. The court held when the test is preferred in order of merit and one who is higher in rank is deemed to be more meritorious than one who is lower in the rank. The court held there is no arbitrariness in fixing the score as 55 per cent for the purpose of selecting although a candidate obtained 48 per cent was eligible to be appointed.

9. In the instant case P.S.C. felt that only those persons who have got more than 40 per cent marks need only be called for interview. In other words, those who have excelled in the written test and those who have got at least 40 per cent above need only attend the interview, so that persons of least meritorious could be weeded out. This according to us is not a process which can be characterised as arbitrary or unreasonable. The number of vacancies in existence or which may

arise during the period when the recruitment process is on is not the sole guiding facts when the P.S.C. proposes to fix a minimum marks for the written test to assess the merit of the candidates. Nobody can insist that a candidate failed to qualify, on the basis of the cut-off marks stipulated by P.S.C. should be called for the interview. In the counter affidavit filed by the State Government it is stated as follows:

Now the Government propose to amend the recruitment rules consequent to constitution of the Kerala State Veterinary Council. As per Section 57 of the Indian Veterinary Act, 1994 and Rule 26 of Kerala State Veterinary Council Rules only a veterinary practitioner registered with the State Veterinary Council shall practice veterinary medicine or other minor veterinary service in the State. It is therefore decided that only those Veterinary Surgeons who have registered their names with the Council be made eligible to apply to the post of Veterinary Surgeon.

The Government also decided to amend the recruitment rules making the knowledge of Malayalam a desirable qualification and condition of the registration with the Kerala State Veterinary Council as mandatory for appointment as Veterinary Surgeon. Government later directed the Director of Animal Husbandry not to report further vacancies to the Public Service Commission. We notice that 263 candidates were earlier advised. Subsequently certain vacancies were reported and altogether only 267 candidates were advised for appointment and the rank list got exhausted. But all those who were included in the rank list satisfied the criterion of 40 per cent or more marks in the written test laid down by P.S.C. and they were advised and appointed.

10. We also notice that subsequently P.S.C. published Anr. notification, dated 28th December 1999 incorporating additional qualification of registration with the Veterinary Council which was not there in the earlier notification. On the basis of present notification written test was conducted on 29th July 2000 and selection process is on. We have already indicated that the P.S.C. has got the power to limit the number of candidates on the basis of the performance in the written test. In this case 40 per cent was the minimum marks fixed for calling candidates for interview. Petitioners are below the qualifying marks and therefore not called for interview even though a direction was given by this Court to interview the Petitioners. Since we have found that the procedure adopted by the P.S.C. is legal and valid, we are of the view Petitioners are not entitled to any of the reliefs prayed for. Learned Single Judge was therefore justified in declining the reliefs sought for. We therefore find no reason to disturb the finding of the learned Single Judge.

Appeals therefore lack merits and the same are dismissed.