
(2002) 05 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 4085 of 2001

Kerala Public Service Commn

APPELLANT

Vs

Asokan A.M. and Another

RESPONDENT

Date of Decision : 29-05-2002

Acts Referred:

Citation : (2003) 1 KLJ 866

Hon'ble Judges : K. Thankappan, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : P.C. Sasidharan, for the Appellant; O.D. Sivadas and A. Sudhi Vasudevan, for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph. J.

1. The appellants herein are the District Officer, Kerala Public Service Commission, Thrissur and the Kerala Public Service Commission who are respondents 2 and 3 respectively in O.P.No.31446 of 2001. The appellants challenge the order passed by the learned Single Judge on 19.12.2001 in C.M.P No.51236 of 2001 in O.P.No.31446 of 2001. During the year 1997 the Public Service Commission issued a notification inviting applications from eligible candidates for the post of Electricity Worker (Mazdoor) in the various offices of the Kerala State Electricity Board. Sri.Asokan.A.M., petitioner in OP 31446 of 2001, applied for the post of Electricity Worker (Mazdoor). The petitioner passed the written examination and he was included in the short-list published by the Public Service Commission. Thereafter he was asked to appear for physical measurement and cycling test. As per the notification issued by the Public Service Commission, the minimum height required for selection to post of Electricity Worker (Mazdoor) is 157.48 cm. The candidate is required to submit a certificate issued by the Medical Officer in order to prove that he is having the required physical measurement. According to the petitioner, the physical measurement in his case was conducted by a policeman attached to the Office of

the Deputy Superintendent of Police, Thrissur. It is contended that the policeman is not an expert to conduct physical measurement of the candidates. The petitioner claims that his height is 158 cm. as evidenced by the certificate issued by the Assistant Surgeon, Public Health Centre, Vellanikkara. It is contended that at the time of physical measurement the authorities declared that the petitioner was not having the required height and therefore he was not permitted to participate in the cycling test. Aggrieved by the above action, the petitioner filed an appeal before the Public Service Commission. Thereupon he was directed to be present at the Office of the second respondent on 29-9-2001 for re-measurement. Accordingly the petitioner appeared before the authority concerned. But, according to the petitioner, the same police constable who had taken the earlier measurement, measured the petitioner's height and declared that the petitioner was not having the prescribed height. Thereupon the petitioner filed the Original Petition contending that the measurement taken by the authority was not in the proper manner and that the measurement was taken by an incompetent person who was not an expert in the field. The petitioner relied on the certificate issued by the Assistant Surgeon, Public Health Centre, Vellanikkara showing his height as 158 cm. In the Original Petition the petitioner prays for a direction to respondents 2 and 3 to permit him to participate in the cycling test in the light of Ext. P2 certificate issued by the qualified medical practitioner. He also prays for a direction to the respondents to refer the dispute with regard to the height of the petitioner to a medical board or to any other qualified medical practitioner in order to ascertain the actual height of the petitioner and to proceed with the selection process in the light of the certificate issued by the medical board or the qualified medical practitioner. There is also a prayer to declare that the petitioner is fully qualified to hold the post of Electricity Worker (Mazdoor).

2. Along with the Original Petition the petitioner filed C.M.P. No. 51236 of 2001 praying for a direction to respondents 2 and 3 to permit the petitioner to provisionally participate in the cycling test for selection as Electricity Worker (Mazdoor) pending disposal of the Original Petition. When the CMP came up for consideration before the learned single Judge, the Court directed the Security Officer of the High Court to measure the height of the petitioner who was present in Court on that day. The Security Officer found that the height of the petitioner is 157.6 cm. On that basis the Court held that prima facie, the petitioner is eligible to be considered for selection and for inclusion in the rank list. Hence the impugned interim order was passed by the learned Single Judge on 19-12-2001 directing that the petitioner shall be considered for the purpose of selection and for inclusion in the rank list subject to further orders. Aggrieved by the said order, the Public Service Commission has filed this appeal.

3. In the Original Petition a counter affidavit has been filed on behalf of respondents 2 and 3. According to the averments in the counter affidavit, as per the notification issued by the Public Service Commission, a candidate applying for the post should have the minimum height of 157.48 cm. The requisite

measurement regarding height is an essential qualification for being considered for the post. The petitioner was called for a physical measurement test by the Commission and the petitioner was subjected to physical measurement by a board duly constituted by the Commission. In that measurement the petitioner's height was noted as 157 cm. After the physical measurement the petitioner filed an appeal before the Commission seeking re-measurement and the re-measurement was conducted under the direct supervision of the Chairman of the Public Service Commission. In that measurement it was found that the petitioner was having a height 157.2 cm. Even as per the second measurement the petitioner did not have the minimum height. No further measurement is provided under the Rules. It is also contended that the certificate issued by the medical practitioner showing the petitioner's height as 158 cm is not binding on the Commission and cannot be accepted by the Commission as the Commission has independently measured the height of the petitioner. The measurement was done by the duly constituted board and on appeal, the re-measurement was done in the presence of and Under the direct supervision of the Chairman of the Public Service Commission. Under such circumstances no further measurement was necessary or permissible.

4. The main grievance of the appellants is regarding the procedure followed by the learned Single Judge in directing the Security Officer of the High Court to measure the height of the candidate and passing an interim order on the basis of such measurement. It is contended that the Constitution of India has entrusted the function of selecting eligible candidates and assessing their qualifications with the Public Service Commission. When a constitutional body like the P.S.C. is satisfied about the eligibility or ineligibility of a candidate, such satisfaction cannot be substituted by the satisfaction of any other body. It is contended that the Commission had taken the measurement in a scientific manner with meticulous accuracy whereas the Security Officer of the High Court had used only a tailor's tape to make the measurement.

5. Having regard to the facts and circumstances of this case, we are of the view that the procedure adopted by the learned Single Judge in directing the Security Officer of the High Court to measure the height of the candidate and granting relief on the basis of such measurement is not correct or proper. When the responsibility of selecting candidates for posts coming under the purview of the Public Service Commission is entrusted with the Public Service Commission and when the Commission has its own machinery and procedure for taking physical measurement of candidates and when the Rules of the Commission provide for redressal of grievances, if any, regarding any mistake or error in the measurement, it is not open to this Court to ignore the measurements made by the Public Service Commission and to arrange an independent measurement by the Security Officer of the Court. Even if the Court is satisfied that there is defect or error in the measurement made by the Commission, the Court can only direct the Public Service Commission to reconsider the matter. It is not for the Court to do the measurement or to get it measured by an officer of the Court. As rightly

pointed by Sri. Sasidharan, learned counsel for the Public Service Commission, the Commission had taken the measurements in a scientific manner using the proper equipment, but the Security Officer of the High Court used only a tailor's tape for measuring the height of the candidate. There is force in the contention of the learned counsel for the Public Service Commission that using a tailor's tape accurate, measurement cannot be made. We are of the considered view that the functions and responsibilities entrusted with the Public Service Commission should be left to be discharged by the Commission and no other authority including the Court cannot usurp those functions and responsibilities. If there is any patent mistake or error which calls for correction, the Court may direct the Public Service Commission to reconsider the matter. The action of the Court is directing the Security Officer to make the measurement amounts to infringement of the rights and powers of the Public Service Commission.

6. In taking the above view, we are supported by the judgment of the Supreme Court in *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, . It is a case where the Bihar Public Service Commission conducted selection for appointment to the post of Motor Vehicle Inspectors and on the basis of the selection made by the Commission, candidates selected by the Commission were appointed by the Government. Some of the unsuccessful candidates challenged the appointments on the ground that the selected candidates did not possess the qualification or experience in an appropriate automobile institution registered under the Factories Act, 1948 or possess driving licence. A learned Single Judge of the High Court who dealt with the case did not examine the contentions raised on behalf of the writ petitioners in necessary detail with reference to each selection candidate and directed the Transport Commissioner to do that exercise. On appeal the Division Bench of the High Court set aside the report sent by the Transport Commissioner pursuant to the order made by the learned Single Judge and directed fresh consideration of the matter by the Transport Commissioner. In such circumstances, the Supreme Court observed as follows :

We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such commission, which is an autonomous authority have a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate direction to redo the process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter.

7. In *Rajasekharan Nair v. D.I.G. of Police* 1987 (2) KLT 993, a learned Single Judge of this Court has observed that as a general proposition it is difficult to accept the position that when the Public Service Commission selects candidates after taking into account the qualifications prescribed by the Rules, the appointing authority can make a reassessment of the self-same qualification and

reach a conclusion different from that of the Public Service Commission. The Court further held that where the Commission was satisfied about the height of the candidate and advised him for appointment, the advice could not have been ignored by the appropriate authorities.

8. In OP 13013 of 1994 this Court did not accept the contention of the petitioner therein that his height should be granted relief on that basis. While rejecting the request of the petitioner the Court observed that the height of the petitioner as on the date of the first physical efficiency test is the relevant matter and that measurement cannot be taken at a later stage after the lapse of several months. It was further observed that such a procedure would be an unjust method when compared to the rights of the persons whose claims were rejected under similar circumstances. In the light of the discussion above, the appeal is liable to be allowed. Hence the impugned order is set aside. The Writ Appeal stands allowed.