
(2014) 03 KL CK 0028
In the High Court Of Kerala
Case No : O.P. (KAT) No. 59 of 2014

Kerala Public Service Commission and Another	APPELLANT
Vs	
Sini, K.	RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15(3), 16, 19, 21

Citation : (2014) 2 ILR 383 : (2014) 2 KHC 388 : (2014) 2 KLJ 637 : (2014) 2 KLT 357 : (2014) 4 SCT 69 : (2015) 1 SLJ 179

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : P.C. Sasidharan, (S.C., KPSC), Advocate for the Appellant;
Kaleeswaram Raj, Advocate for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These original petitions are filed by the Public Service Commission invoking Article 227 of the Constitution of India. It challenges different verdicts of the Kerala Administrative Tribunal interfering with the PSC's decisions refusing to reschedule the physical efficiency test of the woman candidates who were passing through different milestones of pregnancy or maternity when they were called for such test for the purpose of recruitment to the post of Excise Guards or Women Police Constables.

2. The learned standing counsel for the PSC, also making reference to Rangaswamy v. PSC (1982 KLT 574) and J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., argued that the process of finalisation of the select list is not an act or event which occurs in a single day, that is to say, on the date of publication of the select list. He says that the process of finalisation of the select list, going by the procedure prescribed, would necessarily take reasonable time from the finalisation of initial select list till the approval of that draft by the competent finalising authority after it being vetted at different stages to make it error-free. He, therefore, argues that if the date of finalisation of the select list is treated as the date until which a request for a

second opportunity for physical efficiency test could be ordered, that would put the entire select list to jeopardy and stalemate.

3. Per contra, learned counsel for the applicants before the Tribunal (candidates) argued that whatever be the legal issues, the fact of the matter remains that on ground realities, the women, who had applied for the different posts and are involved in these litigations, have the eligibility for a second opportunity as directed by the Tribunal, having regard to the proximity of the date of the physical efficiency test as fixed by the PSC and the relevant maternal milestones, particularly the date of delivery of the child or the expected date for such delivery.

4. The Tribunal relied on the Bench decision of this Court in *KPSC v. K. Jayasree* 2014 (1) K.H.C. 358, also noticing the order passed by this Court on R. P. No. 535 of 2000 filed by the PSC seeking review of that judgment. It initially decided O.A. No. 2582 of 2013 and O.A. No. 2583 of 2013 from which OP (KAT) No. 59 of 2014 and OP (KAT) No. 62 of 2014 arise respectively.

5. In its net effect, the decision of the Division Bench in *K. Jayasree's* case (supra) read with the order on the review petition is that a pregnant woman cannot be denied an opportunity to have adequate means of livelihood merely on account of the biological reason that she was unable to appear for the physical efficiency test at a given point of time and that a pregnant woman cannot be compelled to undergo the endurance test at a time when it was dangerous to her life and that of the baby in her womb. It was held that the effect of refusal on the part of the PSC to grant extension of time for such a woman to participate in the physical efficiency test would amount to denial of opportunity to get employment which would enable her to have a decent life. However, while issuing the order on the review petition, it was observed by this Court that the direction contained in the judgment dated 11-10-2000 in the writ appeal was issued taking into account the fact that the selection list had not been finalised in that case at the time when the motion was made and that the PSC will not be under an obligation to conduct fresh endurance test if motion therefor comes after the finalisation of the selection list.

6. While we are in agreement with the reasoning in *K. Jayasree's* case (supra), making reference to Article 42 of the Constitution of India and varied provisions in the Maternity Protection Conventions of the International Labour Organisation which were adopted in the General Conference of ILO at Geneva on 30-5-2000, we may state that though the said precedent was rendered noting that India had not ratified that convention, we are of the view that sharing responsibility of Government and society to provide protection for pregnancy as enunciated therein has to be applied in India as a seminal doctrine relatable to the right to life under Article 21 of the Constitution and inexcusable as a salutary human right, not only of the pregnant woman and the child in the womb, or the mother and the child, but of the family as a basic unit of society. There is also nothing in Indian law which can be pointed out running contrary to the said content of the Maternity Protection Convention. Therefore, it is within the ambit of the

constitutional sanctions that the said document can be relied on from the international domain to decipher and give effect to India's obligations in the said field.

7. In the situation in hand, we see that there are three groups of stakeholders and interests. The primary interest is the requirement to have Women Excise Guards and Women Police Constables to discharge duties, responsibilities and functions in such categories in service. This is the prime interest which is the larger public interest and the interest of the institutions of governance. The second group of stakeholders includes all those who are in the field of competition and who have been found eligible to be included in the select list to be advised in due turn. While that may be a larger basket of candidates, a sub category thereof is the third category, namely, woman candidates, who have reached the stage of physical efficiency test in the selection procedure but are at different milestones of pregnancy or maternity. They form a category by themselves and their rights as enunciated by this Court in K. Jayasree's case (supra) have to be ensured and protected. Now, the question would be as to how the equations and priorities between the aforesaid three groups are to be balanced, bearing in mind the purpose sought to be achieved by providing the aforementioned benefit, in terms of the Constitution and the human right laws, to pregnant women competing in a selection which includes physical endurance test. The order on the review petition in K. Jayasree's case clarified that the declaration made in the judgment in that writ appeal was issued taking into account the fact that the selection list had not been finalised at the time when the motion was made and that PSC will not be under an obligation to conduct fresh endurance test if motion therefor comes after the finalisation of the selection list. A reasonable modality has to be effectuated synchronising the fundamental rights of all the candidates as guaranteed under Articles 14, 16, 19 and 21 and having in view the constitutional values and human right values emanating out of Articles 15(3) and 42 of the Constitution of India and the aforementioned materials in the international domain as understood herein above and in K. Jayasree's case (supra). This has to be done without ignoring the fact that the primary need is to fill up the vacancies without inordinate delay because that is the foremost requirement in public interest. In this backdrop, on the totality of the scheme of things, the competent authority has to frame clear guidelines providing the best possible measures to support the woman candidates who happen to face different situations in relation to pregnancy and maternity during the course of the process of selection which commences with the submission of the applications following PSC's notification. The PSC has to necessarily frame regulations or guidelines to regulate this in a uniform and standardised manner, also taking note of the time frame which it would treat as a "closed period" for the purpose of finalisation of the select list from the time when preparation of list attains definiteness and until it is vetted and finalised through the process of the PSC's machinery. We, therefore, direct the PSC to take the aforementioned facts and factors into consideration and issue regulations or guidelines as may be found

necessary at the earliest.

8. Now, on to certain basic facts of the cases in hand. The earliest among the original applications from which these original petitions arise, was instituted before the Tribunal on 28-11-2013. The impugned orders were issued by the Tribunal on 11-12-2013 or thereafter. O.A. No. 2582 of 2013 from which OP (KAT) No. 59 of 2014 arises is filed in relation to the category of Women Excise Guards. The physical efficiency test of that candidate was on 23-10-2013. With medical certificate, she showed that she had delivered a child on 8-10-2013. All the other original petitions relate to the category of Women Police Constables. The respective dates for physical efficiency test of the candidates, who were the applicants respectively in O.A. Nos. 2583, 2897, 2893, 2895 and 2898 of 2013, were 31-10-2013, 31-10-2013, 5-11-2013, 31-10-2013 and 4-11-2013. of them, the applicant in O.A. No. 2583 of 2013 which gives rise to OP (KAT) No. 62 of 2014 delivered her baby on 3-9-2013 and she was discharged from the hospital on 8-9-2013. In the other four original applications which give rise to OP (KAT) Nos. 72, 74, 75 and 76 of 2014 respectively, the plea is that the applicants are in advance stage of pregnancy and have been advised rest till May, February, March and June, 2014 respectively. These facts have been adverted to and considered by the learned Tribunal. We see that the impugned decisions of the Tribunal have been rendered after adverting to those facts. The Tribunal has come to reasonable conclusions on the basis of the totality of the facts and circumstances. The final select list, not having been published till now, for the present, it is only just and proper that the directions of the Tribunal are given effect to. We do not find any ground to interfere with those directions, though we clarify that all those decisions of the Tribunal are rendered on the particular facts of each case, except to the extent reference is made, on principles of law, to the decision of this Court in K. Jayasree's case (supra) and the order on R. P. No. 535 of 2000 arising therefrom.

These Original Petitions are ordered accordingly.