

(2015) 11 KL CK 0107

In the High Court Of Kerala

Case No : WP(C) Nos. 6341 of 2014 (P), 6273 of 2014 and 22649 of 2012

K. Sahadevan and Others

APPELLANT

Vs

The Kerala Public Service Commission and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Citation : (2015) 11 KL CK 0107

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : U. Balagangadharan, Advocate, for the Appellant; P.C. Sasidharan, SC, for the Respondent

Final Decision : Partly Allowed

Judgement

Dama Seshadri Naidu, J.—All the petitioners in these writ petitions have sought a writ of mandamus from this Court to the respondent Public Service Commission to consider them, being the candidates in the rank list, in "No Candidates Available" (NCA) vacancies. Since the issue is identical in all these three writ petitions, involving the same set of respondents, this Court has proposed to dispose of the writ petitions through a common judgment. For ease of reference and convenience, I refer to the facts as pleaded and the parties as arrayed in W.P. (C) No. 6341 of 2014.

W.P.(C). No. 6341/2014

2. Out of five petitioners that had approached this Court, the first and the second petitioners secured employment during the pendency of the writ petition; petitioners three to five alone are contesting.

3. Initially, the first respondent Commission issued a notification to fill up the posts of Peon/Watchman/Lift Operator in the 4th respondent District Co-operative Bank. The recruitment was to be from two streams: 50% in the open category and 50% in the in-service category, i.e., candidates of the Primary Cooperative Societies. It is as per Rule 187 of the Kerala Cooperative Societies

Rules.

4. Having conducted the necessary tests on 21.02.2009, the Commission published on 01.03.2011 two rank lists: (i) Part I, covering candidates in open category; (ii) Part II, covering the in-service candidates. Since certain vacancies have remained unfilled on account of the fact that no candidates are available as per the communal roster, the petitioners have claimed those unfilled vacancies.

W.P.(C). No. 22649 of 2012

5. The post to be filled up is Clerk-cum-Cashier. Out of four petitioners, three got employment pending the writ petition. The 4th respondent alone is now in the fray; he also seeks appointment in the NCA vacancy.

W.P.(C). No. 6273/2014

6. Here, too, the post to be filled up is Clerk-cum-Cashier. Out of four petitioners, the first and the third petitioners got employment pending the writ petition. What compounds the issue, at least for the purpose of narration, is that the petitioners 1 & 2 applied in the open category, and the petitioners 3 & 4 applied in the in-service category. One person in each category got employment. Thus, now the fourth petitioner seeks appointment under NCA in the in-service category. The second petitioner, having applied under the open category, however, seeks appointment in the NCA vacancy of in-service candidates. The claim is said to be on the strength of a provision made in the recruitment notification.

7. In the above factual background, Sri Balagangadharan, the learned counsel for the petitioners in W.P.(C). Nos. 6341/2014 and 22649/2012, has submitted that in Palakkad, where the 4th respondent Bank is situated, the question of having suitable candidates available under certain communal categories does not arise. According to him, demographically there is no representation for certain communities in that area. In other words, the posts earmarked as per the roster for those communities will forever remain unfilled.

8. In elaboration of his submission, the learned counsel drew my attention to Rule 15 of the KS & SSR, which mandates that if no suitable candidates are available after re-notification two more times (i.e., the initial notification and two re-notifications-three times in all), the vacancy shall be made available to the other candidates in the Other Backward Candidates ("OBC") category. In this regard, the learned counsel had submitted that the Commission had already notified twice before the petitioners approached this Court. And after the filing of the writ petition, it re-notified one more time.

9. According to the learned counsel, since the mandate under Rule 15 has already been fulfilled, now the posts that are still remaining vacant should be made available to the other OBC candidates in the rank list.

10. Sri S.M. Prasanth, the learned counsel for the petitioners in W.P.(C). No. 6273/2014, having adopted the submissions made by Mr. Balagangadharan, has

further submitted that once vacancies have been notified and reported during the currency of a rank list, the subsequent expiry of the rank list should not affect the prospectus of the candidates whose names are found in the rank list. He has also drawn my attention to Ext. P3 in W.P.(C). No. 6273/2014 to contend that if no suitable candidates are available in the in-service candidates" category, candidates from the rank list of the open category should be given the benefit.

11. The learned counsel, too, has contended that as regards the clerk-cum-cashier, the Commission in compliance with Rule 15 has re-notified twice over, and as such now the vacancies that have remained unfilled should be made available to the other OBC candidates, who include the petitioners as well.

12. Per contra, Sri P.C. Sasidharan, the learned Standing Counsel for the respondent Commission, has strenuously contended that the reservation provided for in the recruitment is inviolable, and it is impermissible to be tampered with. The statute with a view to giving effect to the constitutional obligations has mandated that once there are no candidates available from a particular community, the Commission should make every effort to ensure proper representation for all the communities on a broad spectrum as per the roster. Re-notification is the answer.

13. In an elaboration of his submissions, the learned Standing Counsel has submitted that on a mere promise that there are no sufficient candidates available from any particular community, the Commission cannot rush through subsequent notifications, thereby nullifying the statutory mandate. According to him, there should be a reasonable interval between one notification and another.

14. The learned Standing Counsel has further submitted that even after repeated notifications as has been contemplated under Rule 15 of the KS&SSR Rules, if no candidates are available, the vacancies that remained unfilled should be taken care of in a fresh general notification that may have to be issued in future. To his credit, he has, nevertheless, submitted that there is an element of ambiguity and vagueness present in the recruitment procedure.

15. In elaboration, the learned Standing Counsel has submitted that the ambiguity is concerning whether the NCA vacancies should be made available to the candidates in the rank list prepared based on the original notification or to the candidates to be selected based on a future notification. He has submitted that the Commission has already referred the issue to the Government and has been awaiting a response in that regard.

16. At any rate, the learned Standing Counsel has contended that once the rank list has expired, the candidates in that rank list getting any advantage of NCA vacancies that remained unfilled does not arise. Thus, the learned Standing Counsel has urged this Court to dismiss the writ petitions.

17. Heard the learned counsel for the petitioners in all the three writ petitions and the learned Standing Counsel for the Public Service Commission, apart from

perusing the record.

18. Indeed, the facts are not in dispute. Most of the petitioners, after filing the writ petitions, have secured employment. The few that remained have staked their claim on the grounds that either before the filing of the writ petitions or during their pendency, the Commission has twice re-notified the vacancies intending to fill the NCA vacancies, but could not succeed in its efforts.

19. In this context, both the learned counsel for the petitioners in the three writ petitions have urged in unison that as the vacancies stood reported before the expiry of the rank list, the benefit should be given to the candidates of that rank list alone, its expiry notwithstanding.

20. As a matter of an established practice, the notification, it is to be observed, is common for both the streams of recruitment. The Commission publishes two separate rank lists: Part I rank list for the open category candidates; Part II rank list for the in-service candidates.

21. The second petitioner in W.P. (C). No. 6273 of 2014 has claimed NCA vacancy in the in-service category despite his applying under the open category. At the outset, I may observe that in the light of the statutory mandate under Rule 15 and also the roster, which is required to be followed, the migration of candidates from the open category list to the list of the in-service candidates at this juncture does not arise. Once in-service candidates are available from the ranks of OBCs, they cannot be deprived of the benefits by choosing candidates from the open category. If at all the notification has got such a provision, as has been contended by the learned counsel for the petitioners in W.P. (C) No. 6273 of 2015, that could perhaps be permissible only when no candidate is available from the OBC category and SC & ST category in the rank of the in-service candidates.

22. Now, we may examine the claim of the other petitioners. In so far as the application of Rule 15 is concerned, it is profitable to examine the said provision to appreciate whether the petitioners could be given the benefit of the said provision, so that the NCA vacancies that have remained still vacant after repeated notifications can be filled with them.

23. Rule 15 (a) of the K.S. & S.S.R. reads as follows:

"The integrated cycle combining the rotation in clause (c) of Rule 14, and the sub-rotation in sub-rule (2) of rule 17 shall be as specified in the Annexure to this Part. Notwithstanding anything contained in any other provisions of these rules or in the Special Rules if a suitable candidate is not available for selection from any particular community or group of communities specified in the Annexure, such vacancy shall be kept unfilled, notified separately for that community or group of communities for that selection year and shall be filled by direct recruitment exclusively from among that community or group of communities. If after re-notification, repeatedly for not less than two times, no suitable candidate is available for selection from the respective community or group of

communities, the selection shall be made from available Other Backward Classes candidates. In the absence of Other Backward Classes candidates, the selection shall be made from available Scheduled Castes candidates and in their absence, the selection shall be made from available Scheduled Tribes candidates."

(emphasis supplied)

24. It is not in dispute that either before the petitioners' filing the writ petitions or during their pendency, the Commission has re-notified the NCA vacancies. Thus, the requirement under Rule 15 stands fulfilled.

25. Now the issue has tapered off to one singular aspect: whether the benefit of NCA vacancy could be given to the candidates of the rank list that expired before the process of re-notification could be completed. The petitioners indisputably belong to OBC category.

26. The learned Standing Counsel has contended that the rank list shall be subsisting by the time the process of re-notifying the NCA vacancies twice is completed. And only in such an eventuality, the candidates found in the rank list could claim the benefit. The argument on the part of the learned counsel for the petitioners is on the converse.

27. If we examine Rule 15 (a) of KS & SSR, the last portion of the said provision provides the clue to the legislative or executive intent. It specifically mandates that if no suitable candidates are available for selection from the communities as per the roster despite the re-notification twice over, the selection shall be made from available Other Backward Classes candidates.

28. "Available Other Backward Classes candidates" means, to my mind, the candidates from the rank that is already "available". True, by efflux of time, the list may have expired; the fact, nevertheless, remains that the vacancies had been notified and reported when the rank list was subsisting. In that context alone we can put the expression "available" in perspective.

29. Viewed from another angle, if the NCA vacancies were made available to candidates from the rank list to be prepared based on the notification yet to be issued, the expression "available" becomes otiose-superfluous. It is a cardinal canon of construction of statutes that there can be no superfluity in the legislative expressions—at least the interpretation shall begin with the said presumption as the basis. That accepted, I am of the considered opinion that the incidental expiry of the rank list does not defeat the rights of the candidates who belong to Other Backward Classes if they are otherwise eligible. And the petitioners do belong to OBC category.

30. In the facts and circumstances, all the writ petitions are allowed, to the extent that as regards the NCA vacancies still being available despite two re-notifications, the benefit shall be given to the candidates in the rank list from Other Backward Classes candidates. The petitioners may be them, subject to their fulfilling all other criteria.

With the above directions and observations, the writ petitions are allowed in part.
No costs.