

(2013) 11 KL CK 0004
In the High Court Of Kerala
Case No : W.A. Nos. 1713 of 2010

Kerala Public Service Commission

APPELLANT

Vs

Jelphy

RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2014) 2 KLT 459

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Judgement

Thottathil B. Radhakrishnan, J.—Two among the captioned Writ Appeals are by the State of Kerala. The others are by the Kerala Public Service Commission, for short, "PSC". Though different judgments are under challenge in these Writ Appeals, the basic facts, contentions and arguments are common. Sequence of events and litigations which has led to the present situation also lies intertwined and evidenced by the materials in these different Writ Appeals. Therefore, these matters are consolidated and heard with consent of parties. P.S.C. issued gazette notification dated 30.12.2006 with Category No. 168/2006 for district-wise recruitment of Lower Division Clerks to various departments in different districts. The method of appointment is by direct recruitment.

2. During the currency of that ranked list, different Writ Petitions were filed by the rank holders in the list for one or some of the districts, contending that the posts of "Warden" in the Scheduled Tribes Development Department are in addition to the cadre of Clerks and therefore, vacancies in that category may also be ordered to be reported for being advised.

3. At one stage, in W.P. (C). No. 15115 of 2004, this Court held that persons in the ranked list for Lower Division Clerks cannot be advised for appointment as Warden. However, in W.P.(C). No. 30967 of 2007, the Director of the Scheduled Tribes Development Department filed a statement before this Court to the effect that keeping the vacancies of Warden unfilled is detrimental to the interest of the department and therefore, considering the fact that the post of Warden is an

addition to the cadre of clerks, the department craved leave of this Court to report the vacancies of Warden which are additional posts in the cadre of clerks in the department as per the Special Rules, to the P.S.C. and to post the candidates advised by the P.S.C. from the list of Lower Division Clerks as Wardens as against the vacancies. That was the stand taken by the Government through the Director of Scheduled Tribes Development Department in the said case relating to Wayanad district. This Court, therefore, by judgment dated 5.12.2007, ordered that Writ Petition directing such reporting of vacancies.

4. Thereafter, as per judgment dated 23.5.2008 in W.P.(C). No. 12969 of 2008, such exercise was also made possible in Palakkad District and, by later judgment in W.P. (C). No. 1927 of 2008, to Idukki district. In W.P. (C). No. 14019 of 2009, direction was issued by this Court to report the vacancies of Female Wardens in Kannur district from the list prepared for direct recruitment of Lower Division Clerks.

5. In W.P.(C). No. 19728 of 2008, a learned single Judge had taken the view that the Government was competent to take a decision on the question of treating the post of Warden as additional to the cadre of Lower Division Clerk and it was such decision that culminated in the judgment in W.P. (C). No. 30967 of 2007 noted above.

6. As already noted, the P.S.C.'s notification was one inviting applications for the post of Lower Division Clerks for different districts and the prescribed method of appointment is direct recruitment. The notification specifically stated that Lower Division Clerk will include the integrated post of Lower Division Clerk/Village Assistant in the Revenue Department. It was further stated in that notification that the vacancies of Amin in the Judicial Department will be filled up from the ranked lists prepared in pursuance of that notification after obtaining the willingness of the candidates and that vacancies of Lower Division Clerks in Kerala Water Authority, Kerala Khadi and Village Industries Board and Panchayat Schools will also be filled up from the ranked lists prepared in pursuance of that notification (For Direct Recruitment only).

7. Warden in the Scheduled Tribes Development Department is not included specifically in that notification. The Kerala Scheduled Tribes Development Subordinate Service Special Rules 1993, for short, "STDSS Rules", made and published by the Government of Kerala as the Special Rules for the Kerala Scheduled Tribes Development Subordinate Service has created a category by name "Warden" which is at Sl. No. 8 among the categories as per the constitution of that subordinate service. That is shown as addition to the cadre of Clerks. The method of appointment of Warden is by transfer from among Clerks. Direct recruitment is not a method of appointment to the post of Warden.

8. The fact situation noted above is nothing but the Creation of the rank holders in the different districts who wanted the avenues for appointment to be opened up, also by treating the vacancies of Warden available to be filled up. They

craved for such recruitment from the ranked list of Lower Division Clerks. Government, essentially, conceded to that situation by the statement made by the Director of Scheduled Tribes Development Department before this Court. When operated upon and given effect to, that does not appear to have been well taken by those among the rank holders who have filed the Writ Petitions from which these writ appeals arise.

9. One thing is certain. The department could not have reported the vacancies of the Warden as if they were vacancies of Lower Division Clerks without the Government's decision in that regard and P.S.C. would not have, then, advised as against those vacancies. The records of these cases, by now, show that this Court had accepted the factual position that Government had treated the posts of Warden as an addition to the posts of Lower Division Clerks. It was thereafter that this Court acted upon the statement made by the Director of Scheduled Tribes Development Department in one among the earliest litigations relating to the recruitment and ranked list in question. Therefore, if such reporting of vacancies were not made, many in the ranked list who were later advised to join as Warden would not have got that opportunity for public employment. More importantly, the larger public interest which was projected in the statement of the Director of Scheduled Tribes Development Department, that is to say, the need for Warden in the Scheduled Tribe hostels, could not have been satisfied.

10. The P.S.C. and the State of Kerala have filed these Writ Appeals primarily because the impugned judgments tend to proceed as if the post of Warden cannot be filled up from the ranked list of Lower Division Clerks and therefore, the advice made by the P.S.C. in that regard is erroneous. The P.S.C. is also aggrieved by the quashing of the advice memos with direction in some of the cases to put the respective candidates back in the appropriate slot in the ranked list and thereupon, to advise for appointment as Lower Division Clerks.

11. The Special Rules do not provide direct recruitment as a method of appointment to the cadre of Warden. The posts of Warden, though treated as addition to the posts of Lower Division Clerk in the Special Rules, was not specifically included in the notification of the P.S.C., though there are specific clarificatory statements relating to certain other departments and quasi-governmental establishments in that notification. When direct recruitment is not the method of appointment to a particular cadre, the select list prepared by the P.S.C. for direct recruitment to yet another category cannot be operated for filling up the vacancies in the category which were to be filled up by transfer. For one thing, Warden is a specific category, going by the STDSS Rules. The Clerks are not included there. The decision of the Government that post of Warden will be an addition to the post of Lower Division Clerk, without changing the method of recruitment, could not put the vacancies of Wardens in the basket of the Lower Division Clerks to apply direct recruitment as the method of appointment to the vacancies of Warden, when the statutory rules do not provide such prescription. This is the law.

12. If the aforesaid situation in law is to be pushed further in this case, all advices made in excess of the vacancies of Lower Division Clerks have to fall. But the fact of the matter remains that with the passage of time, the different judgments referred to above, which followed on the basis of the view of the Government expressed through the Director, have led to the situation where advices for appointment had been issued, also taking into account the vacancies of Warden. When persons are advised for appointment as Lower Division Clerks, taking also into account the vacancies in the category of Warden, the Government will necessarily have the power in terms of the General Rules to appoint such persons by transfer as Wardens having regard to the public interest involved. In this fact situation of the case, it would be within the domain of the State's power in terms of Art. 309 of the Constitution of India to rectify anomalous situation, if any, now existing. It appears that on the basis of the judgments impugned, in some of the cases, the P.S.C., had undone the advices and had again advised some of the rank holders who are the respondents in some of these Writ Appeals to different other departments and they have joined those departments and are working for quite some time in those posts. That fact situation cannot also be ignored.

In the result, these Writ Appeals are ordered as follows:

- i. The judgments impugned in all the Writ Appeals are vacated.
- ii. It is declared that the post of Warden governed by the Kerala Scheduled Tribes Development Subordinate Service Special Rules 1993 is to be filled up by transfer and not by direct recruitment. Such appointments by transfer are to be from Clerks and have to be done following due procedure in terms of the said Special Rules and the General Rules, as also, other applicable laws.
- iii. All advices made by the PSC from the ranked list of Lower Division Clerks following the selection as per the gazette notification dated 30.12.2006 for category No. 168/2006, in so far as the rank holders advised to Scheduled Tribe Development Department are concerned, shall be treated as advices for being appointed as Lower Division Clerks, also taking into account the vacancies reported by the department treating the vacancies of Warden in the Scheduled Tribes Development Department in the district also; however that, after the entry of that incumbent into service, it will be open to the Government to appoint any such person as Warden, by transfer, in terms of the Special Rules and the General Rules.
- iv. In so far as those cases where the PSC had undone the advices and had again advised some other rank holders to different other departments, the situation obtained by such exercise shall not be disturbed and they will be treated as lawfully joined those other departments and are working as against the posts to which they have been appointed. Such situation shall not be disturbed on the basis of the declaration and other directions contained in this judgment.
- v. No costs.