
(1992) 03 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 1943/92

J. Mohan

APPELLANT

Vs

Kerala Public Service Commission and Others

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1992) 03 KL CK 0020

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker and K.S. Radhakrishnan, for the Appellant; T.P. Kelu Nambiar, for 1st Respondent and N. Sankara Menon, Government Pleader for 2nd Respondent and K.P. Dandapani, for 5th Respondent, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Public Service Commission invited applications for recruitment to the post of Assistant Professor in E.N.T. by special recruitment, as provided by Rule 17A of Kerala State and Subordinate Services Rules. Petitioner and third Respondent applied for the post. They were the only two candidates considered by the Commission for selection. Both had the basic qualification of M.S. (E.N.T.). Commission interviewed them for preparing the ranked list. At the interview Petitioner secured 15 marks out of 20 and third Respondent 12 marks out of 20. The Commission took note of the percentage of marks obtained by the candidates in the final M.B.B.S. Examination as well. Petitioner secured 56 per cent of marks in that Examination, while the third Respondent secured 62 per cent. On the basis of the higher total marks obtained by the third Respondent, he was assigned 1st Rank. This action of the Commission is under challenge.

2. The stand taken by the Public Service Commission is that the Commission took a decision that percentage of marks for the basic Degree Examination (Final Year M.B.B.S.) and the marks obtained at the interview, out of 20, must be the

basis for selection. The percentage of marks in M.B.B.S. final, according to the Commission, is a relevant factor and is not unrelated to the process of selection. Commission wanted to finalise the selection as quickly as possible. Since there were two candidates, only, written test was not conducted for selection. Recruitment to public services is regulated by procedure followed by the Commission in their managerial discretion. It is for the Commission to determine the appropriate method of selection. The Court, in such situation, is not to interfere with the decision of the Commission in the absence of proven or obvious oblique motive.

3. Petitioner and third Respondent took their M.B.B.S. degrees from Kerala University and Calicut University respectively. Can the marks obtained by them in the examinations held by different Universities be a relevant criteria for selection to the post of Assistant Professor (E.N.T.)? The basic qualification for that post is M.S. (E.N.T.). It is the common case that marks are not awarded in M.S. Examination. Candidates, who come out successful, are given distinction or pass. Petitioner and third Respondent secured pass in the M.S. Examination. They took the M.S. Degree also from different Universities. In such a situation was the Public Service Commission justified in considering the percentage of marks obtained by them in the Final M.B.B.S. Examination as a relevant factor?

4. Question arose as to whether marks obtained by students from various Universities can be the basis for selection to the postgraduate course. Courts consistently took the view that it would be wholly unjust to grant admissions to the students by assessing their relative merits with reference to the marks obtained by them from different Universities. This was so done because the standard of judging the merits of the students would not be reasonably uniform. The standard of judging students would necessarily vary from University to University. Different Universities are having varying standards. So, the assessment made by one University cannot be compared with the assessment made by Anr. University. While dealing with this issue, a Full Bench of five Judges of this Court in *State of Kerala v. Rafia Rahim* 1978 KLT 369 (F.B.) observed:

The question is not whether one University is superior to the other or maintains higher standards in the matter of syllabus, examination and, evaluation than the other, but whether the operation of different Universities with varying standards of their own is productive of inequality. We are satisfied that this has been proved to be so.

Their Lordships went on to observe:

As a result of our discussion, we are of the opinion, that the scheme of selection for admission for the Medical Colleges on an assessment of merit of students drawn from different Universities with no uniformity of standards is objectionable and violative of Article 14 of the Constitution.

5. The same issue was considered by the Supreme Court in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, Their Lordships

observed:

Some Universities may be very liberal in their marking while some other may be strict. There would be no comparable standards on the basis of which the relative merits of the students can be judged. It would be wholly unjust to grant admissions to the students by assessing their relative merits with reference, to the marks obtained by them, not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution.

(emphasis added).

From these decisions, it has necessarily to be found that merits of students coming out of different Universities cannot be assessed on the basis of marks awarded by those Universities. If such a procedure is adopted, it will be violative of Article 14 of the Constitution, because unequals are sought to be treated alike.

6. Learned Counsel representing the Public Service Commission submitted that the principles stated in the above decisions cannot be pressed into service while making selection to public service. According to counsel, the above observations made with reference to the selection of candidates to higher studies are not applicable to selection to the public service. I do not find my way to accept this argument. If the method of selection condemned in the above decisions cannot be resorted to for selection to the Postgraduate studies, it cannot be made basis for selection to public service either. Whether it is for selection to higher studies or to public service if the marks awarded by different Universities is treated as the basis for selection, that selection is hit by the equality provision contained in Article 14 of the Constitution. When it is violative of Article 14, it cannot be good for selection to public service and bad for selection to higher studies.

7. Learned Counsel representing the Commission then raised a contention that the Commission was not solely relying on the marks obtained by the candidates from the two Universities, but they were relying on the marks obtained by the candidates at the interview as well. When the marks in the interview is also taken into consideration, according to counsel, there cannot be any vice in accepting the marks obtained by the candidates in their final M.B.B.S. Examinations. This argument is also not appealing. When a criteria which is hit by Article 14 of the Constitution has gone in the process of selection, the entire process of selection must be held to be void. In the instant case, the criteria, which violated Article 14 of the Constitution, has tilted the balance in favour of a candidate who secured lesser marks at the interview. But for the objectionable material, namely the percentage of marks obtained in the MB.B.S. Examination, the ranking would have been otherwise.

8. Sri C.K. Sivasankara Panicker, learned Counsel representing the Petitioner,

submitted that the Public Service Commission committed a wrong in adding the marks obtained by the candidates at the interview to the percentage of the marks obtained by them in the M.B.B.S. Examination. According to him, the percentage of marks obtained by the candidates at the interview should have been added to the percentage of marks in the M.B.B.S. Examination, if the Commission was bent upon placing reliance on the percentage of marks obtained in the final M.B.B.S. Examination. If it was so done, according to him, Petitioner has got 56 per cent in the M B.B.S Examination plus 75 per cent at the interview. That would have worked out at $131/2=65.5$ per cent. By adopting this method, the mark secured by the third Respondent would have been 62 per cent in M.B.B.S. plus 60 cent secured at the interview. It means $122/2=61$ per cent. So calculated, according to counsel, Petitioner secured 65.5 per cent and third Respondent 61 per cent. Thus, it is submitted that even by adopting the method resorted to by the Public Service Commission, Petitioner has secured more marks than the third Respondent. I am not relying on this method of calculation, because according to me, the Public Service Commission was clearly in error in taking into consideration the marks obtained by the Petitioner and the third Respondent in their M.B.B.S. Examinations conducted by different Universities.

9. Learned Counsel representing the Commission argued that the decision taken by the Commission to rely on the percentage of marks obtained by the candidates in the final M.B.B.S. Examination is their managerial discretion and so, the court is not to interfere with the same in the absence of proven or obvious oblique motive. Petitioner has not alleged any oblique motive to the Commission in assigning the first rank to the third Respondent. It is not the motive of the Public Service Commission that is to be looked into in a case of this nature. If the Public Service Commission has taken into, consideration irrelevant matters, then the decision of the Commission cannot stand. If criteria, which is judicially found to be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution, has gone in the process of selection, then the Courts are bound to interfere with that selection.

10. Public Service Commission was called upon to select a candidate for the post of Assistant Professor in the Medical College. The selection is to be made from persons of mature personality possessing the essential academic and professional qualifications. In the case of such candidates, an interview test could by itself have been the best method for making the selection. In the interview, Petitioner secured, it is admitted, higher marks than the third Respondent. But, he was ranked below the third Respondent only because an irrelevant material, which is violative of Article 14 of the Constitution, was taken into consideration by the Public Service Commission. Therefore, the only course that is now open for this Court is to quash the ranked list prepared by the Public Service Commission for selection to the post of Assistant Professor by special recruitment I do so. If the Public Service Commission has advised a candidate on the basis of the above tanked list, that advice and the order of appointment pursuant thereto will also stand quashed. Public Service Commission is directed to make selection

in accordance with law and in the light of the observations made herein before.

11. Original Petition is allowed in the above terms.