

(2023) 04 KL CK 0063
In the High Court Of Kerala
Case No : Writ Petition (C) No. 5656 Of 2023

K.K.Prasanth

APPELLANT

Vs

Kerala State Road Transport Corporation

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Kerala State & Subordinate Service Rules 1958 — Rule 9

Citation : (2023) 04 KL CK 0063

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : Anil Kumar M.Sivaraman, P.Deepak, K.Narayanan Nair, Nazrin Banu, Deepu Thankan

Judgement

Sathish Ninan, J

1. The petitioner is a candidate sponsored by the Kerala Public Service Commission (hereinafter referred to as "the PSC") for appointment to the post of Reserve Driver in the first respondent Corporation. The rank list was published on 23.08.2012. The petitioner is the holder of Rank No.4203 therein. The holders of Rank Nos.4000 were appointed as early as in the year 2013.

2. Subsequently, pursuant to the order of this Court dated 30.06.2015, 2455 vacancies were reported by the Corporation to the PSC. Though the vacancies were reported as above, no regular appointments were made thereafter. The petitioner alleges that, the Corporation is engaging empanelled drivers on daily wages. This is in violation of Rule 9 of Part II of KS&SSR and also the various judgments and orders of this Court. The petitioner contends that the empanelment of Drivers and their continued employment is evident from Exts.P6 and P9 notifications. It is accordingly that the petitioner has approached this Court.

3. The respondents have filed a counter affidavit. Therein, they challenge the locus of the petitioner. They also assert the right to make temporary

appointments.

4. Heard Sri.Anil Kumar M. Sivaraman, learned counsel for the petitioner and Sri.Deepu Thankan, learned Standing Counsel for the Corporation.

5. At the very outset it is observed that, the challenge of the petitioner is not against the appointment of daily wage employees in the Corporation, but is against the process of "empanelment" and the employing of such persons indefinitely in violation of the statutory prescriptions and the judgments of this Court which were affirmed by the Apex Court.

6. In Antony Stejo J. and Ors. v. State of Kerala and Ors. [2019 (1) KLT 556 (DB)], a division bench of this Court was dealing with a case regarding, employing of empanelled conductors in the respondent Corporation. As against substantive vacancies in the Corporation, without filling up the vacancies through the select list of the PSC, services of the empanelled conductors were being utilised and that too, beyond the period of 180 days prescribed under Rule 9 of Part II of KS & SSR. Therein this Court held,

"Any substantive vacancies in the post of Conductor Grade- II after its ascertainment within a time frame can only be filled up through the PSC or by the persons sponsored by the Employment Exchange. The same shall however be strictly in accordance with the provisions of KS&SSR for the period permitted and that too temporarily till the exercise by the PSC is complete."

The Division Bench further held:-

"3. True it is that the KSRTC may appoint a person otherwise than in accordance with the above Rules temporarily to fill up a vacancy in a post immediately owing to an emergency under R.9(a)(i) of Part II of KS and SSR. However one of the provisos therein stipulates that a person so appointed to a post (other than teaching post and another) shall not be allowed to continue in such post for a period exceeding 180 days. R.9(2) of Part II of KS and SSR mandates that such a person shall not be allowed to continue in service in preference to a candidate advised by the PSC. One of the provisos to R.9(3) of Part II of KS and SSR is categoric that a person discharged from service after the admissible period shall not be re-appointed to the same post. The appointing authority can do so only when fresh candidates are not available for appointment through Employment Exchange which shall be made with the concurrence of the PSC. R.9(3)(iii) of Part II of KS and SSR is specific that a person appointed under this clause shall be replaced as soon as possible by an approved candidate qualified to hold the post under the Rules."

7. The services of the empanelled Conductors were terminated. Though the judgment was challenged before the Honourable Supreme Court in SLP(Civil) No.410/2009, the Apex Court refused to interfere with the same.

8. Thereafter, the Division Bench of this Court had occasion to consider a similar case as that of Antony Stejo's case (supra) i.e., Venugopal R & Ors. v. Kerala

State Road Transport Corporation & Ors., 2019 SCC OnLine Ker 1180; the only difference being that it is related to "empanelled Drivers" who continued even after the expiry of 180 days in violation of Rule 9 of Part II of the KS&SSR. The learned Division Bench reaffirming the law laid down in Antony Stejo's case (supra) directed termination of the services of the empanelled drivers. The court held,

"We caution that the KSRTC shall not operate with empanelled drivers when those in the ranked list of the PSC are eager and willing to join duty if advised for appointment who have been kept on tenterhooks for long".

The Division Bench also observed :-

"..... It is not as if the KSRTC is unaware of the law laid down by this Court repeatedly though a conscious attempt is made by them often to appease the trade unions by permitting empanelled employees to cling on."

9. The judgment of the Division Bench was challenged by the Corporation before the Apex Court (See SLP No.11034 of 2019). Ext.P2 is the order of the Apex Court. Therein, the engaging of empanelled Drivers were not approved and the judgment of the Division Bench was not interfered with. However, it was observed that, to meet the exigencies of a given day, the KSRTC may make suitable arrangements.

10. During the Sabarimala season-2019, the Corporation approached this Court in W.P.(C) No.31017/2019, seeking permission to engage contract/daily wage drivers during the Sabarimala Mandalapooja, Makaravilakku Festival Season, for the period 16.11.2019 to 31.01.2020. This Court as per judgment dated 19.11.2019 permitted the Corporation to make suitable arrangements by calling for applications from persons included in the rank list published by the PSC for appointment on daily wages, exclusively for the period from 20.11.2019 to 31.01.2020 and based on seniority. This Court further directed that such engagement will not vest any right with them to claim future engagement beyond 31.01.2020.

11. Alleging violation of the directions of this Court which prohibited continuance of empanelled drivers, Contempt Cases were filed before this court as Contempt Case Nos.2631/2019, 1374/2019 and 1375/2019. Therein the learned Division Bench as per order dated 09.01.2020 directed the Corporation to file an affidavit/undertaking that, no empanelled drivers would be engaged in future and only the candidates from the rank list maintained by the PSC will be engaged. Relevant direction reads thus:-

"An affidavit/undertaking has to be filed by the KSRTC that no empanelled driver would be engaged in future and only candidates from the rank list maintained by the KPSC will be engaged in future."

12. Therefore, from the judgments and orders of the Division Bench of this Court and of the Apex Court noticed supra, it is categoric that the practice of

maintaining empanelled drivers and engaging them beyond the period of 180 days in violation of Rule 9 of Part II of the KS&SSR is not permissible.

13. The respondent Corporation issued Ext.P6 memorandum dated 15.10.2022 inviting applications for appointment of drivers on daily wages for the Sabarimala special operations to be held from 10.11.2022 to 20.01.2023. The memorandum inter alia provided for the following:-

(i) Preference would be given to persons included in the Reserve Driver Rank list of PSC.

(ii) Even beyond 20.01.2023, if additional drivers are found necessary on a given day, employment on daily wages/badli will be made from the said list.

(iii) An agreement is to be executed incorporating the terms of employment including wages.

(iv) Security deposit of Rs.10,000/= is to be furnished.

(v) 100 duties per year, per person would be granted.

As noticed, Ext.P6 was dated 15.10.2022. Ext.P8 is a notice dated 23.10.2022 issued by the President of KSRTC Employees Association to the effect that, "empanelled employees" kept out of duty during Covid period, need not furnish the Security Deposit. Pertinently, the counter affidavit is silent about Ext.P8.

14. Thereafter, on 07.02.2023 Ext.P9 memorandum was issued by the Corporation sanctioning appointment of daily wages/badli employees from such list. Noticeably, as is evident from Ext.P7, 1104 badli drivers have been appointed pursuant to Ext.P6. The petitioner alleges that, out of the 1104 temporary drivers, more than 900 persons are the former empanelled drivers who were terminated as per the orders of this Court. Though the respondents have filed a counter affidavit, the same is not specifically denied therein.

15. From the above, I find force in the contention of the petitioner that under the shelter of Ext.P6 memorandum, the Corporation is engaging the empanelled workers bypassing the judgments of this Court as affirmed by the Apex Court by resorting to a circuitous method. In the light of the judgment in Antony Stejo's case (supra) and Exts.P1, P2, P4 judgments and orders of this Court and the Apex Court, the course adopted by the Corporation in permitting the daily wage drivers as empanelled drivers for future engagement as per Ext.P9, cannot be countenanced.

16. The learned Standing Counsel for the Corporation would submit that, the petitioner is only the selectee in a time expired rank, and hence a writ petition is not maintainable at his instance. No doubt, inclusion of name in the Rank List does not vest in him a right of appointment. It is also true that no rights could flow from a time expired Rank List. In Venugopal R case (Supra) the Division Bench, at paragraph 3 held thus:-"The expiry of the ranked list of the PSC dated 23.08.2012 is immaterial since it is conceded that 2455 vacancies in the post of

drivers were reported by the KSRTC to the PSC much before the expiry of the ranked list on 31.12.2016 pursuant to the interim order dated 30.06.2015. The law in this regard is settled by the decision in Annie v. Commissioner, Chalakudy Municipality (1984 KLT 170) as approved by the Full Bench of this Court in Vimala Kumari v. State (1994 (2) KLT 47) "

In Unnikrishnan Nair G. S and Ors. v. State of Kerala and Ors. 2019 (2) KHC 24 (FB), the Full Bench held thus :-

"Therefore, it becomes irrefragable that the reason for keeping alive a rank list for a particular period, whatever be the said period, is that the candidates included therein would obtain the guaranteed entitlement for being considered for appointment against all the reported vacancies which were available and are reported during the said period, notwithstanding whether the rank list expires thereafter."

17. As noticed earlier, 2455 vacancies were reported to the PSC before the expiry of the rank list. No appointments have been made from them. The petitioner being one among the selectees entitled for appointment to one among the 2455 vacancies is, without doubt, entitled to maintain the writ petition. That apart, what is brought to the notice of this Court is the conscious attempt to circumvent the judgments and orders of this Court as affirmed by the Apex Court. The challenge against the locus of the petitioner is only to be negated.

18. In spite of repeated directions of this Court not to engage empanelled drivers, and that the appointment, even on daily wages, should be in tune with Rule 9 of Part II of the KS&SSR, the Corporation is disregarding the same. Ext.P9, in the background of Exts.P6, P7, P8 is a classic demonstration of the same. Ext.P9 is liable to be interfered with.

19. Resultantly, the writ petition is ordered as hereunder :-

(i) Ext.P9 memorandum dated 07.02.2023 is quashed.

(ii) Resorting to appointment of daily wage/casual/ badli drivers if necessitated, shall be done strictly adhering to the directions of this Court in Antony Stejo's case (supra) as affirmed by the Apex Court in SLP(Civil) No.410/2009, and Venugopal's case (supra) as affirmed in SLP (c). 11034/2019.