
(2011) 08 KL CK 0015

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 22278 of 2011

Liji. P.R. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 31-08-2011

Acts Referred:

Kerala Public Service Commission Rules of Procedure, 1976 — Rule 14
Kerala State and Subordinate Services Rules, 1958 — Rule 14(e), 15(d)

Citation : (2012) 2 KLJ 518

Hon'ble Judges : C.T. Ravi Kumar, J

Bench : Single Bench

Advocate : M.R. Anison, K.P. Geetha Mani, P.A. Rinusa and Annie Jacob, for the Appellant; A.J. Varghese (GP) and P.C. Sasidharan (SC), for the Respondent

Final Decision : Dismissed

Judgement

C.T. Ravi Kumar, J.—The petitioners responded to Ext.P1 notification dated 30.4.2009 issued by the Kerala Public Service Commission ("PSC" for short) for appointment to the post of Police Constable (Indian Reserve Battalion - Regular Wing) in the Police Department. After conducting a regular selection process Ext.P2 ranked list was brought into force on 5.6.2010. The petitioners are included in the supplementary list published as per Ext.P2 ranked list. The contention of the petitioners is that going by the notification it was issued for the purpose of filling up 475 vacancies of Police Constables in the Indian Reserve Battalion - Regular Wing. 532 candidates were included in the main list and 571 candidates were included in various supplementary lists attached to the said list. After the coming into force of the ranked list on 13.7.2010, 475 candidates were advised from the said list. According to the petitioners subsequently 146 non-joining duty (NJD) vacancies were reported to the second respondent on 21.2.2011 and consequently, such number of candidates were also advised by the PSC on 5.4.2011. Thereafter 59 NJD vacancies and three fresh vacancies were reported to the PSC on 7.4.2011. By that time except rank No. 530 in the main list all the others stood advised by the PSC. Therefore, with the advice of

that last person in the main list, the main list got exhausted. Resultantly, the supplementary lists become inoperative. The grievance of the petitioners pertain to the non-reporting of the aforesaid 62 vacancies reported to the PSC on 7.4.2011. According to the petitioners, going by Rule 14 of the Kerala Public Service Commission Rules of Procedure, the Commission is bound to advise candidates against all those vacancies reported and pending before it and also against all the vacancies which may be reported to them for the period during which the ranked lists are kept alive, in the order of priority, if any, and in the order of merit subject to the rules of reservation and rotation, wherever they are applicable. Therefore, according to them, the second respondent is bound to effect advise against all the reported vacancies on or before 7.4.2011 in spite of the exhaustion of the main list. It is in the said circumstances that this writ petition has been filed mainly with a prayer to issue a writ of certiorari to quash Ext.P2 ranked list to the extent it suffers from non-inclusion of sufficient number of candidates in the main list and to advise all the vacancies reported to the second respondent during the currency of the above ranked list. The further prayer is for issuance of a direction to the second respondent to select sufficient number of candidates from among the persons already applied to the post of Police Constable (Indian Reserve Battalion - Regulation Wing) in the Police Department, pursuant to Ext.P1 notification, for being included in the main list attached to Ext.P2 ranked list. It is also prayed for a direction to the second respondent to enlarge or enhance the number of candidates in the main list attached to Ext.P2 ranked list by selecting candidates from supplementary list and to enable the second respondent to advise all the vacancies reported during the validity of Ext.P2 ranked list. In support the contentions as also the prayer for enlargement of Ext.P2 ranked list, the petitioners relied on the decisions of this Court reported in *Ajayan Vs. State of Kerala*, ; *Ravidas v. KPSC* 2009 (2) KHC 10. I have heard the learned counsel for the petitioners, the learned Standing Counsel for the Kerala Public Service Commission and also the learned Government Pleader. The learned standing counsel for the PSC and also the learned Government Pleader contended that the aforesaid decisions relied on by the petitioners have no application to the facts and issues involved in this case. Accordingly to them, since the main list is exhausted the supplementary lists cannot be operated anymore and enlarging or enhancing the main list is also wholly impermissible in law, in the said circumstances.

2. A perusal of the judgments relied on by the petitioners would reveal that in all those cases the question to be decided was that whether enlargement of an exhausted ranked list is required or not. The question whether enlargement of the main list of a ranked list after its exhaustion was not a subject matter for consideration in those cases.

3. Ext.P3 would reveal that on 7.4.2011, 62 vacancies (59 NJD and 3 fresh) were reported to the PSC. Admittedly, pursuant to the receipt of the reporting of the said vacancies of candidate with Rank No. 530 in the main list, the only surviving candidate in the said list, was advised for appointment and thus, with his advice

the main list got exhausted. The contention of the petitioners is that in the light of Rule 14 of the Kerala Public Service Commission Rules of Procedure, the second respondent is bound to advise candidates against all the above reported vacancies prior to the expiry of the ranked list and that is, against the remaining 61 vacancies as well. In none of the decisions relied on by the petitioners the question whether the main list of a particular rank list in respect of a particular post could be enlarged after its exhaustion was poignantly passed for consideration. Even going by the provisions under Rule 14 of the Rules of Procedure PSC would be under an obligation coupled with duty to advise candidates against reported vacancies only during the currency of the ranked list. The purpose of drawing a supplementary ranked list is evident from Rule 14(e) of Part II of Kerala State and Subordinate Service Rules. Rule 14 (e) reads as follows:-

Rule 14(e): A supplementary list of sufficient number of suitable candidates, not less than five times the reservation quota, if available, from each community or group of communities for the purpose of satisfying the reservation quota, shall be prepared and published.

4. Thus it is obvious that the purpose of drawing a supplementary list is to satisfy reservation quota. Going by the contentions of the petitioners and also the reliefs sought for by them, it is evident that they seek for bringing them into main list and then to operate it. The question of enlargement or enhancement would arise only if the main list is in existence. Admittedly, the main list got exhausted with the advice of the sole candidate remaining to be advised as on 7.4.2011.

5. There cannot be any doubt that under normal circumstances, i.e., if the main list has not expired or exhausted the Commission is bound to effect advice candidates against all the vacancies reported to it during the currency of the concerned list by virtue of the provisions under Rule 14 of its Rules of Procedure. This is evident from the expression "for the period during which the ranked lists are kept alive" employed in the said rule. In *Ajayan Vs. State of Kerala*, and in the decision in *Twinkle v. Kerala Public Service Commission* reported in 2011 (2) KLT (SN) 58 (Case No. 77), this Court held that the advice of candidates should be in respect of the vacancies reported during the currency of the list. In fact, the *Twinkle's* case it was held that the Commission is only obliged to advise candidates to vacancies which were reported only during the currency of the ranked list. In *Ajayan's* case (*supra*) it was held that the Commission could not prescribe cut-off marks and short list the candidates in the absence of such a provision in the Rules and notification. It is further held:-

Shortlisting should not be done in an arbitrary manner and it should relate not only to the existing vacancies, but also, to the anticipated vacancies and it is always better to prescribe the manner why shortlisting is done before the selection process starts.

Following, *State of Punjab and others v. Manjit Singh and others*, PSC was

directed to consider the anticipated vacancies also and then refix the number of persons to be called for the interview on the basis of the directions in Manjit Singh's case. Thus, according to the petitioners, the main list should have three times of the number of reported vacancies and the anticipated vacancies taken together. Correctness of the decision in Ajayan's case was later, referred to the Full Bench in the light of the decision of a Division Bench in Indulekha and Others Vs. State of Kerala and Others holding that prescription of cut-off marks was proper in shortlisting of candidates. Full Bench in Ravidas case (supra) while agreeing with the view taken in Ajayan's case held the law laid down in Indulekha's case as not good law. It was also held that shortlisting of candidates based on circulars as proper and it would not amount to shortlisting based on cut-off marks. As regards the size of the main list in the case on hand it was only 532 and notification itself would reveal that the number of notified vacancies was 475. In the said circumstances, the claim of the petitioners for enlarging the size of the main list would appear only to be accepted at the first blush. But, at the same time, it is to be noted that admittedly, with the advice of the candidate with Rank No. 530 in the main list the main list got exhausted. Admittedly, the petitioners are candidates included in the supplementary lists published as per Ext.P2 ranked list. As already noticed herein before, the very purpose of preparing a supplementary list is satisfy the reservation quota. If that be so, bringing candidates included in the reservation quota to the main list that too, after the main list is exhausted, would definitely defeat the said purpose. In this context another aspect also assumes relevance. The provisions of second proviso to Rule 15(d) of Part II of Kerala State & Subordinate Service Rules, which is relevant in this context, reads thus:

Rule 15(d): Reservation to a category of posts shall not exceed 50% of the total number of vacancies for which selection is resorted to in a selection year:

Provided that the 50% ceiling to reservation specified above shall not apply to the filling up of any number of reserved vacancies kept unfilled and notified separately as per sub-rule (a) of rule 15 to be filled exclusively by direct recruitment from among a community or group of communities.

Provided further that such class of vacancies to be filled up in that year or in any succeeding year or years shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% of the total number of vacancies of that year.

For the purpose of inclusion of candidates in a supplementary list the respondents must have lowered the marks. In other words, in a supplementary list persons having lower marks than the last candidate in the main list would find place. In this case the last candidate included in the main list had 36 marks. In the case of candidates included in the supplementary list of Ezhava community, persons who secured only 29 marks also found place. In the case of Scheduled Castes the last candidate in the supplementary list secured only 27 marks. It is to be noted that the prayer of the petitioners is to enlarge or

enhance the number of candidates in the main list attached to Ext.P2 ranked list by selecting candidates from supplementary lists, to enable the second respondent to advise all the candidates reported during the validity of Ext.P2 ranked list. The question whether after the exhaustion of a ranked list its supplementary lists could be operated, had come up for consideration in *Nair Service Society Vs. Dist. Officer, Kerala Public Service Commission and Others*, . The Hon"ble Apex Court held that non-joining duty vacancies cannot be filled up by candidates included in the supplementary lists after the main list is exhausted or expired. In the above circumstances, the petitioners cannot claim for resorting to a method indirectly to defeat the dictum laid down by the Hon"ble Apex Court. If supplementary lists could not be operated after exhaustion of the main list such candidates included in supplementary lists cannot contend that they should be brought over to the main list for the sake of its expansion that too, after its exhaustion. The Full Bench has not laid down any law that even after exhaustion of the main list it has to be expanded to satisfy the decision in *Manjith Singh's* case (supra) as regards size of a list. It is a settled position that what cannot be done directly cannot be done indirectly. In this case, evidently, the petitioners approached this Court only after the main list in Ext.P2 got exhausted. The contention of the petitioners that they are entitled the reliefs in view of the decision in *Ajayan's* case despite the exhaustion of the main list cannot be accepted in view of the decision of the Hon"ble Apex Court in *Dhodha House Vs. S.K. Maingi*, . It was held therein by the Hon"ble Apex Court that a decision is an authority for what it decides and not what can be legally be deduced therefrom. For all these reasons, the petitioners are not entitled to any of the reliefs. There is no merit in this writ petition and accordingly, it is dismissed.