

(2000) 10 KL CK 0062

In the High Court Of Kerala

Case No : W.A. No. 1289 of 2000 (Arising out of O.P. No. 1597 of 2000 of the Honourable High Court of Kerala)

Kerala Public Service Commission

APPELLANT

Vs

K. Jayasree

RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Citation : (2014) 1 KHC 358

Hon'ble Judges : Mrs. K.K. Usha, ACJ. and Mr. M.R. Hariharan Nair, J.

Bench : Division Bench

Advocate : O.V. Radhakrishnan, Advocate, for the Appellants; M. Sasindran, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mrs. K.K. Usha, A.C.J. - This appeal at the instance of the Kerala Public Service Commission is from the judgment of the learned Single Judge in OP No. 1597/2000 filed by the 1st respondent herein. The learned Single Judge allowed the prayer made by the petitioner for granting her a further chance to undergo the endurance test for selection to the post of Agricultural Assistant Grade-II for the reason that she could not take part in the test on the date originally fixed, as she was in advanced stage of pregnancy. The learned Judge directed Kerala Public Service Commission to conduct an endurance test for the petitioner before finalising the rank list of Agricultural Assistant Grade-II. It is submitted at the Bar that pursuant to the judgment of the learned Single Judge endurance test was given to the petitioner on 29/06/2000 and she came out successful in the test.

2. The Public Service Commission challenges the above judgment of the learned Single Judge on the ground that the direction given by the learned Judge would amount a direction to relax the Conditions of Rules of Recruitment by the Public Service Commission, which, according to the appellant, is directly against the dictum laid down by the Supreme Court in Jammu & Kashmir public Service

Commission v. Dr. Narinder Mohan 1994 KHC 789 : 1994 (2) SCC 630 : 1994 SCC (L&S) 723 : 1994 (27) ATC 56 : AIR 1994 SC 1808 : 1994 (1) LLJ 780 : 1994 (1) CLR 1 : 1994 (1) SLR 246. It is further contended that if the PSC had accepted the request made by the petitioner, it would be violating the dictum laid down by this Court in Rangaswamy v. Kerala Public Service Commission 1982 KHC 138 : 1982 KLT 574 : ILR 1982 (2) Ker. 59 : 1982 KLN 315. The learned counsel for the appellant pointed out that if such relaxation are granted on the ground of ill-health, early stage of pregnancy, advanced stage of pregnancy etc., it will be against the larger interest of the candidates and the requirements of the public service. It will be doing injustice to a larger section of the public offending Articles 14 and 16 of the Constitution.

3. We find no merit in the contentions raised by the Public Service Commission in this appeal. Pursuant to a notification issued by the PSC in the year 1994 for appointment to the post of Agricultural Assistant Grade-II the petitioner also submitted her application. A written test was conducted in the year 1997 and a list was published by the Public Service Commission on 08/02/1999, in which the petitioner was also included. Candidates who possess Vocational Higher Secondary Certificate in agriculture has to undergo an endurance test, whereas the diploma holders are exempted from it. The petitioner was placed as serial No. 739 in the short list published by the Public Service Commission.

4. The petitioner got married in November, 1998 and she became pregnant. Her expected date of delivery was 2nd December, 1999. She received a communication from the 1st respondent scheduling the endurance test on 29/11/1999. In the endurance test a candidate has to run 1600 metres within 10 minutes and should do manual work on land measuring .4 Are within one hour. The test is common for male and female candidates. The above mentioned works were part of the syllabus of the certificate course undergone by the petitioner. In view of her advanced stage of pregnancy, she submitted a representation before the Public Service Commission on 22/11/1999 praying for an opportunity to participate in the endurance test after 45 days. Along with her representation Ext. P2 she produced a medical certificate to the effect that tier expected date of delivery is 02/12/1999. The petitioner submitted that since the endurance test is scheduled to 29/11/1999, it was impossible for her to take part in the test. On 12/12/1999 also the petitioner made Ext. P4 representation in which she had stated that she had delivered on 04/12/1999 and she will be able to take participate in the endurance test if she is given a chance after January. She, therefore, prayed that she may be given such a chance or if the rank list has to be published before that time, her name may be included in the list subject to the condition of her passing the endurance test. Since no favourable reply was received she filed OP on 13/01/2000.

5. Admittedly the list was not finalised at that time. It was finalised only on 20/05/2000. The period of extension, the petitioner sought, would have been over by the time she filed the original petition. Therefore, even if her prayer was

granted by the Public Service Commission, it would not have in any manner delayed the finalisation of the list.

6. The stand taken by the Public Service Commission in this appeal is unbecoming of a constitutional authority. Article 42 of the Constitution of India enjoins the State, to make provisions for securing just and humane conditions of work and for maternity relief. The above article which is placed in Part IV of the Constitution is part of the directive principles of State policy. Article 37 provides that the principles laid down in the provisions contained in Part IV are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. The view taken by the Public Service Commission that a pregnant woman should lose her opportunity to get an employment only for the reason that it is not safe for her to take the endurance test is in direct conflict with the duty cast under Article 42 of the Constitution.

7. When the General Assembly of the United States adopted and proclaimed the Universal Declaration of Human Rights on December 10, 1948 there was special reference in it about the motherhood. Article 25(2) declared that motherhood and childhood are entitled to special care and assistance.

8. International Labour Organisation created in 1919, at the end of the First World War, at the time of Peace Conference which was convened in Paris always seek promotion of social justice and internationally recognised human and labour rights. It has emphasised the necessity to have comprehensive set of measures for national as well as International Labour Organisation action to be undertaken in various areas which included equal access to employment and training and also provision for adequate maternity protection and benefit and their gradual extension to women in all sectors of activity and enterprises of all sizes. Varied provisions are made in Maternity Protection Conventions of the International Labour Organisation in the interest of pregnant women. Special provisions are incorporated for the women worker who is nursing her child. There are special provisions prohibiting night work and overtime work for pregnant and nursing women. Employment of a woman on work prejudicial to her health or that of her child is prohibited during pregnancy and upto at least three months after confinement and longer if the woman is nursing her child. There had been much modifications on the provisions of the Maternity Protection Convention (Revised), 1952 during later years. The General Conference of the International Labour Organisation at Geneva on 30/05/2000 had adopted Maternity Protection Convention, 2000. It is true that India has not yet ratified this convention. This convention was found required noting the need to revise the Maternity Protection Convention (Revised), 1952 and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the work force and the health and safety of the mother and child and the development of protection of maternity in national law and practice. It was also found that the above convention is required taking into account the circumstances of women workers

and the need to provide protection for pregnancy, which are shared responsibility of Government and society. Of course, the convention applies to all employed women, but this convention has come out with the idea of sharing responsibility by Government and society to provide protection for pregnancy.

9. According to us, duty cast on the State under Article 42 of the Constitution cannot be limited to those women who are already employed. It should apply to woman who seek employment also. The provisions contained under Article 39A of the Constitution also is relevant in this issue. It provides that State shall in particular direct its policy towards securing that the citizen men and women have the right to adequate means of livelihood. Due to biological reasons women have to bear children which is an absolute requirement for the existence of the society. A pregnant woman cannot be denied an opportunity to have adequate means of livelihood for such reasons relied on by the Public Service Commission in this case to sustain rejection of petitioner's request to grant her time for taking the endurance test.

10. The action of the Public Service Commission impugned in the original petition is in clear violation of Article 21 of the Constitution also. The petitioner cannot be compelled to undergo the endurance test at a time when it was dangerous to her life as well as that of the baby in her womb. At the same time the effect of the refusal on the part of the Commission to grant her extension of time would amount to denial of opportunity to get employment so that she can have a decent life.

11. We do not find any merit in the contention raised by the Commission that if time is granted to the petitioner, it will delay the process of publishing the rank list. On the facts in the case no such contention could be raised as it is found that the rank list was published much after the petitioner took the endurance test pursuant to a direction issued by this Court. Apart from the above, the reason that the rank list will be delayed is no answer when the State as well as the society has a responsibility to take care of the pregnant woman. If a candidate has taken the main test, there is no difficulty to include her name in the list subject to her taking the endurance test or the interview as the case may be. We are not deciding upon the question whether for the main test also such benefit should be given to a pregnant woman as such an issue does not arise in this case.

12. We find no merit in the appeal filed by the Kerala Public Service Commission. We, therefore, dismiss the appeal.