

(2005) 08 KL CK 0051

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 15659 and 15876 etc. of 2004

Krishnankutty

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4(1), 4(2), 4(4)

Kerala Public Service Commission (Additional Functions as Respects the Kerala State Road Transport Corporation) Act, 1970 — Section 4

Citation : (2005) 4 ILR (Ker) 536 : (2005) 4 KLT 448

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : M.K. Damodaran and I.V. Pramod, for the Appellant; B.S. Krishnan K. Anand, Latha Krishnan, Thampan Thomas, V.V. Nandagopal Nambiar, T.P. Pradeep and K.S. Sabitha, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Common questions arise for consideration in all these cases. Learned single Judge vide order dated 8th August 2005 referred these cases to the Division Bench to examine the question whether appointment to the post of Mazdoor would fall within the purview of the Kerala Public Service Commission in view of the Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Act, 1970 (Act 9 of 1970) read with the Kerala Public Service Commission (Consultation by Corporations and Companies) Rules, 1971.

2. Learned Judge on the same day also disposed of OP. 5311 of 2003 quashing the award dated 4-10-2002 passed by the Industrial Tribunal, Palakkad and directed the Industrial Tribunal to consider the claim of regularisation of the service of CLPW (Casual Labour Pool Workers) who had worked for not less than 200 days prior to 1.11.2000 afresh. Industrial Tribunal was directed to dispose of the matter within a period of three months from the date on which a copy of the judgment is made available to the Tribunal. So far as the writ petitioners in all

these cases are concerned the award has already been quashed by the learned single Judge in OP. 5311 of 2003 and therefore the only question posed for consideration is whether the post of Mazdoor would fall within the purview of Public Service Commission.

3. Sri. M.K. Damodaran who led the arguments submitted that Malabar Cements is a government company which has already been included within the purview of Act 9 of 1970 and therefore consultation with the P.S.C. is a pre requisite for effecting appointment to the post of Mazdoors. Counsel also submitted even if this post would not fall within the purview of Public Service Commission recruitment be confined only to those candidates who have been sponsored by Employment Exchange. Counsel referred to the provisions in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. Counsel referred to several decisions of Supreme Court as well as this Court such as Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , Jacob M. Puthuparambil v. Kerala Water Authority (1991) 1 SCC 25, Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , State of Kerala and Ors. v. Jyothi S.S. and Ors. (2002 (1) KLT SN 126 : ILR 2002 (Ker.) 341, Sabu Kurian v. Meenachil East Urban Co-operative Bank Ltd. 1999 (2) KLT 180 and submitted, in any view of the matter, since the persons represented by petitioners" union are being engaged as casual labourers for over 10 to 15 years the respondent Government Company is bound to regularise them in service. Counsel also submitted, the steps taken by the company to fill up the post of Mazddor through direct recruitment is illegal and would defeat the right of the members of the petitioners" union for regularisation in service. Counsel submitted, in any view of the matter since the question of regularisation of CLPW is pending consideration before the Industrial Tribunal no appointments be effected in the meanwhile. Identical is the contention raised by Advocate Sri. Thampan Thomas and Ors.

4. Sri. B.S. Krishnan, Senior counsel appearing for the Company contended that the post of Mazdoors will not come within the purview of the Public Service Commission and therefore the company is entitled to fill up the post through direct recruitment. Counsel submitted, the policy of the Government is that all employees of individual corporations and companies, as defined in the Factories Act, and excluding persons employed in supervisory and managerial capacity, are to be recruited by the Public Service Commission. Counsel referred to a Government letter dated 14-8-1990 and the notification SRO No. 145/71 containing the Rules issued u/s 4 of Act 9 of 1970 and submitted that all employees of the individual corporations and companies excluding "workman" as defined in the Factories Act and excluding "Managerial" and "supervisory" personnel under the Industrial Disputes Act are to be recruited by the Public Service Commission. Reference was also made to Ext.R2(e) letter dated 4-7-1988 and also R2 (a) letter dated 25-5-2000. Counsel submitted, those orders would show that post of Mazdoor would not fall within the purview of Public Service Commission. Counsel also referred to several decisions such as

AIR 2004 SC 834, R.K. Jain v. Union of India and Ors. 1993 AIR SCW 1899, Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , Mahendra L. Jain and Others Vs. Indore Development Authority and Others, , Zakir Hussain Vs. Engineer-in-Chief, Irrigation Dept. and Others, .

5. We have gone through the provisions of Act 9 of 1970 and the rules framed thereunder including the notification issued by the Government under SRO. 145/71 and the rules issued u/s 4 of Act 9 of 1970. Policy of the Government is that all employees of individual Corporation and Companies excluding workers as defined in the Factories Act and excluding persons employed in supervisory or managerial capacity are to be recruited through P.S.C. Identical is the question raised in respect of Travancore Titanium Products Limited, another Government company and a Division Bench of this Court in W.A.Nos. 986 and 603 of 1987 had held that the worker categories are excluded from the purview of the Public Service Commission. We are in agreement with those decisions. We are of the view the post of Mazdoor therefore would not fall within the purview of Public Service Commission.

6. We may further examine the question raised by the counsel for the petitioners as to whether respondent company is legally obliged to recruit persons only through Employment Exchange. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted by the Parliament to provide for the compulsory notification of vacancies to employment exchanges. It is the common case that the respondent company is also bound by the provisions of the Act. We are informed that about 108 vacancies are available for the post of Mazdoor. Company has addressed the Employment Exchange, Palakkad and 4389 names are now sponsored. Company has also invited applications through direct recruitment and 19314 applications are received. Qualification prescribed for the post is only VIII Standard and the candidates should have physical fitness to carry 50 kilograms of cement and persons should have completed 18 years of age as on-1-1-2004 and not more than 35 years of age. Going by the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, (Act 31 of 1959) after the commencement of the Act, the employer in every establishment in public sector in the State shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed. Section 4(4) stipulates that nothing contained in Sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because that vacancy has been notified under any of those subsections. Section 4 as such does not cast any obligation on the employer to recruit any person merely because the vacancy is sponsored by the Employment Exchange. Further in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, the Apex Court interpreting Section 4(1) of Act 31 of 1959 held as follows:

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

But when the actual qualification is only VIII Standard and the post to be filled up is that of Mazdoor and large number of persons are awaiting recruitment after getting their names registered, the field of choice could have been confined to the persons sponsored by the local Employment Exchange. Salary scale is low and the post is that of Mazdoor, hence persons of the locality could have been preferred. We however express no final opinion in view of the decisions of the apex court and the applications have already been invited from open market. Further petitioners have also not impleaded any person who has applied from open market through paper publication in these proceedings. We however, notice that persons represented by the petitioners union are being engaged as CLPW for several years it would be appropriate for the respondent company to frame some scheme for their absorption so that they could also be considered for appointment to the post of Mazdoor if they satisfy the job requirements. In any view their claim is new pending consideration before the Industrial Tribunal, hence we are inclined to give a direction to the respondent company not to fill up the post of Mazdoors till a final adjudication is made by the Industrial Tribunal on their request for regularisation. We make it clear we have not expressed any final opinion with regard to the merits of their case since matter is pending consideration before the Industrial Tribunal.

Writ Petitions are disposed of with the above direction.